

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 2097/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2011-12)

Shri Kishor Bachuram Kapdi C/o. A. P. Sandesara & Co. 104, Maurya Complex, Near C.U.Shah College, Off. Ashram Road, Ahmedabad 38009	बनाम/ Vs.	Income Tax Officer Ward -8(4), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGGPK3897B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Kalpesh Doshi, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Umesh Kumar Agarwal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	30/01/2020
घोषणा की तारीख /Date of Pronouncement	31/01/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-8, Ahmedabad ('CIT(A)' in short), dated 05.06.2015 arising in the assessment order dated 26.03.2014 passed by the

Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. As per grounds of appeal, the assessee has challenged the action of the CIT(A) in sustaining the additions of Rs.19 Lakhs towards cash deposits under s.69 of the Act alleging unsatisfactory explanation of source of cash deposits.

3. When the matter was called for hearing, the learned AR for the assessee referred to the cash book (page no.20 & 21 of paper book) maintained by the assessee and pointed out that the cash has been withdrawn from the bank by the assessee from time-to-time and thereafter re-deposited in the bank. In the circumstances, the source of cash deposit is fully explainable. It was pointed out that the AO has disbelieved the gap between the withdrawals from the bank and re-deposit in the bank. The AO has not accepted the cash withdrawals prior to the cash deposit to be the proper source of cash deposit mainly on the ground that the cash withdrawals have been used for acquisition of immovable property and for payment of unaccounted stamp duty thereon amounting to Rs.3,10,000/- during the year. It is alleged that the cash withdrawals was used as on-money for investment in immovable property, addition and alteration in the property and other personal expenses and towards payment of stamp duty and therefore could not be ploughed back in the bank at the fag end of the financial year as claimed. The learned AR submitted that the payment for immovable property acquired for a consideration of Rs.63,39,500/- was made

through cheque and therefore, the applicability of cash in hand cannot be disbelieved.

4. The learned DR for the Revenue, on the other hand, submitted that the assessee has failed to explain the source of cash deposit and therefore the onus in this regard was not discharged at all. The learned DR relied upon the order of the CIT(A) and submitted that to avail the source of cash deposit as claimed, the assessee was required to disclose all the facts within his knowledge. The reasons and occasion for large withdrawal were not provided by the assessee and therefore, rotation of funds cannot be inferred by implication.

5. We have carefully considered the rival submissions and perused the orders of the authorities below. The assessee seeks relief towards cash deposit on the grounds of similar withdrawal of cash from bank in the earlier part of the year. A perusal of the cash summary filed by the assessee shows that assessee had withdrawn money at regular interval mainly in initial part of the year which were re-deposited in the later part of the year.

6. The reasons for cash withdrawal earlier is not known. The assessee has failed to explain the source of payment of stamp duty and therefore, utilization of cash to the extent of Rs.3,10,000/- remains unexplained. However, the benefit of doubt requires to go in favour of the assessee for the remaining amount in view of the fact that the withdrawals as well as deposits are not only continuous but gap between the withdrawals and deposits cannot also be regarded as quite long.

The presumption drawn by the Revenue authorities are in the realm of suspicion and surmises. Therefore, whole of the addition cannot be sustained. We therefore allow the appeal of the assessee to the extent of Rs.15,90,000/-.

7. In the result, appeal of the assessee is partly allowed.

This Order pronounced in Open Court on 31/01/2020

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad: Dated 31/01/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / 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 ।