

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 7854/Mum/2019 (Assessment Year 2014-15)

Shri Ramniklal Nathwani Legal heir of late Ramaben Ramniklal Nathwani 603, Milan Mandir Ramchandra Lane, Malad- West, Mumbai-400064. PAN : AAEPN5493Q (Appellant)	Vs.	ITO-30(3)(1) Kautilya Bhavan G Block, Bandra Kurla Complex Bandra East Mumbai-400051. (Respondent)
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Assessee by	Shri Gaurav Mehta
Department by	Shri Abhirama Karthikeyan
Date of Hearing	15.12.2021
Date of Pronouncement	02.02.2022

ORDER

This appeal by the assessee is against the order of learned CIT(A) dated 31.10.2019 pertains to A.Y. 2014-15.

2. The issue raised is that learned CIT(A) erred in confirming the addition under section 68 of the Act of Rs. 9,35,000/- being cash deposits in savings bank account with Kapol Co-operative Bank.

3. Brief facts of the case are that the Assessing Officer noted that the assessee has expired on 30.5.2014 and she was engaged in the business of builders and developers. The Assessing Officer proceeded to enquire cash deposit in bank account. He was informed that cash of Rs. 9,35,000/- in saving bank account was out of cash balance of Rs. 12,69,710/- as on 31.3.2014. Learned AR of the assessee also submitted copy of statement of affairs drawn as on 31.3.2013 to 31.3.2014 before the Assessing Officer. However, the Assessing Officer observed that the assessee has failed in providing any supporting evidence which proves that the assessee was having

opening cash balance of Rs. 12,69,710/- during the financial year 2013-14 relevant to A.Y. 2014-15. The Assessing Officer noted following response of the assessee :-

“In response to the final show cause notice issued from this office a submission has been received in this office on 08.12.2016 through the A.R. of the assessee. In the submission the A.R. has submitted cash book prepared for the F.Y. 2012-13 and F.Y. 2013-14 showing opening cash balance of Rs. 24,24,417/- as on 01.04.2012 and Rs. 12,75,710/- as on 01.04.2013. The A.R. has further stated that the assessee was filing ITR -I which specifically does not provide any section in it for reporting of cash balances or any other balance sheet items.

The submission made by the assessee along with the explanation offered on the cash deposits of Rs. 9,35,000/- appearing in the Kapol Bank were duly considered but the same is found to be unacceptable as the assessee failed in providing any documentary evidence which proves that the assessee was having such cash in hand for deposits which has been shown in the cash book prepared and submitted during the assessment proceedings. The assessee filed ITR 4 for the A.Y. 2013-14 and the cash in hand column in the balance sheet has been shown at NIL Further, for the last five years income has been shown as under-

A.Y.	HEAD OF INCOME	INCOME RETURNED
2009-10	other source income	1,58,340/-
2010-11	-	Nil
2011-12	other source income	3,53,151/-
2012-13	other source income	2,69,254/-
2013-14	Other source income	2,66,262/-
	Total	10,47,007/-

4. However the Assessing Officer was not satisfied he held that cash balance was not justified. He held as under :-

“From the income returned by the assessee during the last five years it is clear that the cash balance shown in the submission made during the proceedings is not justified. Further, as the assessee was having bank account in her name and regularly withdrawal and deposits are appearing as per the ITS details hence it cannot be said that the cash balance were out the business activity for the past five years. On perusal of the bank statement it is seen that the cash deposits has been immediately used for issue of cheques to the family members only.

As the legal heir of the assessee failed in providing any supporting documentary evidence to establish the cash balance claimed as on 01.04.2012 and 01.04.2013, the cash deposits of Rs. 9,35,000/- Made In the saving bank account of Kapol Bank remained unexplained and hence the same is hereby added to the total income returned by the assessee.”

5. Against the above order the assessee appealed before learned CIT(A). learned CIT(A) confirmed the order of the Assessing Officer.

6. Against this order the assessee is in appeal before the ITAT.

7. I have heard both the parties and perused the records. I note that the assessment has been framed by the Assessing Officer in the name of Shri Ramniklal Nathwani, legal heir of late Smt. Ramaben Ramniklal Nathwani. However, we note that learned CIT(A) has passed his order in the name of dead person i.e. Ramaben Ramniklal Nathwani. Such a lack of application of mind by learned CIT(A) is totally unsustainable. When it was clearly emanating from the order of the Assessing Officer that the assessee is a dead person and assessment framed is in the name of his legal heir, there is no reason for learned CIT(A) to pass the appellate order in the name of a dead person. By no stretch of imagination it can be said that the appellate order passed in the name of a dead person is sustainable in law. Furthermore we note that before the Assessing Officer due details of past income has been given. Rejection of the opening balance by the Assessing Officer is only on his surmises and conjecture. There is no presumption that the person having smaller income cannot accumulate small amount of fund. Hence, I set aside the orders of the authorities below and delete addition.

8. In the result, appeal by the assessee is allowed.

Pronounced in the open court on 2.2.2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 02/02/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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