

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 95/Ahd/2020  
Assessment Year 2011-12**

Girishbhai Thakarshibhai Sanghvi A/3 Poonam Parina Apptt. Nr. Vasna Telephone Exchange, Ahmedabad-380007 PAN No: BHYP6807B (Appellant)	Vs	The ITO, Ward-5(2)(1), Ahmedabad (Respondent)
---	----	--

**Appellant by : Shri S. N. Divatia, Advocate  
Respondent by : Shri Sudhendu Das, Sr.D.R.**

Date of hearing : 03-06-2022  
Date of pronouncement : 24-08-2022

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

The present appeal has been filed by the Assessee against the order dated 25.11.2019 passed by the Commissioner of Income Tax (Appeals)-5, Ahmedabad, as against the Assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2011-12.

2. The brief facts of the case is that the assessee is an individual and post retirement from a private business as cloth merchant, used to work as an estate broker and other miscellaneous also. The assessee has not filed Return of Income u/s 139 of the Act. On verification of Actionable Information Monitoring System (AIMS) and Non Filer Monitoring System (NMS), there is an information that the assessee has deposited cash amounting to Rs. 74,55,000/- in his saving bank account maintained with Nutan Nagrik Sahkari Bank Ltd. Therefore, notice u/s 148 was issued, the assessee has not filed any return in response to the 148 notice. After repeated notices, the assessee appeared before the assessing officer and filed copy of acknowledgment for Income Tax Return filed for the Assessment Year 2008-09. Copy of cash book for the Assessment Years 2010-11 & 2011-12. Summary of cash deposited in Nutan Nagrik Bank for the Assessment Year 2010-11 & 2011-12 with opening and closing balance and copy of Form 26AS. The Assessing Officer called for bank statement from Nutan Nagrik Sahkari Bank Ltd. by issuing notice u/s. 133(6) of the Act, which contains two bank accounts in the name of the assessee one is Saving Account and another is Current Account. Both accounts were closed in the year 2016.

2.1. The assessee submitted that he was acting as intermediary i.e. broker in land trading nearby area of his native place. The assessee furnished cash book for the Assessment Years 2010-11 & 2011-12, however not produced any supporting evidences but claimed that

there was an opening brought forward cash balance of Rs. 14,51,250/-. The assessee could not able to establish the cash deposits and also could not explain business/financial activities for which the assessee did not declare any income from business or profession or under other sources. Therefore the entire cash deposited amounting to Rs. 25,05,000/- remained unexplained. Therefore the Assessing Officer adopted the peak credit method and made an addition of Rs. 10,00,000/- as unexplained investment in the hands of the assessee.

3. Aggrieved against the same, the assessee is before us raising the following Grounds of Appeal:

*1.1 The order passed u/s.250 on 25.11.2019 for A.Y.2011-L2 by CIT(A)-5, Abad upholding the addition of Rs.10 lakh as unexplained cash deposits in bank account is wholly illegal, unlawful and against the principles of natural justice.*

*1.2 The Ld. CIT(A) has grievously erred in law and/or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition. The Ld.CIT(a) has passed a non speaking order in a cursory manner so that it is liable to be quashed.*

*2.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming addition of Rs.10 lakh as undisclosed investment u/s 69 of the Act.*

*2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the addition of Rs.10 lakh as undisclosed investment u/s 69 of the Act*

*2.3 The Ld.CIT(A) has erred in observing that the appellant had not submitted any supporting documentary evidence or explained the purpose of cash deposit and immediate cheque issuance.*

*2.4 Without prejudice to above and in alternative, the impugned addition of Rs.10 lakhs is highly excessive and calls for reduction.*

3.1 The Ld. AO has grievously erred in law and or in facts in initiating the proceedings u/s.147 and the notice u/s.148 was illegal and unlawful in view of the condition precedent were not satisfied.

It is, therefore, prayed that the addition of Rs.10 lakh upheld by the CIT(A) may kindly be deleted.

3.1. The Ld. Counsel Shri S.N. Divatia appearing for the assessee submitted that the statement made by the Assessing Officer is factually not correct. In fact the cash withdrawals which is evident from the bank pass book are as follows:

Date	Cash Withdrawn	Cash Deposited	Balance
01/02/2010	1,00,000	-	1,00,000
01/02/2010	6,00,000	-	7,00,000
03/02/2010	3,00,000	-	10,00,000
11/03/2010	2,00,000	-	12,00,000
22/03/2010	1,00,000	-	13,00,000
22/03/2010	1,00,000	-	14,00,000
31/03/2010	1,00,000	-	15,00,000
31/03/2010	-	1,50,000	13,50,000
APRIL,2010		9,00,000	4,50,000
05/05/2010	3,00,000		7,50,000
05/05/2010	-	400,000	3,50,000

3.2. As stated by the Assessing Officer the cash withdrawn were not old ones. The A.O. mentioned the dates and the figures. If the A.O. has rightly considered the figures, there would have been a positive cash balance as on 05/05/2010, a Negative Cash balance of Rs. 10,00,000/- as determined by the A.O. is not correct. Thus, the chart prepared by the Assessing Officer is half-truth and conveniently ignored the earlier entries to justify the negative cash balance. The table stated above reveals the link between the

withdrawals and the deposits of cash in bank. In view of the above explanation, the addition of Rs. 10,00,000/- made as peak credit is liable to be deleted.

4. Per contra the Ld. D.R. appearing for the Revenue supported the order of the lower authorities and pleaded that the concurrent findings of the Authorities does not require any interference and there is no material placed by the assessee in support of its claim.

5. We have heard both the parties and perused the materials available on record. We do not find any force in the argument of the assessee for the reason that the assessee having not filed the Return of Income for the present Assessment Year 2011-12. The assessee had only furnished cash book for the Assessment Years 2010-11 & 2011-12 and no Income Tax Return was filed by the assessee for Assessment Years 2009-10 & 2010-11 to justify the cash balance is brought forward for the earlier years. From the Return of Income filed for the Assessment Year 2011-12 it is seen that the assessee has shown only income from other sources of Rs. 49,920/- and no other income. The assessee could not establish the cash withdrawals to crack the real estate deal. Thus the assessee has not established the entire cash deposit amounting to Rs. 25,05,000/- in Nutan Nagrik Sahkari Bank Ltd.. However the Assessing Officer seems to have taken a reasonable approach and considering the circumstances of the case made a least peak credit of Rs. 10,00,000/- as unexplained investment u/s 69 of the Act which does not require any interference in the absence of material

evidence before any of the Lower Authorities. In the above circumstances, the grounds of appeal raised by the assessee are hereby rejected and the appeal filed by the assessee is hereby dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 24-08-2022

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 24/08/2022**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**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/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद