

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)  
**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri TR Senthil Kumar, Judicial Member**

**ITA No. 289/Rjt/2019  
Assessment Year 2010-11**

Mahesh K. Bhutiya "Parth", Paresh Nagar, Chhaya, Porbandar, PAN No. ALPPB5964Q  (Appellant)	Vs	The Income Tax Officer Ward-2(3), Porbandar (Respondent)
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**Appellant by : None**  
**Respondent by : Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 23-06-2022  
Date of pronouncement : 30-06-2022

**आदेश/ORDER**

**PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-**

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-3, Jamnagar, (in short referred to as CIT(A)), dated 27-09-2019, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2010-11.

2. The solitary issue in the present appeal relates to the addition made to the income of the assessee on account of cash deposit remaining unexplained amounting to Rs. 18,66,000/-

2.1 The grounds raised by the assessee in this regard are as under:

*1. Ld. CIT(A), Jamnagar has erred in law as well as on facts in confirming addition of Rs. 17,09,490/- u/s. 69A in respect of cash deposits made by an appellant by treating it as unexplained money.*

3. Brief facts relating to the case are that the A.O. had information that the assessee had deposited 18,66,000/- in his ICICI Bank account at Porbandar Branch during the impugned year. Accordingly jurisdiction was assumed by the A.O. to reopen the case of the assessee u/s. 148 of the Act and proceedings u/s. 147 conducted. In response to notice issued u/s. 148, the assessee filed return of income declaring income of Rs. 1,56,510/-. The assessee claimed to have returned income on presumptive basis on his business carried out as per the provisions of section 44AD of the Act but since he was unable to furnish any evidence to prove that the source of cash deposited was out of cash generated from his business activity, the entire cash deposits were treated as unexplained and added to the income of the assessee.

5. Before the Id. CIT(A), the assessee reiterated his contention, pointing out that he was engaged in the business of trading of agricultural produce, Kirana & Milk at Porbandar and had a turnover of Rs. 20,85,825/- out of the

same, on which he had declared income @ 5% as per the provisions of Section 44AD of the Act. He contended that as per the said provisions he was not required to maintain any books of accounts and further being a very old matter pertaining to A.Y. 2009-10, the bills and vouchers for sales and purchases had also not been preserved since long period six years had elapsed since then and the assessee belonged to unorganized business segment. He further pointed out that in identical matters where additions on unaccounted cash deposit had been made and even higher rate of profits estimated by Assessing Officers, in appeal the addition had been restricted to 5% of the turnover, accepting the plea of the assesseees that they were small businessmen and the cash deposits could be attributed to the turnover of their business. Alternatively the assessee contended that only the peak balance be added. The Id. CIT(A) was not convinced with the explanation of the assessee and upheld the findings of the A.O. that the assessee had been unable to substantiate the source of cash deposits from the turnover of his business. The relevant findings of the Ld. CIT(A) at Para 5 of the order is as under:

*5. The order u/s. 143(3) r.w.s. 147 of the Act of the AO as well as written submission of AR of the appellant have been considered. The grounds of appeal of the appellant are reproduced in initial paragraph of this appeal order. The second ground of appeal of the appellant is that the AO has erred in law as well as on fact in assuming jurisdiction in making assessment u/s. 143(3) r.w.s. 147 without issuing mandatory notice u/s. 143(2) of the Act. But this plea as raised by the appellant as per this ground of appeal and also the written submission of AR of the appellant in this regard are not found to be acceptable, The fact is that the AO has issued notice u/s, 143(2) of the Act dated 13/11/2017 to the appellant after reopening of the case u/s. 147 of the Act and copy of such notice u/s, 143(2) of the Act of the AO is enclosed herewith for reference. In view of this facts, the grounds of appeal no, 2 of the appellant is hereby dismissed.*

*The ground of appeal no. 1 of the appellant is that the AO has erred in law as well as on facts in making addition of Rs. 17,09,490/- being cash deposited in bank account treating the same as unexplained u/s. 69A of the Act. With regard to this ground of appeal it is mentioned that the AO as per ITS information noticed that the appellant had deposited Rs. 18,09,100/- in her State Bank of India saving account at Porbandar Branch during the year under consideration. Based on this information the AO reopened case of the appellant u/s. 147 of the Act by way of issue of notice u/s. 148 of the Act. However, the appellant had filed her return of income declaring the profit of Rs. 1,56,510/- u/s. 44AD of the Act i.e. 8% of entire cash deposit of Rs. 18,66,000/- in response to notice u/s. 148. As per the AO the appellant could not provide any evidence regarding her claim of cash sales made of any product. The AO in para 6 of the assessment order u/s. 143(3) r.w.s. 147 of the Act has mentioned that the appellant did not submit any reply in relation to show cause notice dated 28/11/2017. Thus the AO presumed that the appellant was having nothing to say with regard to points raised in the show cause notice. Accordingly the AO made addition of Rs. 17,09,490/- (i.e. cash deposit of Rs. 18,66,000/~ - income of Rs. 1,56,510/- as declared in the return of income) to the total income of the appellant u/s. 69A of the Act on account of unexplained money. The AR of the appellant as per his written submission dated 17/09/2019 has contended that the appellant being smart trader in petty agricultural items, grocery, milk etc. and the books of account were not maintained by her and whatever cash were deposited in the books of account was out of sales and on which profit @ 5% has been declared by her in return of Income. As per the AR of the appellant the matter pertains to financial year 2009-10. As per the AR of the appellant the bills and vouchers for sale and purchase were not preserved on laps of long period of this year and also due to unorganized culture of small business man. The AR of the appellant as per his para 8 of his written submission has produced the chart showing the identical case of other assesses for assessment year 2009-10 and wherein the addition has been made by the department and also the additions as sustained by the CIT(A) and ITAT. The AR of the appellant has also relied upon decisions of various honorable Courts. As per the AR the appellant had done trading business of brass products and supplied goods to various parts of India and from where cash were deposited in their respective bank account which is admittedly unaccounted sales. As per the AR of the appellant the said amount were withdrawn at Jamnagar for making URD purchase for subsequent supply of goods. Thus the AR has requested to treat these deposits of Rs. 18,66,000/- as sales and not as undisclosed investment, But this entire submission of AR of the appellant is not found to be acceptable, The admitted fact is that this source of cash deposit of Rs. 18,66,000/- could not be explained by the appellant during the course of assessment proceedings and also at appellate stage by way of filing relevant details and evidence. The AR of the appellant at appellate stage himself has admitted that books of accounts in the case of appellant were not*

*maintained as the appellant was small trader in petty agricultural items, grocery and milk etc. The AR of the appellant has also admitted the fact that since the matter pertains to financial year 2009-10 and hence bills and voucher for sale and purchase were no preserved. In my opinion in absence of any proof or evidence, the mere submission of the appellant that this amount of deposit of Rs, 18,66,000/- in the bank account were sales cannot be accepted. This is also in view of the fact that during the course of assessment proceedings, the appellant failed to furnish his reply in response to show cause notice dated 28/11/2017 of the AO and this aspect has not been explained by the AR of the appellant in the written submission dated 17/09/2019 as filed during the year appellate proceedings. The AR of the appellant has pleaded that alternatively the benefit of peak credit to the appellant can be given. As per the AR of the appellant, the appellant has deposited cash in piece meal viz 15000, 20000, 22000, 25000 and maximum 49000/- on various dates and the same were withdrawn subsequently in cash through ATM and again which is evident from the bank statement as attached with the written submission dated 17/09/2019. But no any bank account is found to be attached with the written submission dated 17/09/2019 of AR of the appellant as filed during the course of appellate proceedings, More over the AR of the appellant has not mentioned the dates of withdrawal of the same amounts as mentioned above and which were initially deposited in the bank account and were withdrawn from such bank account and were again redeposited. The AR of the appellant has also not explained the time gap i.e. between the deposition of above amounts of Rs. 15000,20000,22000,25000 and 49000/- and further withdrawal of the same amount and again further deposition of these amounts in the bank account. In my opinion this mere statement of AR of the appellant without any evidence and explanation cannot be accepted. This is also in view of the fact that no any such plea was takers by the appellant before the AO at the time of assessment proceedings despite the Fact that show cause notice dated 28/11/2017 was issue to her by the AO. the AR of the appellant has not furnished any evidence to show that exactly the same amount which were deposited in the bank account were withdrawn and again exactly the same amount were further deposited in the bank account within a very short period. Considering all these facts the above plea of AR of the appellant is not found to be acceptable. In my opinion in view of the facts as mentioned in this paragraph of this appeal order, the AO has correctly made addition of Rs. 17,09,490/- to the total income of the appellant u/s. 69A of the Act by treating the same as unexplained money and such addition of the AO is hereby confirmed. Thus the ground of appeal of the appellant is dismissed.*

6. We have heard both the parties. We have noted that the Revenue has accepted the income returned by the assessee from his business by

applying 5% profit rate to his turnover of Rs. 20,85,825/-. It is evident therefore that it is an accepted fact that the assessee is a very small businessman and it is common knowledge that such small businessmen conduct almost their entire business in cash. Therefore it cannot be ruled out completely that the entire turnover of the assessee was in cash. Having said so another very pertinent fact is that neither do such small businessmen maintain any books of accounts worth its while nor are they required under law to maintain books of accounts as per Section 44AD of the Act, as per which the assessee had returned the impugned income on presumptive basis. But having said so, the assessee still needs to substantiate his turnover with certain documentary evidences so that the correct estimation of his net profits by applying the rate specified under the section can be made. However in the peculiar facts of the case before us the assessee was asked to justify this fact after a lapse of six years in reassessment proceedings. Considering the fact that he was a very small businessman, operating in unorganized sector, it was asking for too much to produce bills to substantiate his turnover in cash that too after a lapse of six years. In these peculiar facts and circumstances we are of the view that having accepted the fact that the assessee had conducted business to the tune of Rs. 20 lakhs odd which in all probability was conducted in cash and the department having found out no other source of income available with the assessee, the entire deposits of Rs. 18,66,000/- in cash in the bank can be safely attributed to the business receipts of the assessee only. We may add that very small businessmen like the assessee for whom the law itself provides a convenient method for declaring their incomes by returning

taxes on at a presumptive rate, thus doing away with the onerous requirement of maintaining books of account and other documents , noting that it acted as a deterrent to such businessmen from declaring their income ,the Revenue is expected to take a considerate and holistic view on such matters and not waste its efforts and energies in making such paltry additions .

8. In view of the above facts and circumstances we hold that that the addition of Rs. 18,66,000/- on account of alleged unexplained cash deposit be deleted.

9. In effect, appeal filed by the assessee is allowed.

Order pronounced in the open court on 30-06-2022

Sd/-  
(TR SENTHIL KUMAR)  
JUDICIAL MEMBER *True Copy*  
Ahmedabad : Dated 30/06/2022

Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट