

आयकरअपीलअधकरण, अहमदाबादयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" A " BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 714/AHD/2015

जथावकावष/Asstt. Year: 2010-2011

Shri Haren kantilal Mistry, 401, Pranam Complex, Urmi Dinesh Mill Road, Vadodara. PAN: AAUPM0021B	Vs.	I.T.O, Ward-2(3), Vadodara.
--	-----	-----------------------------------

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by :	Shri Suresh Thakkar, A.R
Revenueby :	Shri Deelip Kumar, Sr.D.R

सुनवाईकालाख/Date of Hearing : 22/01/2020

घोषणाकालाख/Date of Pronouncement: 11/03/2020

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-5, Vadodara, dated 12/12/2014 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s.143 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 26/03/2013 relevant to the Assessment Year 2010-2011.

The assessee has raised the following grounds of appeal.

1. *On the facts and circumstances of the case, the I'd CIT(A)-5, Vadodara is not justified in both in law in confirming the ground, as per his appellate orders for Asst. Years 2006-07 and 2007-08, which needs to be properly adjudicated and treating the cash credit account no. 118 with Commercial Co-operative Bank as unaccounted bank account of the appellant, instead of holding the same as belonging to H.K. Mistry(HUF).*

It is prayed that the ground needs to be adjudicated properly and the cash credit account no. 118 with Commercial Co-operative Bank be held as belonging to HUF of H.K. Mistry.

2. *On the facts and circumstances of the case, the L'd CIT(A)-5 is not justified both-in law and on facts in refusing give credit of opening cash balance of Rs.8,61,809/- as on 01.04.2009 belonging to the HUF of H.K. Mistry and confirming addition of Rs. 9,56,477/- and not giving deduction of opening balance of Rs.8,61,809/-.*

It is prayed that the opening cash balance of Rs. 8,61,809/- be given deduction out of Rs. 956477/-.

3. *On the facts and circumstances of the case, the L'd CIT(A)-5 is not justified both in law and on facts (taken as alternative ground) in not admitting claim of interest of Rs. 55146/- on the ground that the conditions u/s 31(l)(iii) is not satisfied and the interest belonged to HUF which had not filed Returns of Income.*

It is prayed that the interest payment of Rs.55,146/- of cash credit a/c. no. 118 be given deduction if cash credit account no. 118 with Commercial Co-operative bank Ltd. is treated as belonging to individual of H.K. Mistry.

On facts and circumstances of the case, the I'd CIT(A)-5 has erred not adjudicating ground no. 4 separately which is as under.

"On facts and circumstances of the case, the I'd A.O, erred in treating the sum of Rs. 9,56,477/- being cash deposited in cash credit A/c no. 118 with Co-operative Bank Ltd, as appellant's unaccounted investments u/s 69 of the IT Act 1961, even though evidences and explanations of sources of cash deposits were furnished to him. The addition is baseless and requires to be deleted. It is prayed that the sources of amount ofRs. 9,56,477/- be held as properly explained' and therefore, the addition be deleted. "

It is prayed that the above ground be separately adjudicated.

5. *The appellant craves leave, to add to alter, amend or delete any of the grounds of appeal on or before the date of hearing.*

2. The effective issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by sustaining the addition of Rs. 9,56,477/- on account of deposit of cash in the bank account.

3. The brief facts of the case are that the assessee in the present case is an individual and engaged in the business of trading of tailoring materials. The assessee during the assessment proceedings also claimed to be acting as Karta of its HUF which was holding the CC bank account bearing No. 118 with Commercial Co-operative Bank Ltd. Accordingly the assessee contended that the amount of cash deposits in such CC account for Rs. 13,08,670/- does not belong to him. The assessee to this effect has also furnished the affidavit i.e. the impugned account belongs to the HUF.

3.1 As per the assessee, such bank account was opened by him in the capacity of Karta of HUF in the year 2000 to extend the help to one of the member of the HUF namely Smt. Alka Ben H Mistry proprietor of Darshan Traders. Therefore, the transactions including the deposit of cash belongs to the member of the HUF.

3.2 The assessee also claimed that there was the opening cash in hand available in the books of the HUF amounting to Rs. 8,61,809/- only.

3.3 The assessee during the assessment proceedings also made a reference to the Additional CIT Range-2 Baroda, under section 144A of the Act and justified his stand before him in the manner as discussed above.

3.4 However, the learned Additional CIT disagreed with the contention of the assessee by observing that the account belongs to the assessee as confirmed by the bank that such CC account was opened in the name of M/s H.K. Mistry Prop. Haren Kantilal Mistry (the assessee). Furthermore, for opening the bank account the PAN and the driving license of the assessee was furnished to the commercial bank. But the learned Additional CIT admitted the fact that the impugned account has been used for the business transactions carried out by the member of HUF namely Smt. Alkaben H Mistry Proprietor Darshan Traders. Accordingly, the learned additional CIT directed the AO to allow the benefit of Rs. 3,52,193/- being the

amount of sales shown by the member of the HUF for Rs. 4,00,088/- as reduced by the amount of expenses of Rs. 47,895/- only.

In view of the above direction by the learned Additional CIT as discussed above, the AO treated the balance amount of Rs. 9,56,477/- (Rs. 13,08,670/- cash deposited minus the transactions carried out by the member HUF amounting to Rs. 352193/-) belonging to the assessee.

3.5 The AO also disregarded the contention of the assessee i.e the opening cash balance of Rs. 8,61,809/- was utilized for the impugned deposit of cash on the reasoning that there was no source of income of the HUF, PAN and ITR etc.

In view of the above the AO treated the amount of cash deposit in the impugned bank account for Rs. 9,56,477/- as unaccounted investments under section 69 of the Act and accordingly added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A).

4. The assessee before the learned CIT (A) reiterated his contentions as made before the AO during the assessment proceedings i.e. the impugned bank account belongs to the HUF. The assessee further contended that there were the interest expenses amounting to Rs. 55,146/- against such CC account but he has never claimed the deduction for the same. Accordingly, the assessee further pleaded that if impugned account is treated as his (the assessee) personal account instead of HUF then he should be allowed the interest expenses.

4.1 Regarding the availability of cash of Rs. 8,61,809/- as opening balance, the assessee contended that similar issue was also there in the assessment year 2006-07 and 2007-08 and the AO was pleased to grant the benefit of the opening balance. Accordingly, the assessee contended that he should be allowed the benefit on account of the opening balance of cash as discussed above.

5. However, the learned CIT (A) held that the impugned account belongs to the assessee only by observing as under:

*I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. The direction issued to the Assessing Officer by the Addl. CIT, Range-2, Baroda u/s 144A of the Act are also noted. The mere fact that prefix "M/s" is used before the name of the holder would not automatically entitle the account holder to be treated as an HUF, particularly when the PAN of individual was used. The appellant has failed to prove with clinching evidences that the above account was in fact his HUF account. In the instant case, the appellant has failed to discharge his onus in view of the provisions of sec. 69 of the Act. The explanation given by the appellant before the Assessing Officer appears to be an afterthought and except for bald statements, nothing concrete has been placed on records to justify the claim that the account belonged to his HUF. In view of the detailed discussion made by the Assessing Officer in the body of the order and the directions of the Addl. CIT, Range-2, Baroda issued to the Assessing Officer and considering the facts of the case and the reply of Bank, Commercial Co-operative Bank Ltd., it is hereby held that the Cash Credit A/c No. 118 belongs to the appellant. On same facts, this type of addition was confirmed by me in A.Y. 2006-07 and 2007-08 in CAB/11-41/13-14 and CAB/11-412/13-14 vide order dated 30.06.2014. There is no reason to differ from those orders. Accordingly, the addition of Rs.9,56,477/- is confirmed and **Ground No. 1** is dismissed.*

5.1 The learned CIT (A), regarding the availability of cash for Rs. 8,61,809/- as opening balance, has also disregarded the contention of the assessee by observing as under:

4.4.2 I am of the view that the Assessing Officer has correctly considered the amount of Rs.9,56,477/- as unexplained investments of the appellant under the provisions of section 69 of the Act. The contentions of the appellant that there was opening cash balance in HUF account is not verifiable and, therefore, not acceptable. Therefore, the net addition of Rs.9,56,477/- made by the Ld.Assessing Officer is hereby confirmed and I hold that the appellant is not entitled to any further deductions on this account. This ground fails.

5.2 Similarly, the learned CIT (A), regarding the contention of the assessee for allowing the benefit of interest expenses, has also disregarded the contention of the assessee by observing as under:

5.2 I Have thoughtfully considered the contentions of the appellant. The interest which is no claimed as a deduction pertains to cash credit account number 118. The claim for interest payment is admissible under section 36(1)(iii) of the Act provided it satisfies the conditions laid down in that section. In the instant case, the appellant has not been able to establish that the borrowings were made for the purpose of business of the appellant. On the contrary, it has always been claimed that the same were for HUF business. The said HUF does not have PAN and no returns of income have been filed in capacity of HUF ever. In any case, such deduction cannot be allowed to the appellant. I am unable to agree with the view canvassed by the Id.Counsel for the appellant. This grounds fails.

Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

6. The learned AR before us filed two paper books running from pages 1 to 63 and 1 to 62 and contended as follows:

1. The cash credit accounts no. 118 with commercial co-operative bank never belongs to H.K.Mistry individual. He has never claimed any interest as expense in his personal returns of income for all the years.
2. The source of credit in the cash credit account is from cash received from Darshan Traders.
3. The cash deposited in the cash credit account no. 118 with Commercial Co-Operative bank during the A.Y. 2010-11 is out of opening cash balance of the HUF and cash deposited by the Darshan Traders.

Considering above facts no cash credit addition is required to be made in the case of Mr. H.K. Mistry Individual.

7. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record before us. The facts of the case as discussed above are not in dispute, therefore we are not inclined to repeat the same for the sake of brevity and convenience. From the preceding discussion, the following issues emerge for our consideration:

- i. Whether the impugned bank account belongs to the assessee or HUF in the given facts and circumstances.
- ii. Whether there was the opening cash balance available for Rs. 8,61,809/- in the books of HUF which needs to be adjusted against the deposit of cash.

- iii. Whether the assessee is eligible for deduction of the interest expenses incurred on the impugned cash credit bank account against the income on account of deposit of cash in such bank.

8.1 Regarding the 1st issue, we find that the assessee has furnished his PAN, driving license for opening the bank account. The bank opening form was also signed by him in the capacity of the proprietor as confirmed by the bank. We also find that the cases for the assessee were reopened by the AO under section 148 of the Act for the assessment years 2006-07 and 2007-08 on the reasoning that the assessee has deposited cash in the impugned bank account which has escaped assessment. The AO accordingly made the addition to the total income of the assessee in the respective assessment years. The learned AR before us has not brought anything on record suggesting that the impugned addition made by the AO for the assessment years 2006-07 and 2007-08 has been challenged before the higher forum. But the learned AR before us has placed the copies of the assessment order which are placed on pages 54 to 63 of the paper book. Thus in the absence of such information, it is transpired that the orders of the AO for the assessment years 2006-07 and 2007-08 have reached to its finality. Thus we can safely conclude that the impugned bank account belongs to the assessee.

8.2 Now coming to the 2nd question about the availability of opening balance of cash in hand for Rs. 8,61,809/-, in this regard we note that the assessee filed cash book of the HUF for previous years from 2005-06 to 2009-10 which are available on record. However, we are not inclined to make any reference to these cash books filed by the assessee for the reasons that the HUF has not filed its return of income and therefore such balance of cash was never disclosed before the income tax authorities. Similarly, there was no benefit extended to the assessee by the revenue in the assessment years 2006-07 and 2007-08 on account of opening cash balance in the respective years.

8.3 Before parting, we look the transactions for the deposit of cash from a different perspective. Admittedly, there was the deposit of cash in the year under consideration.

8.4 The question arises whether such deposit of cash represent the income of the assessee. As such, if we look at the withdrawals of Rs. 6,30,296/- from the bank for the year under consideration, we find that the payment was made to various organizations in a small value. These organizations appear to be commercial business entities. The name of such entities appear as under:

S.No	Name	Amount
1	Maha Dhanlaxmi Textile	239402
2	HM Trading Co	19046
3	Sarvottam stationary	33875
4	Reshma Enterprises	122745
5	New India Assurance Co	19020
6	Interest	55146

8.5 On analysis of the above details it is transpired to us that the assessee has utilized the amount of cash deposits for some commercial activities. Moreover the revenue has not brought anything on record suggesting that the amount of cash deposits was utilized by the assessee either for investment purposes or it was used to meet the personal expenses. As such, in the given facts and circumstances, we are of the view that the amount of cash deposit cannot be treated as income in the entirety. Thus, we are of the considered opinion that justice shall be served to the assessee and the revenue if some percentage of profit of the cash deposit is treated as income to bring the end to the ongoing dispute. Accordingly, we direct the AO to treat 20% on average basis of cash deposit as income of the assessee. We are taking the basis of 20% of the cash deposit as income of the assessee from the profit and loss account filed by the assessee for different years.

8.6 Coming to the 3rd question for allowing the claim of the assessee on account of interest expenses incurred in the CC bank account for Rs. 55,146/-, in this regard we note that onus lies on the assessee to justify based on documentary evidence that such interest expenses was incurred in connection with the business. But there was no documentary evidence filed by the assessee suggesting that the interest expenses incurred on borrowing were in connection with the business. Therefore we hold that the assessee cannot be allowed the claim for the deduction of such interest expenses under the provisions of section 36(1)(iii) of the Act. Hence the ground of appeal of the assessee is partly allowed.

9. In the result the appeal filed by the assessee is **partly allowed**.

Order pronounced in the Court on 11/03/2020 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
VICE PRESIDENT**

Ahmedabad; Dated
manish

(True Copy)
11/03/2020

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**