

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER**

I.T.A. No.345/Rjt/2018  
(Assessment Year: 2007-08)

Shri Pravinkumar Babu Dhankecha, C/o. D.R. Adhia, "Om Shri Padmalaya", Beside Trikamraji Haweli, Opp. Hotel Imperial Palace, 16 Jagnath Plot, Fr. Yagnik Road, Rajkot [PAN No.AHPPD2797M]	Vs.	ITO Ward-1(1)(5), Rajkot
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by</b> :	Written Submission
<b>Respondent by</b> :	Shri B. D. Gupta, Ld. DR

<b>Date of Hearing</b>	30/08/2022
<b>Date of Pronouncement</b>	16/09/2022

ORDER

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

This is an appeal filed by the assessee against the order dated 21.06.2018 passed by the Commissioner of Income Tax (Appeals)-1, Rajkot (in short "CIT(A)") arising out of the assessment order dated 16.03.2015 passed under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the A.Y. 2007-08.

2. The assessee is an individual having income from other sources and agricultural income. The Assessing Officer got information that the assessee deposited Rs. 14,50,000/- in cash in the Bank of India, Sardhar Branch. However, the assessee has not filed any Return of Income. As there was escaped income, notice under Section 148 of the Act was issued on 19.03.2014 and the notice was served on 21.03.2014. However, the assessee has not filed Return of Income, hence reminder was issued on 21.07.2014 & 24.09.2014 and 142(1) notice was issued on 19.12.2014. Thereafter, the assessee filed Return of Income on 16.01.2015 declaring total income of Rs. 87,300/-. The assessee was called upon to explain the source of cash deposit of Rs. 14,50,000/-. The assessee submitted that the Savings Bank Account was operated jointly by the assessee with four others and cash is deposited in that account by all of them. The assessee claimed out of the total cash deposit only 3,00,000/- belong to him but could not explain the source of cash deposit with supporting evidences. Therefore, the AO added the entire cash deposit of Rs. 14,50,000/- as unexplained cash deposit and added to the total income of the assessee.

3. Aggrieved against the same assessee filed an appeal before the Ld. CIT(A). During the appellate proceedings the assessee filed a written submission explaining the cash deposits made in the joint account. The Ld. CIT(A) call for a remand report from the AO. The AO replied that the assessee's explanation that 2.5 lakh is a opening balance as on 03.04.2006 and the remaining 12 lakh that four members as joint holders of the bank account have deposited of 3 lakh each is not acceptable, since the assessee has not produced any supporting evidence

that the cash of Rs. 3 lakh each pertaining to the four persons. The source of cash from where they had such cash was not explained. This is only an afterthought process, as the assessee had unexplained cash with him during the period under which is not brought to tax bracket and clearly its escaped income.

3.1 A rejoinder was received from the assessee which reads as follows:

*“3.1 Briefly submitted that the above bank account is pertains to five persons jointly operated by them the name of each of the person amount deposited by them is as under:*

1.	Rs. 3,00,000/-	Rasikbhai Babubhai Dhankecha
2.	Rs. 3,00,000/-	Pravinbhai Babubhai Dhankecha (assessee)
3.	Rs. 3,00,000/-	Jyotsanaben Babubhai Dhankecha
4.	Rs. 3,00,000/-	Dayaben Babubhai Dhankecha
	Rs. 12,00,000/-	Total deposited on 27-03-2007.

3.2. *The Ld. A.O. has not made any comments nor objected with cogent reason on this issue and therefore the submissions made in this para by assessee may kindly be accepted.*

4.1. *The above deposit amount is made by each of the above persons by way of separate voucher and a copy of the certificate and copy of bank accounts showing the above transaction is furnished here with for kind perusal*

4.2. *The Ld. A.O. has not made any comments nor objected with cogent reason on this issue and therefore the submissions made in this para may by assessee kindly be accepted.*

5.1. *Thus, the addition of Rs.14,50,000/- is made erroneously. In the case of Smt. Dayaben Dhankecha and Jyotsanaben Dhankecha the concern Ld. A.O. has accepted this contention and has made addition of Rs.3,00,000/- in the respective cases. Copy of the assessment order passed in the case of these persons are submitted here with it is therefore prayed That the addition made of Rs.14,50,000/- being unlawful and although bank authority does not support the same, made by the Ld. A.O. needs deletion.*

5.2. *The Ld. A.O. has not made any comments nor objected with cogent reason on this issue and therefore the submissions made in this para may by assessee kindly be accepted.*

6.1. As regards deposit of Rs. 3,00,000/- a copy of bank account no. 4557 maintained with Bank of India, Sardhar Branch in which accounts this amount is deposited and from which the Ld. ITO has made addition of Rs.14,50,000/- is sent here with. This shows that assessee has withdraw of Rs.2,50,000/- on 03.04.2006 from this account and therefore as on 03.04.2006 there was opening balance of Rs.2, 51,026/- in this account. The assessee re-deposited this amount of Rs.2,50,000/- on 29.9.2006 in this account as is available in bank account itself. Thus, in respect of this Rs.2,50,000/-addition out of Rs. 14,50,000/-, the amount of Rs. 2 ,50,000 /-stands explained.

6.2. Thus out of Rs.14,50,000/-, the amount of Rs.2,50,000/- being old balance withdrawn and re-deposited stands explained. In respect of balance demand of Rs.12,00,000/- a copy of bank accounts furnished here with shows that the said Rs.12,00,000/- are deposited on 27-3-2007 by 4 different person each of them deposited Rs.3,00,000/- a copy of certificate dated 23-3-2012 and 2-2-2018 is furnished here with which shows the name of the person to have deposited his Rs.12,00,000/-, i.e. Rs.3,00,000/~ each. The bank has confirmed that the assessee Shri Pravinbhai has deposited only Rs. 3,00,000/- and balance Rs.9,00,000/-are deposited by remaining 3 persons in whose case the id. A.O. has made addition of Rs.3,00,000/-.

6.3. The ld. A.O. has not made any comments nor objected with cogent reason on this issue and therefore the submissions made in this para by assessee may kindly be accepted.

7.1. Thus on 27-3-2007 assessee Shri Pravinbhai deposits Rs.3,00,000/- the source of this Rs.3,00,000/- is also available in the bank account submitted here with. As mentioned in para 6.1 above the assessee has deposited Rs.2,50,000/- on 29-9-2006, Thus as on that date he was having balance of Rs.2,51,169/-. From this amount he withdrawan Rs.1,00,000/- on 3-10-2006 and Rs.1,50,000/- on 4-10-2006. Thus total withdrawal amount of Rs.2,50,000/- which he has redeposited in his bank account on 27-3-2007 of Rs.3,00,000/-. The balance difference of Rs.50,000/-is also from the saving made during the year and having cash on hand and thus this Rs.3,00,000/-is also stands explained together with evidence of bank accounts itself. It is therefore prayed that addition of Rs.3,00,000/- may kindly be deleted being explained and balance of Rs.9,00,000/- out of Rs.12,00,000/- as per bank's certificate pertains to different 3 persons as per copy of bank certificate attached here with.

7.2. The ld. A.O. has not made any comments nor objected with cogent reason on this issue and therefore the submissions made in this para by assessee may kindly be accepted.

8. Thus the entred deposit of Rs.14,50,000/- stands explained as under:

1. Rs. 9,00,000/- - pertains to other 3 persons as per bank certificate.

2. Rs.2,50,000/- - deposited on 29-9-2006 by assessee as explained at para 6.1 above
3. Rs.3,00,000/- - as explained as para 6.1 above
- Rs. 14,50,000/- - Total”

3.2. Considering the above reply the Ld. CIT(A) held that the contention of the assessee is not acceptable, firstly because of it tantamounts to additional evidence and no circumstances have been established so as to merit their admittance. Besides, the contention that Rs. 2.5 lakh withdrawn on 03.04.2006 were deposited on 29.09.2006 i.e. after five months is too farfetched. Similarly claiming the deposit on 03.04.2006 to be out of earlier withdrawal is apparently a mere story particularly when no such explanation was furnished before the Assessing Officer. In view of the above discussion addition of Rs. 5.50 lakh is confirmed and balance addition of Rs. 9 lakh is deleted. Thus, the CIT(A) partly allowed the appeal.

4. Aggrieved against the same assessee is in appeal before us raising the following grounds of appeal:

- “1. The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 5,50,000/-. The addition needs deletion.
2. The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 5,50,000/- based on position which he described and considered erroneously. The addition needs deletion.
3. The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 5,50,000/- ignoring the details furnished. The addition needs deletion.
4. The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 5,50,000/- based on presumption and cernices. The addition needs deletion.
5. Taking into consideration the legal, statutory, factual and administrative aspects, no addition of an amount of Rs. 5,50,000/- ought to have been confirmed. The additions need deletion.
6. Without prejudice, the above Rs. 5,50,000/- has also been confirmed in the case of Shri Rasikbhai Dhankecha. Thus there is taxation of the same amount twice. The addition needs deletion.

7. *Without prejudice, the assessment made is bad in law and deserves annulment.*
8. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at appeal stage. The assessment needs annulment.*
9. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at assessment stage. The assessment needs annulment.*
10. *The appellant craves leave to add/alter/amend and/or substitute any or all ground of appeal before the actual hearing takes place.”*

5. During the course of hearing none appeared on behalf of the assessee but a written submission filed on behalf of the assessee, wherein the assessee claimed that it established that an amount of Rs. 2.5 lakh was withdrawn on 03.04.2016 that re-deposited on 29.09.2006 which is reflecting in the bank account of the assessee. The CIT(A) has rejected on the ground that re-deposit done after five months is too farfetching. Similarly the claim of deposit on 03.04.2006 of Rs. 3,00,000/- were out of early withdrawal merely as a story that no such explanation was made by the assessee, before the Ld. AO. The Ld. CIT(A) being the First Appellate Authority and co-terminated authority has simply not considered the explanation and rejected the same as mere story by the assessee. The assessee further submitted the admission of deposit made on 03.04.2006 deposit of Rs. 3,00,000/- which itself an evidence that within only two days of the Financial Year. It is already proof in other person cases, the same amount has been suffered to tax. Therefore, the matter be restored to the file of the AO for proper verification.

6. The Ld. DR for the Revenue has no serious objection for remitting the matter back to the AO provided that the assessee should cooperate with necessary evidences.

7. We have considered the materials available on records and submissions of the rival parties. The addition of Rs. 5.5 lakhs which are claimed by the assessee are nothing but re-deposits in the bank account which was not verified by the Ld. AO. Further the claim of the assessee that the deposit made by respective other persons have suffered tax in their hands and again bringing to tax in the hands of the assessee will amount to double taxation, which is not permissible under law. To meet the ends of justice, we deem fit that the case be remitted to the file of the AO to verify the same by providing an opportunity to the assessee to explain its case and then complete the assessment in accordance with law. The assessee is directed to cooperate with the AO by producing all the necessary evidences before him. Thus, the grounds raised by the assessee is partly allowed.

8. In the result, the appeal preferred by the assessee is allowed for statistical purpose.

**Order pronounced in the Court on 16.09.2022 at Ahmedabad.**

Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
Ahmedabad, dated 16/09/2022  
*Tanmay, Sr. PS*

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

**TRUE COPY**  
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1.अपीलार्थी / The Appellant, 2. प्रत्यर्थी / The Respondent, 3. संबंधित आयकर आयुक्त / Concerned CIT, 4. आयकर आयुक्त (अपील)/ The CIT(A)- , 5.विभागीय प्रतिआयकर अपीलीय अधिकरण राजकोट/DR,ITAT, Rajkot, 6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot