

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" A " BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**Ms MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 490/AHD/2018  
निर्धारण वर्ष/Asstt. Year: 2006-07

J.C.I.T.(OSD), Central Circle-2(1), Ahmedabad.	Vs.	Shri Sanjay H. Thakkar, Devnandan Palace, Ambli Bopal Road, Ahmedabad.  <b>PAN: AARPT3337Q</b>
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Revenue by	:	Shri Mukesh Jain, Sr. D.R
Assessee by	:	Shri Vartik Chokshi, A.R

सुनवाई की तारीख / **Date of Hearing** : **10/03/2022**  
घोषणा की तारीख / **Date of Pronouncement**: **20/04/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax(Appeals)-12, Ahmedabad, arising in the matter of Assessment Order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2006-07.

2. The only issue raised by the Revenue is that the learned CIT (A) erred in deleting the addition made by the AO on account of unexplained cash credit under section 68 of the Act.

3. The facts arising from the order of the authorities below are that the assessee in the present case is an individual and claimed to be engaged in the construction activity. The assessee was belonging to the 'Dev Group' which was subject to search & seizure operation under the provisions of section 132 of the Act dated 3<sup>rd</sup> January 2013. The assessee was found to be the Benamidar of three bank accounts of his employees which were being operated and managed at his instructions. There were cash deposits in these bank accounts which were subsequently transferred through the banking channel to the bank account of the assessee. The necessary details of these bank accounts and names of the Benamidar of the assessee along with the deposit of cash stand as under:

Name	A/C No.	Cash Deposited during FY: 05-06
Sureshgiri Kailashgiri Goswami	SB A/C No.2276	Rs.58,26,050
Jagdishbhai Maharajbhai Goswami	SB A/C No.2277	Rs.50,08,000
Rameshbhai Muljibhai Solanki	SB A/C No.2542	Rs.91,57,000
Total		Rs.1,99,91,050

3.1 In view of the above, the AO issued a show cause notice under section 142(1) of the Act dated 21<sup>st</sup> March 2014 proposing to make the addition of the cash deposits to the total income of the assessee. The assessee in response to such show cause notice vide letter dated 25<sup>th</sup> of March 2014 submitted that there were few more bank accounts of which he was the Benamidar in addition to the alleged bank accounts. The details of all the Benami bank accounts as submitted by the assessee stand as under:

Sr.No.	Name of the Employee	Account no.
1	Sureshgiri K. Goswami	2276
2	Jagdishbhai )alias Bharatbhai) M. Goswami	855
3	Rameshbhai M. Solanki	2542
4	Harshad M. Prajapati	1227
		909

3.2 As per the assessee there were withdrawals from the bank accounts as discussed above in the financial year 2004-05 which were utilized for depositing in the bank account as alleged by the AO. The assessee also clarified that the major withdrawal from the bank account bearing No. 909 was in the name of Shri Harshad M. Prajapati. Thus the assessee claimed that there was the opening balance as on 1 April 2005 aggregating to ₹76,57,768/- only, representing the withdrawal from the different bank accounts. The assessee in support of his claim has filed the copy of the bank book and cash book along with the bank statement for the financial year 2004-05.

3.3 The assessee also contended that he has also deposited the amount in cash in the impugned bank accounts in the year under consideration out of the cash available with the group concern namely Dev Pritam Nagar Cooperative Housing Society.

3.4 The assessee further submitted that whatever amount was deposited by way of cash in the impugned Benami bank accounts was transferred to the bank account of the assessee by way of cheque which was subsequently transferred back/returned back to the bank account of the benamidar who in turn withdrew the same in cash which was utilized to return the money belonging to Dev Pritam Nagar Cooperative Housing Society.

3.5 The assessee without prejudice to the above further contended that the Revenue has already made the addition in the hands of Shri Rameshbhai M. Solanki for the amount of cash deposited in his bank account in the year under consideration in the assessment framed under section 147 read with section 143(3) of the Act vide order dated 21<sup>st</sup> February 2014. The amount of cash deposits in the year under consideration in the hands of Shri Rameshbhai M. Solanki stand at ₹ 91,57,000/- which has already been added in his hands. Therefore, any further addition in the

hands of the assessee for an amount of ₹ 91,57,000/- would lead to double addition which is unwanted under the provisions of the Act.

3.6 However, the AO was not satisfied with the contention of the assessee on the reasoning that there was no evidence available on record suggesting that additional 3 bank accounts bearing account numbers 855, 1227 and 909 belongs to the assessee as Benamidar. As such the assessee to justify the source of cash deposit has come up with this explanation only after receiving the notice issued under section 142(1) of the Act dated 21<sup>st</sup> March 2014. Likewise, the assessee has not explained the source of deposits in these bank accounts in the financial year 2004-05 which was very vital in order to establish the fact that the account holders were the Benamidar of the assessee. Furthermore, the deposits in these three additional bank accounts was not possible to assess under income escaping assessment under section 147 of the Act due to limitation of time provided under the Act. On the same reasoning, the assessee failed to explain the opening cash balance of Rs. 44,28,072/- shown in the cash book as on 1<sup>st</sup> April 2004. Thus the explanation of the assessee that the cash was deposited in the impugned bank account which was available with him in the financial 2004-05 fails.

3.7 The AO also did not believe on the contention of the assessee that the part of the amount of cash deposit was out of the money available with the impugned society. It is for the reason that the assessee has failed to establish any nexuses. Furthermore, the concept of mutuality in the case of the impugned society gets destroyed in the event if the money belonging to the society is deposited in the bank accounts as discussed above. On the same lines, it was also observed that the society has not filed any return of income, its accounts were not audited, the availability of corresponding cash in hand in the cash book was not available. Thus, the AO rejected the submission of the assessee. According to the AO, the cash book filed by the assessee represents the negative balance in the event the cash entries from the society are excluded.

3.8 In view of the above, the AO treated the amount of cash deposit as unexplained cash credit under the provisions of section 68 of the Act. The AO, for the alternate contention of the assessee was of the view that the addition made in the hands of the Shri Rameshbhai M. Solanki might get deleted by the higher forum and therefore the contention of the assessee for the double addition would no longer be tenable in that event. Thus the AO added the entire amount of ₹ 1,99,91,050/- to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the learned CIT-A.

5. The assessee before the learned CIT (A) clarified the modus operandi adopted by him for depositing the cash in the different bank accounts of his Benamidar and subsequently transferring the same in his bank account and thereafter transferring the funds from his bank account to the bank account of the Benamidar, following withdrawal of cash from the bank account of the Benamidar. As per the assessee, this modus operandi was accepted by the settlement commission in the petition filed by him for the assessment years 2007-08 to 2013-14.

5.1 The assessee further contended that he was maintaining 19 bank accounts which were Benamidar. All these facts were duly admitted after the necessary verification by the learned PCIT in his report submitted under rule 9 of the report. The learned PCIT also admitted the availability of cash as on 1<sup>st</sup> April 2006 amounting to ₹50 Lacs though the cash balance was higher in the books of accounts. As per the cash book prepared by the assessee cash balance as on 31 March 2006 stand at Rs. 77,55,545/- only. This fact was duly explained before the settlement commission. Thus the availability of cash shown by the assessee based on the cash book and filed before the AO cannot be considered as bogus. Furthermore, there was no cash balance which was negative in the entire cash book.

The assessee further submitted that the additional 3 bank accounts disclosed during the assessment proceedings in response to the notice issued under section 142(1) of the Act cannot be treated as afterthought. It is for the reason that all these bank accounts were duly disclosed before the settlement commission which were duly accepted.

5.2 The assessee further contended that the AO was never questioned during the assessment proceedings about the opening cash balance as on 1<sup>st</sup> April 2004 and therefore the earlier years cash book were not filed. As such the assessee has constructed the cash book from 1<sup>st</sup> April 1999 till 31 March 2006 after incorporating the transactions of all the bank accounts which were Benamidar.

5.3 The cash flow statement filed before the settlement commission was duly accepted by Commission as well as by the Id. PCIT wherein the opening cash balance as on 1<sup>st</sup> April 2006 was shown to the tune of ₹ 50 Lacs. Thus the cash book prepared by the assessee in the year under consideration cannot be ignored/rejected while calculating the income of the assessee for the year under consideration.

5.4 The assessee also submitted that he was the key person of the 'Dev Group' which is an undisputed fact. Likewise, the same fact was also noted in the reasons recorded for the reopening of the assessment. The AO has not believed receipt of cash from the society but accepted the repayment made by the assessee to the society of the impugned cash receipt. According to the assessee, the AO cannot take different stand for the receipt of cash viz a viz payment of cash. In other words, if the AO does not believe the receipt of cash then he should also not believe the payment of cash to the society which would result higher amount of cash available with the assessee as on 31<sup>st</sup> March 2006. Consequently, such higher amount of cash will reduce the income shown before the settlement commission. Thus, the action of the AO is tax neutral.

6. The learned CIT (A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

*3.2 The submissions made by the appellant are considered. The Appellant was subjected to search under Section 132 of the Act on 3<sup>rd</sup> January, 2013 wherein he had stated that three bank accounts being account No. 2276, 2277 and 2542 belonging to employees/per sons and held with MCVB are benami accounts. On this basis the AO taxed entire cash deposits in three bank accounts along with unexplained cheque entries in such accounts as unexplained cash credit in the hands of the Appellant. The Appellant explained that such cash deposits were out of available cash balance with him and same was generated out of cash withdrawn from various benami accounts belonging to various employees and held in MCVB. The AO denied such credit mainly on the ground that during the course of search the Appellant had admitted only three bank accounts as benarni accounts. However, it is observed that Appellant has filed the Settlement Petition for A.Y. 2007-08 to A.Y, 2013-14 wherein modus operand) of such benami accounts and list of such accounts were \_given at para - 7 of his Petition, which is reproduced herein as under:*

*"The applicant had opened benami bank accounts in the names of employees/associates/relations/friends in the Mahila Vikas Co-operative Bank Limited, which was also subjected to search proceedings u/s 132 of the Act on 3<sup>rd</sup> January2013. The list of bank accounts which were opened in benami names and which fall during the Assessment Years under consideration is placed at **Exhibit-29**. The applicant adopted the modus operandi for depositing the unaccounted/unexplained cash of the Group and thereafter transferring those funds from the banami bank accounts to the regular book accounts for the use of the funds by various group entities in their regular business. This was followed by reversal of all those transactions by group entities subsequently by issuing cheques from their regular bank accounts and depositing them in the respective benami accounts from which cash was withdrawn which was merged In the pool and, thus, the cycle was completed. It resulted in utilization of unaccounted funds in the regular business. In one accounting year, there were several cycles, of depositing the unaccounted funds from the pool account in to the benami accounts in Mahila Vikas Cooperative Bank, transfer of the funds from these accounts into the group entities, transferring back the funds from the Group entities into the benami accounts and withdrawal of cash from these benami accounts and merging it into pool account during the intervening period."*

*On perusal of the order passed in the case of Appellant by the Hon'ble Settlement Commission, it is observed that the Appellant has owned up various benami accounts and transactions in such accounts are considered in cash flow statement which is accepted by the Hon'ble Settlement Commission vide order dated 29<sup>th</sup> September^2016. Thus, the AO is not correct in holding that Appellant has inappropriately considered other bank accounts belonging to employees while explaining cash deposit in three benami accounts only.*

*3.3 It is further observed that along with the Settlement Application, the Appellant has submitted cash flow statement wherein all the transactions in benami accounts including three benami accounts which are subject matter in the present Assessment Year under appeal was included and the Appellant has prepared such cash flow which is similar to cash book prepared for the current Assessment Year as well as for the preceding Assessment Years. The Appellant has 'also shown opening cash balance at Rs.50,00,000/- in Settlement cash flow statement even though closing balance as on 31st March, 2006 was higher than such figure. It is also observed that the Hon'ble Settlement Commission has not made any adverse observation regarding above cash flow statement of the appellant and same was*

*accepted as such in the order under Section 245D(4), dated 29<sup>th</sup> September, 2016, Considering such facts cash book prepared by the Appellant for current Assessment Year as well as for the preceding Assessment Years cannot be held to be an afterthought as such modus operandi is accepted by Hon'ble Settlement Commission and even opening balance of Rs.50,00,000/- was considered as explained available cash balance. It is also observed that the Appellant in support of above cash book has also submitted bank statements, bank books for all the benami accounts and it is found that all these entries are reflected in the cash book prepared by the Appellant for the purpose. In the cash book for current Assessment Year, there is positive balance throughout the year hence argument of the AO that there is negative cash balance is incorrect. The Appellant has also shown opening cash balance of Rs.76,57,758/- as on 1<sup>st</sup> April, 2005 which is arising out of cash book for F.Y, 2004-05 which was also submitted during Assessment Proceedings The Appellant has considered all the cash transactions even in earlier Assessment Years from such benami accounts which are not found to be incorrect by the AO and merely because the Appellant has not explained cheque deposits in benami accounts for A.Y. 2005-06 which is not the subject matter of Assessment Proceedings before AO, does not mean that cash book prepared by Appellant should not be accepted.*

*With regard to observation of the AO that the Appellant has claimed that cash lying with Dev Pritamnagar Co-operative Housing Society was also **used by** the appellant in above cash book and as the Society being independent and this explanation should not be accepted, it is observed that the Appellant has submitted confirmation of the said Society before the AO and even loan taken from such Society was ultimately repaid by the Appellant from the very same cash book. When cash payments made by the Appellant to the Society are considered to be explained out of cash balance available with the Appellant, there is no reason for not accepting utilisation of cash held by the Society by the Appellant for depositing cash in benami accounts more particularly as the Society belongs to same Group. If the AO was not satisfied with regard to source of cash balance with the Society, he should have taken appropriate action in the hands of the Society as per provisions of the law. Thus, the above argument made by the AO does not appear to be tenable.*

*3.4 In nutshell, the addition made by the AO for cash deposits for Rs.1,99,91,050/- in three benami accounts are required to be deleted as it is out of available cash balance with the Appellant. However, it is observed that the Appellant has failed to explain cheque deposit of Rs.13,00,000/- in bank account No. 2542 and cash deposit of Rs.4,50,000/- in the name of one Shri Suresh Goswami and hence the addition made by the AO to that extent is confirmed. The related ground of appeal is partly allowed.*

7. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.
8. The learned DR before us vehemently supported the order of the AO by reiterating the contentions raised therein.
9. On the contrary the learned AR before us filed a paper book running from pages 1 to 201 and contended that the assessee has made cash deposits in the bank account out of the cash withdrawal made in the earlier years. It was also

contended by the learned AR that the assessee being the key person of Dev group has received the cash from the society which was utilized for making the deposit in the bank account. The learned AR vehemently supported the order of the learned CIT-A.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The facts relating to the dispute on hand have already been explained/elaborated in the preceding paragraph. Therefore, for the sake of brevity and convenience, we are not inclined to repeat the same.

11. The 1<sup>st</sup> controversy that arises for adjudication whether the 3 additional bank accounts bearing numbers a/c nos. 855, 1227 and 909, belongs to the assessee. In this regard we note that the assessee in the settlement commission has disclosed 19 bank accounts of which he was the Benamidar. These 3 additional bank accounts were also duly disclosed in the petition filed before the settlement commission which were also admitted as the bank accounts of the Benamidar. A report was also called upon under rule 9 wherein the learned Id. PCIT has also admitted the assessee as the Benamidar of these 3 bank accounts. The admission by the learned Ld. PCIT in his report leaves no scope of confusion for the AO to draw an inference against the assessee that it was afterthought. Accordingly, we hold that the assessee was the Benamidar of these 3 bank accounts.

12. At this juncture, we are inclined to mention that there were total 19 bank accounts which were used as the Benamidar. But the issue that arising from the order of the AO is limited to the extent of 6 bank accounts only. Accordingly, we are not inclined to give any finding on the remaining bank accounts which have been accepted as the Benamidar. In this regard we find support and guidance from the judgment of The Hon'ble High Court of Gauhati in the case of Assam Cooperative Apex Bank Ltd vs. CIT reported in 112 ITR 257 where it was held as under:

*Thus, the power of the Appellate Assistant Commissioner is not confined to the subject-matter of appeal by the assessee. It is much wider. He might examine all matters and dispose*

*of the appeal, even to the prejudice of the assessee by himself enhancing the tax or remanding the case to the Income-tax Officer, with a view to increase the tax liability. But, when the matter comes before a judicial tribunal, by way of appeal, the same principle cannot apply. The jurisdiction of the Appellate Tribunal should, in the absence of express words in the statute, be governed by the subject-matter of the appeal.*

12.1 Moving further, the next controversy arises whether the cash book prepared for the financial year 2004-05 and the cash balance (opening as on 1 April 2004), should be considered as the cash available with the assessee for the purpose of depositing the same in the bank account. In this connection, we note that AO has not brought anything on record suggesting that the assessee has made investment or utilized the impugned cash withdrawal from the bank in the financial year 2004-05 for some other purpose. In the absence of such finding, the presumption goes in favour of the assessee that such cash was available with him which has been utilized for making the deposit in the year under consideration. At this juncture, it is also important to note that it was submitted by the assessee before the learned CIT-A that he has prepared the cash book for the period beginning from 1<sup>st</sup> April 1999 till 31<sup>st</sup> March 2006 to justify the availability of cash in hand in his books of accounts. But the AO has never questioned to the assessee about the cash available in the earlier years with the assessee. The submission of the assessee before the learned CIT-A reads as under:

*This argument was never pointed out during the assessment proceedings and it was only in the impugned order that the Ld.Assessing Officer challenged the opening balance as at 1.4.2004 and treated it as unexplained.*

*The appellant in this regards submits that Cash Book pertaining to the period before that which the appellant had not furnished in order not to burden the Department's record that the same could have been produced before him if he had raised this issue.*

12.2 The above contention of the assessee was not doubted by the learned DR appearing on behalf of the Revenue. Thus in the absence of any question raised by the AO to the assessee about the availability of cash in the earlier years, the same cannot be doubted.

12.3 The next controversy arises whether the cash available with the society can be considered as deposits made in the bank account of the assessee. Indeed, the

assessee before the authorities below has not filed any supporting details to demonstrate that the cash was really available with the society. However, the assessee in the cash book prepared by him has shown receipt of cash and the payment of cash from the society. Based on that, the available cash balance as on 31 March 2006 was drawn showing closing balance at Rs. 77,55,545/- only. Indeed the entire amount of cash balance shown by the assessee as on 31<sup>st</sup> March 2006 was not shown before the settlement commission as well as before the Id. PCIT in the report prepared by him under rule 9 of Income Tax Rule. What was shown was the amount of ₹50 Lacs only. Thus the entire amount of cash balance of 77,55,545.00 was not declared. Be that as it may be, the crucial issue arises if it is believed that there was no money received by the assessee from the society which was deposited in the bank accounts as discussed above, there would be negative balance of the cash and the same is liable to be taxed. If it is done so, then the closing cash in hand of the assessee shall automatically increase by the amount which was purported to have been received from the society. In that event, the application made before the settlement commission showing the opening balance as on 1 April 2006 of ₹50 lakhs should be enhanced by the amount claimed to be received from the society which ultimately would reduce the tax burden upon the assessee before the settlement commission. However, the order of the settlement commission has reached to the finality wherein the opening cash balance of ₹50 lakhs was shown by the assessee. Thus, if we deny the claim of the assessee for having received the money from the society, it would lead to the double addition of the same item of the cash receipt which is unwanted under the provisions of law. Firstly, the amount of cash receipt from the society will suffer from the tax in the year under consideration and secondly, the assessee failed to claim the benefit of the higher amount of available cash in hand as on 1<sup>st</sup> April 2006 before the settlement commission which eventually has already suffered the tax again. Thus, to avoid the double taxation, we are inclined to admit the contention of the assessee that he has received cash from the society which was utilized to deposit in the bank accounts.

12.4 In view of the above and after considering the facts in totality, we do not find any reason to interfere in the order of the learned CIT-A. Thus, we uphold the same. Accordingly, we direct the AO to delete the addition made by him under the provisions of section 68 of the Act. Hence the ground of appeal of the revenue is hereby dismissed.

13. In the result, the appeal filed by the Revenue is **dismissed**.

**Order pronounced in the Court on 20/04/2022 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

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

Ahmedabad; Dated **(True Copy)**  
20/04/2022  
*Manish*