

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.129/SRT/2017

निर्धारणवर्ष/Assessment Year: 2008-09

Ashok Kumar Gurubani, 404/C, Samarth Residency, Hidayat Nagar, Palanpur Jakat Naka Road, Surat. [PAN: AICPG 6453 F]	Vs.	Income Tax Officer, Ward-1, Navsari
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent
निर्धारितकीओरसे /Assessee by	Shri Suresh K. Kabra - AR	
राजस्वकीओरसे /Revenue by	Smt. Anupama Singhla - Sr.D.R	
सुनवाईकीतारीख/ Date of hearing:	11.12.2019	
उद्घोषणाकीतारीख/Pronouncement on:	13.12.2019	

आदेश /O R D E R

PER O.P.MEENA, AM:

1. This appeal filed by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals), Valsad [in short “the CIT(A)”] dated 12-05-2017 for the assessment year 2008-09.
2. Ground No. 1 to 3 relates to confirming the addition of Rs.13,08,050/- made on account of cash deposits.
3. Brief facts of the case are that the AO noticed that the assessee has deposited cash of Rs.13,08,050/- in his savings bank account with ICICI Bank during the assessment year under consideration. It was explained by the assessee that he has not deposited the said amount of Rs.13,08,050/- in his savings bank account with ICICI bank. He has also claimed that he had not opened this savings bank account in ICICI bank

and the account has been opened by the person named Shri Kalpesh P. Prajapati. He has also furnished the bank account opening for savings bank account and the copy of complaint filed against Kalpesh P. Prajapati in the Office of superintendent of Police, Navsari. In reply to notice u/s.133(6), the bank has stated that this said controversial bank account was opened on 10-02-2007 and also furnished bank account of opening form, which clearly depicts the photograph of the assessee and his signature. Further, the copy of PAN card of the assessee is furnished by the bank which was submitted by the assessee as the supporting document to open the bank account in ICICI bank. In respect of summons u/s.131, the statement was recorded for the assessee wherein he denied to have opened the bank account as the claim that his identity was misused by Shri Kalpesh P. Prajapati. He also stated that he has filed the complaint against Shri Kalpesh P. Prajapati for misusing his identity. The assessee has filed one more reply dated 27-03-2016 via e-mail, stating that he has taken back his complaint against Shri Kalpesh P. Prajapati as they have arrived to an agreement. According to the agreement made between the assessee and Shri Kalpesh P. Prajapati, the latter has agreed to pay all the income tax incurred on the cash deposit of Rs.13,08,050/- in the said bank account. He has already paid Rs.25,000/- of bearing expenses that assessee's incurred during the course of assessment proceedings and also given Rs.75,000/- for CA and advocate fees and travelling expenses. Further, it was agreed that Shri Kalpesh P. Prajapati will give Rs.50,000/- to deposit the same in favour

of income tax department. In view of this fact, the AO has added the cash deposit in the bank account in the hand of the assessee.

4. Being aggrieved, the assessee carried the matter before the CIT(A). However, wherein same facts were repeated, the AR of the appellant also filed a copy of mutual agreement between the appellant and Kalpesh dated 04-01-2016 wherein reference of initial complaint dated 29-10-2015 is mentioned. In view of this, the CIT(A) observed that the police complaint and mutual agreement only prove that the appellant is not at all unaware of Kalpesh Prajapati. As the bank bank account in the name of the appellant which is not proved as forged and appellant's mutual settlement proves his involvement. Therefore, the AO has rightly taxed the cash deposits in the said bank account in the appellant's hand. Accordingly, the addition was confirmed.

5. Being aggrieved, the assessee filed this appeal before this Tribunal. The ld. counsel submitted that mutual agreement arrived in the assessee and Shri Kalpesh P. Prajapati dated 04-01-2016 has not been honored by him, therefore the cash deposits in the said account does not pertain to the assessee. The ld. counsel has also filed a copy of High Court order in Criminal Misc. Application No. 6244 of 2018 dated 19-06-2018 by which Shri Kalpesh P. Prajapati was granted bail on the condition that he has undertake before Trial Court and filed within three weeks from the date of his relates to the fact that he will deposit 50% of his total amount by the Income Tax Department in the account of the complaint (i.e., assessee was deposited the said amount before Income Tax Department). Thereafter, the complainant may be directed

to deposit the said amount with the Income Tax Authority in the appeal proceedings that may be filed by the complainant in the Income Tax Authority within a period of three weeks. However, the ld. counsel contended that Shri Kalpesh P. Prajapati has not fulfilled the terms and conditions of the bail granted to him, therefore the cash deposit amount does not belonging to the assessee, hence the same may be deleted.

6. *Per contra*, the ld. Sr. DR relied on the order of the lower authorities.

7. We have heard the rival submissions and perused the material available on record. We find that the amount of cash deposit appeared in the name of assessee; however it appears from the appellant's complaint filed by the assessee that Shri Kalpesh P. Prajapati has misrepresented facts and misused his bank account. However, it is sub-judicious as the Kalpesh P. Prajapati who was related on bail has not fulfilled the terms and conditions of his bail. It is apparent from the High Court order that Shri Kalpesh Prajapati has accepted the liability on account of cash deposits in the said bank account. However, we find that the bank account stands in the name of the assessee and the assessment has made in the name of the assessee. Therefore, on technical ground the income is being considered the cash deposits in the hand of the assessee which would not be influenced to the findings in the complaint filed by the assessee against Shri Kalpesh P. Prajapati. We find that the AO has made addition of total cash deposits, however in such cases of cash deposits, only peak balance is being considered.

The perusal of statement shows that there is a peak credit balance of Rs.2,13,747/- as on 24-07-2007. Accordingly, addition to this peak balance is confirmed. Further, we find that there is opening cash deposit of Rs.2,13,747/- on 04-04-2007, hence the initial cash deposit is also not unexplained. Therefore, the addition of said amount is also confirmed. In view of this, the addition of Rs.4,13,747/-(4,00,000 + 2,13,747) is confirmed and the balance is deleted. This addition is being confirmed on technical ground as there is a dispute between the assessee and Kalpesh P. Prajapati that the bank account was opened by Shri Kalpesh P. Prajapati and not by the assessee. Further, since the Kalpesh Prajapati has agreed to pay the Income Tax liability before the Hon'ble High Court, therefore as per our considered opinion that the assessee will recover the income tax liability of this income from Shri Kalpesh Prajapati and pay to the Income Tax Department. In view of this fact, the ground of appeal is partly allowed in favour of the assessee.

8. In the result, the appeal of the assessee is partly allowed.
9. Order pronounced in the open court on 13-12-2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

सुरत/Surat, दिनांक Dated: 13th December, 2019/S.Samanta, PS
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

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By order
Assistant Registrar, Surat