

आयकरअपीलीयअधिकरण, राजकोटन्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No. 86/Rjt/2017

निर्धारणवर्ष/Asstt. Year:2006-07

Shri Samir Kamruddin Makhani, 104- VrajBhumi Apartment, Maruti Nagar, Opp. Saraswati School, Airport Road, Rajkot <b>PAN: ALWPM7996C</b>	Vs.	ACIT Central Circle-1, Rajkot
<b>(Applicant)</b>		<b>(Respondent)</b>

Assessee by :	Shri Mehul Ranpura, A.R.
Revenue by :	Shri Aarsi Prasad, CIT DR

सुनवाईकीतारीख/**Date of Hearing** : **06/07/2022**

घोषणाकीतारीख/**Date of Pronouncement**: **14/09/2022**

**आदेश/O R D E R**

**PER BENCH:**

The captioned appeal has been filed at the instance of the assessee against the order of the Ld. Commissioner of Income Tax-(Appeals)-11 (in short the Ld. CIT(A)), Rajkot dated 30/12/2015 arising in the matter of assessment order passed under Section 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 assessee has raised the following grounds of appeal:

*1.0 The grounds of appeal mentioned hereunder are without prejudice to one another.*

*2.0 The learned Commissioner of Income Tax (Appeals)-H, Rajkot [hereinafter referred to as the "CIT(A)"] erred on facts as also in law in confirming the reopening of assessment as valid. That on facts as also in law, initiation of action*

*u/s, 147 of the Act is invalid and assessment made on such invalid initiation deserves to be quashed and may kindly be quashed.*

*3.0 The ld. CIT(A) erred on facts as also in law in summarily confirming the addition made by the AO in total disregards to the submission made during the course of appellate proceedings.*

*4.0 The ld. CIT(A) erred on facts as also in law in confirming addition of Rs. 3,84,57,514/- made u/s. 68 of the Act on the alleged ground of unexplained cash deposit of Rs.3,84,57,514/-. The addition made is totally unjustified on facts as also in law, which may kindly be deleted.*

*5.0 Your Honor's appellant craves leave to add, amend, alter or withdraw any or more grounds of appeal on or before the hearing of appeal."*

3. The issue raised by the assessee in Ground No. 4 is that the Ld. CIT(A) erred in confirming the addition of Rs. 3,84,57,514/- representing the cash deposit in the bank treating the same as unexplained cash credit under Section 68 of the Act.

4. The facts in brief are that the assessee in the present case is an individual and filed return of income declaring an income of Rs. 1,04,892/- only. There was huge cash deposit in the bank account of the assessee amounting to Rs. 3,84,57,714/-. On question by the Ld. AO about the source of cash, the assessee explained that he is employed with the firm namely M/s. Bhagwati Enterprise and Shri Lalitmal Asumal Gangvani is the proprietor and the impugned bank account was opened at the behest of such person. Thus, the entire cash deposits in the bank account belongs to Shri Lalitmal Asumal Gangvani. However, the AO disregarded the contention of the assessee and made the addition of Rs. 3,84,57,714/- representing the cash deposit in the bank, treating the same as unexplained cash under Section 68 of the Act.

5. Aggrieved assessee preferred an appeal before the Ld. CIT(A) who confirmed the order of the AO by observing as under:

*" In the appeal proceedings, the AR of the appellant contended that the assessee could know about cash deposit in his bank accounts only after search action in the case of tiles manufacturer. The assessee was a person of no means and was serving with Shri Lalitmal Ashumal Gangwani and he opened bank account at the instance of Shri Lalitmal Ashumal Gangwani. Therefore, the assessee was only a name lender, the addition in his case was totally wrong and unjustified. He relied on some decisions. The decisions were perused and it was*

*found that the facts of the present assessee were clearly distinguishable from the facts of these cases.*

*After considering the facts and circumstances of the case and submission of the appellant, it is difficult to avoid a conclusion that the cash deposited in account of the assessee was his own act for which he was fully responsible to explain with source. As discussed hereinabove, it was proved that the submission of the appellant was evasive and far from the real state of affairs. Accordingly, in my considered opinion, the action of the AO was in order. Thus, the grounds of appeal are dismissed."*

6. Being aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before us. The Ld. A.R. before us filed a Paper Book running from Pages 1 to 83 and contended that the cash deposits in his bank account does not belong to him. As such he was merely acting at the behest of Shri Lalitmal Asumal Gangvani.

7. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the identical issue was raised in the own case of the assessee in ITA Nos. 138 and 119/RJT/2017 for the A.Ys. 2011-12 where the ITAT was pleased to delete the addition made by the authorities below. The relevant extract of the order is reproduced as under:

*"24. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there were huge cash deposit in the account of the assessee. But at the same time there were huge withdrawals from the bank in cash. Thus, we are of the view that if the cash deposits are treated as income of the assessee then at the same time cash withdrawal from the bank should be treated as expenses. As such the AO cannot take a view which is benefiting the Revenue without considering the fact for the withdrawal of cash. In this regard we have perused the bank statement of the assessee which is available on record and find from-the same that there were continuous cash deposits and withdrawals.*

*25. We also note that as per the accounting rule all the withdrawal of cash goes into cash book and if it is unspent it would bear the character of cash in hand so that if any amount is deposited into the bank it would undoubtedly correspond to the available cash in hand. Moreover, the Income tax law does not contain any provision to maintain record of reason or purpose of each withdrawal in cash from the bank. Thus the assessee should be given a benefit of doubt to relate the deposits in cash out of previous withdrawal from the banks.*

26. We also find that there is no iota of evidence suggesting that the assessee has made any investments or incurred any expenditure of personal nature out of the cash withdrawn from the bank. Thus we are of the view that the amount of cash deposits alone cannot be treated as income of the assessee. Thus the action of the AO of making addition on accounts of all deposits made in the bank accounts of the appellant is without any justification and resulting to the high pitch assessment.

27. In addition to the above, it is also pertinent to note that the assessee in the statement furnished under section 132(4) of the Act, has disclosed the name of certain/major parties of the ceramic manufacturers on whose behalf he was accepting the money from the dealers which was finally returned to such manufacturers. The relevant question raised to the assessee and its answer by the assessee is reproduced as under:

Q-3 Pl. Explain your main profession/service.

Ans. The manufacturers of Morbi who sells its goods in Gujarat as well as outside Gujarat, the payment thereof are collected through my account. This means the cash ore deposited in my account and on this amount I collect Rs.50 to Rs.100/lacs as commission and balance is paid to the seller in cash.

Q-4. As stated by you that you are associated with ceramics companies of Morbi on commission, pi. State the for which companies you are dealing Ans. I am associated with the following ceramics companies of Morbi.

1). Hem ceramics, 2) Slogan Ceramics, 3) Ashar trading, 4) set me ceramics, 5) Centre ceramics, 6) Origin, 7) Sun City, 8) Cendrosa, 9) Shantibhai, 10) Winner, 11) Subh Marketing.

Q-5 You ore associated with above companies on commission on sale, what isyour daily and monthly turnover.

Ans. My daily turnover is about rupees seven lacs and monthly is about 1.75crores.

Q-6 What Is your monthly income?

Ans. My monthly income is about Rs. 1700/- to Rs. 1800/-.

28. However, the authorities below has not carried out any verification from such parties despite having sufficient powers with them granted under the statute. As such, the assessee discharged his onus by furnishing the details of the parties as discussed above and the onus was shifted upon the revenue to disprove the contention of the assessee that he was not working on behalf of such ceramic manufacturers.

29. We also find that the case of the assessee was taken under the income escaping assessment under section 147 of the Act for the assessment year 2006-07 on the basis of the letter issued by DDIT (Inv), Ahmedabad dated 4-3-2013 after recording the reason that the assessee is engaged in the activity of Shroff. Thus, in our considered view such reason recorded by the revenue under section 148 of the Act also supports the contention of the assessee that he is engaged in the activity of money transfer. Indeed, the assessee was doing such business

*without obtaining any license from the competent authority. Accordingly it can be inferred that such business carried on by the assessee was without obtaining the license from the competent; authority but what is mandated under the provisions of the income tax Act is to tax the income of the assessee whether it was from legal or illegal source. Therefore, the principles for determining the income will remain the same even the source of income is illegal in nature. In this regard we find support and guidance from the judgment of Hon'ble Madras High Court in case of CIT vs. K. Thangamani reported in 309 ITR 15 where it was held as under:*

*The primary function of the Act is to bring the income of various kinds into the tax net. The income-tax authorities are not concerned about the manner or means of acquiring income. The income might have been earned illegally or by resorting to unlawful means. Illegality tainted with the earning has no bearing on its taxability. Income generated by engaging in liquor trade, generally called as res extra commercium, otherwise known as trade in crime, or income earned by way of selling Khadhi products, are one and the same for the tax authorities. The assessee, having acquired income by unethical manner or by resorting to acts forbidden by law, cannot be heard to say that the State cannot be a party to such sharing of ill-gotten wealth, Allowing such income to escape the tax net would be nothing but a premium or reward to a person for doing an illegal trade. In the event of taxing the income of only those who had acquired the same through legal manner, the tendency of those who acquire income by illegal means would increase, it is not possible for the income tax authorities to act like police to prevent the commission of unlawful acts, but it is possible for the tax machinery to tax such income. During such process, strict rules of evidence are not applicable to the income-tax authorities. Those pieces of evidence, which are not sufficient in ordinary legal proceedings to prove a particular fact, would be sufficient for the tax officials to assess the income of an individual.*

30. *We also note that the learned CIT(A) has given contradictory finding in his order. As such the learned CIT(A) has observed the fact that the entire amount of deposit cannot be treated as income without considering the withdrawal from the bank. Such relevant finding of the learned CIT (A) is reproduced as under:*

*There is continuous cash deposit and withdrawal on daily basis from these accounts. The A.O, has made addition of total cash deposits in these bank accounts by considering only the credit side of the bank account and the debit side i.e. withdrawal has been ignored altogether. This cannot be considered justified because, it is legally settled principle that the evidence should be relied upon in total and not in piece-meal manner. It is also legally settled principle that if there are withdrawal from the same account in cash prior to the deposit in cash, it is considered that the cash withdrawn has been utilized to deposit in the same account, if that has not been found invested in other asset or incurred as expenditure by the assessee. Keeping in view the facts of the case that the cash deposited in the bank account and amount was withdrawn in cash from the same bank account; the additions of total cash deposits made by the A.O. are not found justified. If these cash deposits would have remained in the bank*

*account or found by the A.O, as invested by the appellants in other assets or incurred expenditure; additions to the extent of such investment expenditure could have been justified. But in the present case, no such findings have been given by the A.O. Therefore, it is held that the additions of total cash s deposits made by the A.O. are found excessive.*

31. *However, the learned CIT (A) without cogent reason has changed his stand by concluding that the amount of deposit of cash represents the turnover of the business of the assessee. Accordingly, he estimated the income of the assessee at the rate of 25% of the cash deposits in the bank. Such finding of the learned CIT (A) was not based on any scientific information. As such the learned CIT (A) has assumed the profit of the parties engaged as dealer of ceramic manufacturer at the rate of 25% of the turnover without bringing any material on record. Accordingly, we are not inclined to make any reference to such finding of the learned CIT (A).*

32. *There was no material found during the course of search proceedings suggesting that the assessee was acting as a dealer of ceramic manufacturer. Therefore, the question of making any investment in such business does not arise. Accordingly we are of the view that there cannot be any addition on account of investment of Rs. 13,53,224/- in such undisclosed business of the assessee.*

33. *The next question arises what should be the rate to be applied determining the income of the assessee from its activities of money transfer. As such, none of the authority below has brought anything on record suggesting the rate to be applied for determining the income of the assessee from its activities. Accordingly, in the absence of such information available on record, we accept the rate of the income disclosed by the assessee in his income tax return.*

34. *In view of the above and after considering the facts in totality we hold that the assessee was acting as money transfer agent on behalf of the parties engaged in ceramic manufacturers. Accordingly, we allow the ground of appeal of the assessee and dismiss the ground of appeal of the revenue.*

35. *In the result the appeal filed by the assessee is allowed whereas the appeal filed by the revenue is dismissed."*

9. Before us, no material has been placed on record by the Revenue to demonstrate that the decision of Tribunal in the own case of the assessee as discussed above has been set aside / stayed or overruled by the higher Judicial Authorities. Before us, Revenue has not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of earlier year nor has placed any contrary binding decision in its support. The doctrines of judicial precedent have been evolved to ensure stability, consistency and conformity in law otherwise a judge could take any view in the

interpretation of law resulting in chaos. In view of the above, we set aside the finding of the Ld. CIT-A and direct the AO to delete the addition made by him. Thus the ground of appeal raised by the assessee on merit is allowed.

10. As the assessee succeeds on the issue raised by him on merit, we refrain ourselves from adjudicating the issue raised on the validity of the reassessment proceedings under the provisions of Section 147 of the Act. As such the ground raised by the assessee on the validity of the re-assessment proceedings becomes infructuous. Thus the same is dismissed as infructuous.

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

**Order pronounced in the Court on 14/09/2022 at Ahmedabad.**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

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

Ahmedabad; Dated 14/09/2022

Tanmay, Sr. PS

**TRUE COPY**

**आदेशकीप्रतिलिपिगेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad