

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos. 529/Ahd/2018 & 40/Ahd/2019
(निर्धारण वर्ष / Assessment Years : 2010-11 & 2009-10)

Jayesh N Barad C/o JHS & Associates LLP Chartered Accountants 206, Shital Varsha, Opp. P C Jewellers, Shivranjani Cross Road, Satelite, Ahmedabad - 380015	बनाम/ Vs.	The Dy. Commissioner of Income Tax Circle – 1(1)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AUYPB8944Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri K. H. Shah & Shri Aman Shah, A.Rs.
प्रत्यर्थी की ओर से / Respondent by :	Shri Virender Singh, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	08 & 09/08/2019
घोषणा की तारीख /Date of Pronouncement	11/09/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the assessee against the orders of the Commissioner of Income Tax (Appeals)-1, Ahmedabad ('CIT(A)' in short), dated 12.01.2018 arising in the assessment order dated 15.11.2016 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AYs. 2010-11 & 2009-10.

2. The grievances raised being common, both cases were heard together and disposed of by the common order.

3. We shall first take up assessee's appeal in ITA No. 529/Ahd/2018 concerning AY 2010-11.

ITA No. 529/Ahd/2018-AY-2010-11 (Assessee's appeal)

4. The grounds of appeal raised by the assessee read as under:

“1.00 RE-OPENING IS BAD IN LAW.

1.01 On the facts and circumstances of appellant's case as well as in law, the Hon'ble CIT (A) has erred in confirming erroneous action of Id AO of reopening of assessment proceedings as it lacks jurisdiction, re-opened without bringing on record independent reason / satisfaction for reopening and mainly re-opened based on reason / satisfaction of third party.

1.02 Your appellant prays Your Honour to hold so now and treat the reopening as Bad in Law and set aside the assessment.

2.00 ADDITION OF RS. 33,42,622/- U/S 68 / 69A TREATING CASH DEPOSIT FROM BUSINESS ACTIVITIES AS UNEXPLAINED CASH CREDIT.

2.01 On the facts and circumstances of appellant's case and in law, the Hon'ble CIT (A) has erred in classifying source of cash deposit / cash withdrawal as unexplained cash credit / cash withdrawal though necessary documents such as bills, confirmations, books of accounts etc. are available to substantiate the same.

2.02 Your appellant prays Your Honour to hold so now and treat the source of cash deposit as emanating from business transactions only and not as unexplained cash credit.”

5. Ground no.1 of the appeal is dismissed as not pressed.

6. Ground No.2 concerns addition of Rs.33,42,622/- under s.68/69A treating the cash deposits as unexplained cash credit.

7. Briefly stated, on the basis of certain information received from investigation wing of the department, it was gathered by the AO that the assessee has carried out huge cash transactions through a bank account with Central Bank of India during FY 2010-11. It was noticed that the assessee has deposited aggregate cash of Rs.33,42,622/- on the one hand and withdrawn cash of Rs.30,50,000/- in aggregate on the other hand. It was further noticed by the AO that the assessee did not file return of income for AY 2010-11 at all. Consequently, a notice under s.148 of the Act was issued and re-assessment proceedings were undertaken under s.147 of the Act. In scrutiny assessment, pursuant to the exercise of powers under s.147 of the Act, it was held by the AO that various cash deposits were made in the assessee's bank account aggregating to Rs.33,42,622/- remained unexplained. The AO accordingly made additions towards unexplained cash deposits in bank to the aforesaid extent.

8. In the first appeal before the CIT(A), the assessee submitted that transactions in the bank account pertained to his retail business (wheat). However, as the nature and details of business of the assessee were not explained, the CIT(A) refused to interfere with the order of the AO.

9. Further aggrieved, the assessee preferred appeal before the Tribunal.

10. When the matter was called for hearing, the learned AR for the assessee referred to month-wise quantitative details of purchase and sale together with value thereof in relation to in retail business in wheat. It was further pointed out that the assessee has re-cycled the cash deposits by way of simultaneously withdrawal of almost similar amount which goes to prove that the assessee is in retail business. The learned AR thereafter referred to page no.20 of the order of the CIT(A) and submitted that even in the statement recorded under s.132(4) of the Act by the Investigation Wing, the assessee had asserted that the bank account was used for trading agricultural product, wheat, cumin seeds, coriander etc. It was submitted that during FY 2008-09 to 2010-11, the assessee has also explained before

the Revenue authorities that he purchased agricultural products from nearby Village of Veraval, Taluka i.e. native place of assessee and sold it in the residential areas of Gandhinagar of Ahmedabad. It was pointed out by the learned AR for the assessee that assessee had also submitted the confirmation of farmers along with Form No. 7/12 and 8A certificates in support of claim of being engaged in retail business. The learned AR thus submitted that having regard to the continuity of deposits and withdrawals, it is obvious that the assessee has re-cycled the same money and has no wherewithal to generate such kind of cash deposits. The learned AR thus submitted that the action of the Revenue in making additions towards aggregate amount of cash deposits while completely ignoring the simultaneous cash withdrawals is totally unjustified in the facts and circumstances of the case. The learned AR however submitted that the grievance of the assessee would be met if the provisions of Section 44AF of the Act is invoked as applicable to the persons engaged in retail trade in any goods or merchandise and the sum equal to 5% of the total turnover of such business be deemed to be profits and gains of such business.

11. The learned DR for the Revenue, on the other hand, relied upon the order of the lower authorities and submitted in furtherance that the assessee has failed to produce any evidence that the cash was generated in retail sale as claimed.

12. We have considered the rival submissions. The question that arises for consideration is whether deposits in the bank account of the assessee can be recorded as trading asset or whether such deposits are to be recorded as the income from unexplained source under s.68/69 if the Act. In this regard, we observe at the first place that while total deposit in cash was found to be Rs.33,42,622/-, there is simultaneous withdrawal to the extent of Rs.30,50,000/- during the year. The cash book filed by the assessee showing day-to-day generation of cash and deposits thereof also makes it clear that the assessee is engaged in systematic activity of retail business. The withdrawal of similar amount of cash substantiates the claim of the assessee to be engaged in retail business to a great extent. Coupled

with this, the claim of the assessee also gains support from the statement recorded by the Investigation Wing under s.132(4) of the Act. The assessee has also supported its claim of being engaged in retail business by month-wise summary of retail transactions showing quantity and value. In the circumstances, we are inclined to accept the cash deposit to be arising and attributable to retail trade. This being so and in view of the averments made on behalf of the assessee, the business income from retail trade may be estimated by invoking Section 44AF of the Act. Similar view has been echoed in *CIT vs. Pradeep Shantilal Patel (2014) 42 taxmann.com 2 (Guj)* and *CIT vs. Surinder Pal Anand (2011) 242 CTR 61 (P&H)*.

13. As per the scheme of presumptive taxation provided under s.44AF of the Act, the estimated business income from aggregate cash deposits / turnover works out to Rs.1,67,131/- by applying 5% thereon. The estimated income from the cash deposits in the bank is thus requires to be restricted to the aforesaid amount. The AO is directed to do so.

14. In the result, the appeal of the assessee for AY 2010-11 is partly allowed.

ITA No. 40/Ahd/2019-AY-2009-10 (Assessee's appeal)

15. Identical matter with similar grievance of the assessee arising in AY 2009-10 was heard on next day i.e. 09.08.2019 as well. It was pointed out on behalf of the assessee that the facts in issue and the grievance of the assessee are identical concerning AY 2009-10 where instance of similar cash deposit of aggregate amount of Rs.37,48,036/- was similarly observed. Simultaneously, cash withdrawal of Rs.35 Lakhs was also found. On these facts, the case was re-opened akin to 2010-11 (supra). The Revenue did not rebut the assertions made on behalf of the assessee.

16. In view of the similarity of the matter, our observations in AY 2010-11 would apply *mutatis mutandis*. Accordingly, the order of the CIT(A) is

set aside and the AO is directed to estimate the income @ 5% of the cash deposits as provided under s.44AF of the Act.

17. In the result, appeal of the assessee for AY 2009-10 is partly allowed.

18. In the combined result, both the appeals filed by assessee are partly allowed.

This Order pronounced in Open Court on 11/09/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 11/09/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।