आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
'' SMC'' 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.1534/AHD/2018**
निर्धारण वर्ष/Asstt. Year: 2009-10

Rasiklal Narandas Patel, 2/B, Ambika Nagar Society, Part-I, Highway, Kalol(N.G)-382721. **PAN: AKWPP6206D**	Vs.	I.T.O., Ward-1, Mehsana.

(Applicant)		**(Respondent)**

Assessee by	:	Shri Parimalsinh B. Parmar, A.R
Revenue by	:	Shri V.K. Singh, Sr.D.R

सुनवाई की तारीख/**Date of Hearing : 25/03/2022**
घोषणा की तारीख **/Date of Pronouncement: 27/04/2022**

आदेश/O R D E R

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)-4, Ahmedabad, dated 25/06/2019 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal:

1. The Id. CIT(A) has grossly erred in law and facts in validating the assessment completed u/s. 144r.w.s. 143(3} r.w.s. 147 without issue/service of notice u/s. 143(2).

2. The Id. CIT(A) has grossly erred in law and on facts in confirming huge addition of Rs.10,62,500/-. being cash deposited in the savings bank account no. 033701000003821 with Indian overseas bank ("said account" for short) though

(i) the said account is owned and operated by his son, Shri Paresh Rasiklal Patel ("PRP" for short) wherein the appellant is a mere joint owner,
(ii) cash deposited in the said bank account in the immediately preceeding year i.e.AY 2008-09 was explained by PRP in assessment completed u/s. 143(3) r.w.s 147 dt. 29-02-2016.
(iii) PRP has confirmed that cash deposit in said bank account during AY 2009-10 belongs to him.

3. Without prejudice to the Grounds of Appeal No. 2, the Id. CIT(A) has grossly erred on facts in arriving at peak of Rs.10,62,500/- instead of Rs.6,00,000/- which is also confirmed by Id. Assessing officer in the remand report.

4. The Appellant craves leave to add to, alter, amend, modify, substitute, change any of the grounds as and when the occasion may arise.

3. At the outset, the learned AR for the assessee before us submitted that he has been instructed by the assessee not to press ground No. 1 challenging the validity of the assessment framed under section 144 read with section 143(3) read with section 147 of the Act on the reasoning that the same was framed without issuing the statutory notice under section 143(2) of the Act. Accordingly, we dismiss the same as not pressed.

4. The only issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO by treating the cash deposit in the saving bank account for ₹ 10,62,500/- being unexplained cash credit under section 68 of the Act.

5. The AO during the assessment proceedings found that there was the cash deposit in the Indian Overseas Bank account which was jointly held by the assessee and his son Shri Paresh Rasiklal Patel for Rs. 10,62,500/-, the source of which was

not explained by the assessee. Therefore, the AO treated the same as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

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

7. The assessee before the learned CIT-A submitted that impugned bank account was held jointly in his and his son's name but it is operated by son "Shri Paresh Rasiklal Patel only who is an LIC agent and all the transaction carried out in said bank account belongs to him only. In support, the assessee filed copy of confirmation from his son, cash and bank book in the books of his son.

7.1 The fact that the impugned bank account is operated by his son namely Shri Paresh Rasiklal Patel was accepted by the revenue in the assessment in framed in case of his son for A.Y. 2008-09 under the provisions of section 143(3) read with section 147 of the Act vide order dated 29th February 2016. It was contended by the assessee that there was also the cash deposit of ₹ 57,76,000/- in the immediate preceding assessment year. To this effect cash book was prepared by his son for the immediate preceding year wherein the closing balance of Rs. 12,21,313/- was shown which was accepted by the revenue. Likewise, the transactions reflected in the bank statement as discussed above were also considered by his son in the income tax return filed for the immediate succeeding assessment year i.e. 2010-11 and same is accepted by the revenue. Thus, based on the principle of consistency cash deposited by his son in the impugned bank account cannot be treated as of the assessee. In support of his claim, the assessee filed copy of assessment order framed in the name of his son for the A.Y. 2008-09, copy of queries raised by the AO with respect to cash deposit in the impugned bank in the A.Y. 2010-11 and reply made by the assessee to that effect.

7.2 Without prejudice to the above, the assessee also contended that there was simultaneous cash withdrawal from the bank which was re-deposited therein and therefore the benefit of the same should be given to him otherwise it would lead to double addition of the same cash deposit.

7.3 However, the learned CIT-A rejected the contention of the assessee by observing as under:

> *6.2 I have considered the facts of the case, assessment order and submission made by the appellant. The AO made the impugned addition in view of the fact that the appellant gave different explanations for the cash deposited in his bank account. On the one hand it was stated that he deposited the said cash to inflate the bank balance so that his son could get a foreign Visa. On the other hand it was also claimed that the said account was held jointly by him and his son and that all the deposits were made by his son. This issue has been discussed by the AO vide his remand reports which has been reproduced earlier. 1 find from all the facts filed that the appellant has simply stated that the said money belongs to his son who has given a letter stating the same. However, the fact is that the appellant had not filed his return of income for the year under consideration and has also stated before the AO that the said money was deposited by him. I do not find any merit in the explanations given by the appellant when he is the primary holder of the said joint account. Considering the same, the addition of Rs.10,62,500/- made by the AO is* ***confirmed.*** *Ground of appeal no.2 is dismissed.*

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

9. The learned AR before us filed a paper book running from pages 1 to 75 and contended that the impugned bank account, though held jointly, but it was operated by the son of the assessee. This fact was also accepted by the revenue in the earlier assessment year. Likewise, in the subsequent year as well, all the entries appearing in the impugned bank account were duly incorporated in the books of the son of the assessee.

10. On the contrary, the learned DR contended that the statement given by the assessee before the learned CIT(A) is contradictory. As such, the assessee firstly said that he has deposited the cash in order to get the visa but subsequently he has changed the stand by saying that impugned bank account belongs to his son.

Therefore, the same cannot be relied upon. The learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. There is no ambiguity to the fact that the bank account in dispute was the joint bank account. There was deposit of cash in the impugned bank account which was jointly held by the assessee along with his son. There is no standard formula which can suggest that amount of cash was deposited by the assessee or his son until and unless some documentary evidences are brought on record. In the absence of necessary information, the question arises whether the entire amount of cash deposited can be treated as income of the assessee ignoring the fact that the son was also a joint holder in such bank account. There are numerous instances where Revenue has made the assessment on substantive and protective basis in a situation where it was not aware in whose hands the particular receipt of income should be taxed. In the given case, we find that there was no material available with the revenue suggesting that the impugned bank account belongs to the assessee and therefore the entire receipt of cash deposit should be brought to tax in his hands only. Therefore, we are of the view that the Revenue has erred in taxing the entire cash deposits in the hands of the assessee.

11.1 Be that as it may be, it is equally important to note that the assessee has given a confirmation from his son holding that the cash belongs to him. But, surprisingly, the Revenue has not issued any summon to his son before rejecting the contention of the assessee despite the fact that son of the assessee has filed the cash book and the bank book wherein no defect was pointed out. As such the revenue, has not considered the documentary evidence which were filed by the assessee to demonstrate that such cash was deposited by his son. The crucial fact was also ignored by the Revenue that such bank account was accepted as belonging to the son of the assessee in the immediate preceding year and subsequent year.

11.2 Thus, such circumstances it becomes important for the revenue to verify the contention of the assesse before reaching to the conclusion that such bank account belongs to the assessee. In other words, we are of the considered opinion that addition has been made by the Revenue without examining the necessary evidences which were available on record. Likewise there was the enquiry conducted by the AO for the assessment year 2010-11 vide notice dated 7th March 2017 for verification the cash deposit of Rs. 20,56,660/- in the impugned bank account which was also accepted by the AO as belonging to the son of the assessee.

11.3 In view of the above we are of the view that there is no direct evidence suggesting whether the impugned bank account belongs to the assessee or his son but the preponderance of probability and surrounding evidence indicate that the impugned bank account belongs to the son of the assessee. Therefore, we are of the view that no addition of whatsoever is warranted in the hands of the assessee. Hence, the ground of appeal of the assessee is allowed.

11.4 As the assessee has succeeded in the main ground of appeal, the alternate ground raised by the assessee in the memorandum of appeal does not require to be adjudicated separately. As such it becomes infructuous. Accordingly we dismiss the same.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Court on 27/04/2022 at Ahmedabad.

Sd/-	**Sd/-**
(MADHUMITA ROY)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 27/04/2022

Manish