

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 132 /Rjt/2020
Assessment Year 2014-15**

Shri Vivek Pravinchandra Pala, Jamnagar PAN: AORPP6260Q (Appellant)	Vs	The ITO, Ward-2(2), Jamnagar (Respondent)
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**Assessee by: Shri Mehul Ranpura, A.R.
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 29-06-2022
Date of pronouncement : 06-07-2022

आदेश/ORDER

PER BENCH:-

This assessee's appeal for A.Y. 2014-15, arises from order of the CIT(A), Jamnagar dated 17-10-2019, in Appeal No. CIT(A)/Jam/205/16-17/976, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:-

“1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The Commissioner of Income-tax (Appeals), Jamnagar [hereinafter referred to as the "CIT(A)"] erred on facts as also in law in retaining addition of Rs. 9,26,133/- out of total addition of Rs.10,01,133/- made u/s. 69 of the Act as unexplained investment on the alleged ground that the appellant failed to explain the source of opening capital to extent of Rs.9,26,133/-. The addition retained is totally unjustified and uncalled for and deserves to be deleted and may kindly be deleted.

3. Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.

Total tax effect 2,25,460/-

3. At the outset we note that the appeal is time-barred by 215 days. The assessee has placed on record an application for condonation of delay duly supported by the affidavit of the assessee. As per the said application/affidavit, the assessee has submitted that the order of the Ld. CIT(Appeals) was received by the assessee on 20-10-2019, which was misplaced by the peon who forgot to deliver it to the chartered accountant of the assessee. It was only on receipt of the penalty notice u/s 271(1)(c) of the Act dated 14-03-2020 that the assessee realised that the appeal against the order of Ld. CIT(Appeals) was omitted to be filed. Further, due to Covid 19 pandemic situation, there was a delay of 215 days in filing the appeal, which was not intentional and due to circumstances beyond the control of the assessee. In view of the above, in the interest of justice, we are hereby

condoning the delay in filing the present appeal. The Ld. DR has also not objected to the delay being condoned.

4. The brief facts of the case are that the assessee had filed its return of income for assessment year 2014-15 declaring total income of ₹ 2,18,500/-. During the course of assessment for the impugned assessment year, the AO noticed that the assessee has shown an amount of ₹ 10,01,133/- as opening capital balance even though the assessee had filed return of income for the first time. The assessee was asked as to why this opening balance amount of ₹ 10,01,133/- not be treated as unexplained income of the assessee and thus be added to the total income of the assessee. Since the assessee did not file any reply in response to the show cause notice issued by the assessing officer, he added the above amount of ₹ 10,01,133/- to the total income of the assessee under section 68 of the Income Tax Act 1961 (Act). In appeal before Ld. CIT(Appeals), the counsel for the assessee submitted that the opening capital balance of ₹ 10,01,133/- was out of savings of past 10 to 12 years as the assessee was working as an employee earning salary income and has accumulated earnings. The Ld. CIT(Appeals) gave minor relief to the assessee in appeal and held that benefit of cash amount of ₹ 75,000/- can be given to the assessee as cash being available to him and accordingly Ld. CIT(Appeals) reduced the above amount of ₹ 75,000/- from the addition of ₹ 10,01,133/- made by the assessing officer. He accordingly confirmed the balance amount of ₹ 9,26,133/- as unexplained income of the assessee under section 68 of the Act.

5. Before us, the counsel for the assessee reiterated the submissions made before Ld. CIT(Appeals) and submitted that the assessee has been working as a salaried employee for past many years and the above amount of opening balance of ₹ 10,01,133/- is out of his past savings. He submitted that the assessee has been working for the past 10 to 12 years and accordingly the opening capital amount of ₹ 10,01,133/- is quite reasonable looking into the facts of the case and circumstantial evidences placed on record, which cannot be doubted. He further drew our attention to page 3 of the paper book to submit that during the year the assessee had earned salary income from M/s Shiv Transport Company and also had started his own business during the year under consideration and had earned business income as well. He further drew attention to page 11 of the paper book to contend that the assessee has been earning salary income for past many years in the range of ₹ 1.75 lakhs to 2 lakhs per annum and hence the figure of opening balance of ₹ 10,01,133/- is quite reasonable considering the instant set of facts. He further drew attention to page 15 of the paper book, in which the certificate issued by M/s Shiv Transport Company as proof of employment with the said company was furnished. In response, the Ld. DR relied upon the observations made by Ld. CIT(Appeals) and the Ld. Assessing Officer in their respective orders.

6. We have heard the rival contentions and perused the material on record. We note that the assessee has been working as a salaried employee for past several years and has also furnished employment certificate from his employer to that effect. Further, we note that the Revenue has not doubted/discarded the cash book placed on record by the assessee at pages

12 to 14 of the paper book, which was also duly placed before the revenue authorities at the time of assessment/appeal. Even during the impugned year, the assessee has shown income to the tune of ₹ 2.18 lakhs from salary income and business income. The Ld. CIT(Appeals) has not given any basis as to why relief to the tune of ₹ 75,000/- should be given to the assessee on account of past savings when the assessee has submitted that he had been earning salary income for past several years as duly supported by the cash flow statement for the period 1-4-2011 to 31-3-2013 at page 11 of the paper book. The Ld. CIT(Appeals) has not brought anything on record to controvert the statement of the assessee that he has been earning salary for the past several years. The Ld. CIT(Appeals) has also not doubted the veracity of the salary certificate from his employer M/s Shiv Transport Company and Ld. CIT(Appeals) has not alleged that the same is non-genuine and has neither challenged the fact that assessee is earning salary income for past several years. In view of the above, in our considered view, Ld. CIT(Appeals) has given part relief to the assessee on a purely ad-hoc basis, without controverting the genuineness of the documents placed on record by the assessee in support of his claim that the opening balance is out of past savings. It may be pertinent to refer to the observations made by the Delhi Tribunal in the case of **Jagtar Singh vs Income-Tax Officer 1999 69 ITD 47 Delhi**, on the issue in hand before us:

On the other hand, we are inclined to agree with the submission of the assessee's counsel that in view of the assessee's statement of affairs available with the Revenue since 1982-83, the genuineness of the brought-forward capital cannot be doubted. Simply because the

assessee's income became taxable in this year and the assessee filed the return complying with the provisions of law cannot be a ground to penalise the assessee by not accepting its brought forward capital and that too without bringing any evidence to the contrary. The Revenue's allegation that the assessee stone-walled the investigations also cannot be appreciated because in case the assessee was not furnishing the details required by the AO, he had ample power under the IT Act to make necessary enquiry at his own level and should not have allowed the assessee to escape the liability of proper tax.

5. In view of above facts and circumstances, we are of the opinion that as far as the addition of opening capital is concerned, the same cannot be sustained.

6.1 In view of the above factual and judicial background, we are inclined to take the view that the assessee has been able to place on record sufficient evidence to support his case that the opening balance of ₹ 10,01,133/- is out of past savings of the assessee, and hence the addition made by the Ld. CIT(Appeals) is hereby set aside.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06-07-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

Rajkot : Dated 06/07/2022

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

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

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot