

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

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

**ITA Nos. 54 & 55/Rjt/2021
Assessment Years 2010-11 & 2011-12**

Shri Mukeshkumar Vrajlal Akbari, Block 402, Royal Tower, Opp. Pranami School, Jamnagar, PAN: ADXPA6108R (Appellant)	Vs	The ITO, Ward-3(1), Jamnagar (Respondent)
---	----	---

**Assessee by: Shri Chetan Agarwal, A.R.
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 07-07-2022
Date of pronouncement : 21-09-2022

आदेश/ORDER

PER BENCH:-

ITA No. 55/Rjt/2021 Assessment Year 2011-12

This is an appeal filed by the assessee for A.Y. 2011-12 against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 25-03-2021, in DIN & Order No. ITBA/NFAC/S/250/2020-21/1031742706(1), in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short “the Act”.

2 The assessee has raised the following grounds of appeal:-

“1) Ld. CIT(A) erred in law as well as on fact in confirming order passed by AO for reopening assessment u/s. 147 of the Act.

2) Ld. CIT(A) erred in law as well as in fact in confirming addition of Rs. 15,87,700/- only on the basis of allegation of third party without any evidences of any short and without considering our submission after cross examination.”

3. Briefly stated, facts of the case are that the assessee Shri Mukeshkumar Vrajlal Akbari (hereinafter referred to as 'assessee') is an individual carrying on the business of manufacturing and trading in brass items. The assessee filed his return of income for the year under consideration declaring total income of Rs. 1,58,354/-. The AO had an information that Late Shri Chhotalal V. Doshi (Prop. Of M/s. Abhi Enterprise) of Ashok Sadan, Jamnagar was engaged in the business of lending his own as well as his family member's bank accounts to others for unaccounted cash deposits on commission basis and subsequently, the cash were withdrawn and handed over to the concerned parties. The Ld. Assessing Officer came to know that the assessee was a beneficiary of such transactions amounting to Rs. 15,87,700/- during the year under consideration. As the assessee did not offer the said transaction for taxation, the A.O. had a reason to believe that the same was escaped for assessment and accordingly the case of the appellant was reopened and notice u/s 148 of the Act. In response to the 148 notice, the assessee furnished return of income for AY 2011-12 and requested to treat the return filed originally as return filed in response to 148 notice. Subsequently, in the course of

assessment, the AO treated the said amount as unexplained transaction and made addition of Rs. 15,87,700/- to the total income and accordingly passed the assessment order u/s 143(3) r.w.s. 147 of the Act.

4. In appeal, Ld. CIT(A), the assessee claimed that the addition cannot be made based on the third party allegations without any evidences and without considering the submissions made after cross examination of the third party. However, the Ld. CIT(A) dismissed the assessee's appeal with the following observations:

8.1 It is seen that the appellant sought cross examination of Shri Dharmendra Doshi son of Late Shri Chhotglal V. Doshi on whose statement the reopening was made. The appellant was provided with an opportunity to cross examine the said Dharmendra Doshi during the assessment proceedings. It is claimed by the appellant that the said Dharmendra Doshi had made entries in the diary based on the directions of his late father and the said Dharmendra Doshi had admitted during the cross examination that he did not know the appellant. It is also claimed by the appellant that the said Dharmendra Doshi has not produced any evidence of persons depositing the cash in their accounts. It is claimed by the appellant the said Dharrnendra Doshi had entered the names of various persons only to avoid payments of tax on his own transactions. It is claimed that no liability should be fastened on him without any supporting evidence. The appellant also relied on various case judgements:-

- (a) *Dhakeswari Cotton Mills Ltd. Vs. CIT 26 ITR 775 (SC)*
- (b) *Krishna Chand Chela Ram Vs. CIT 125 ITR 713 (SC)*
- (c) *Andaman Timber Industries Vs. CIT (2015) 62 Taxmann.com 3 (SC)*
- (d) *Ayubkhan Noorkhan Pathan Vs. State of Mharashtra & Ors. (Civil Appeal No. 7728 of 2012 dated 08/11/2012)*
- (e) *Khem Chand Vs. Union of India (AIR 1958 SC 300)*
- (f) *Amitabh Bansal Vs. ITO Ward-46(4), [2019] 102 taxmann.com 229*
- (g) *CIT Vs. Indrajit Singh Suri [2013] 33 taxmann.com 281 (Guj)*
- (h) *PCIT Vs. Kanubhai Maganlal Patel [2017] 79 taxmann.com 257 (Guj)*
- (i) *Late Harbhajan Singh Makkar Vs. ACIT (ITAT Delhi) (ITA No. 2451/Del/2015 dated 16/10/2019)*
- (j) *State of MP Vs. Chintaman Sadashiv Vaishampayan (AIR 1961 SC 1623)*

8.2 *The various claims have been analysed. It is a fact that the said Dharmendra Doshi is a Hawala operator and it is unlikely that he would be knowing all the clients who availed his services. He is also not expected to know the persons who have deposited the cash in their bank accounts except for on whose behalf it is deposited, as the same needs to be withdrawn and be given to the beneficiaries. In such Hawala operations, it is not possible for all the records to be maintained in the manner in which the appellant seeks now. In view of the peculiar manner of Hawala operations, the various claims made*

by the appellant are not acceptable. Therefore, there is a reasonable probability that the said transaction pertains to the appellant based on the entry in the diary and it is also not mandatory under the Income Tax that the evidence should be beyond doubt to assess a transaction. Considering the same, the addition made is upheld and the ground nos. 2 & 3 are dismissed.

5. Before us, the counsel for the assessee submitted that that the said Late Shri Chhotalal V. Doshi who was a Hawala operator has expired and the entire addition was made on the basis of statement of son of Late Shri Chhotglal V. Doshi i.e. Dharmendra Doshi. He submitted that the additions have been made only on the basis of submissions made by Shri Dharmendra Doshi, which cannot be relied upon. He submitted that in the cross examination of Dharmendra Doshi, he could not give any sort of evidences that alleged transactions were carried out by the assessee, and it is only on the basis of oral instructions from his father he has mentioned the assessee's name in the fabricated diary. In cross-examination, therefore Shri Dharmendra Doshi was unable to submit any evidence of whatsoever nature, either direct/indirect/corroborative/substantive to establish that the assessee has carried out any sort of financial transactions with late Shri Chhota Lal Doshi (proprietor of Abhi Enterprises). Shri Dharmendra Doshi has only stated that he has written the assessee's name in the diary on the basis of oral instructions from his father late Shri Chhota Lal Doshi who expired on 12-11-2010. Other than oral instruction of his father, he has no evidence to prove that the assessee has engaged in the financial transactions on the basis of which the additions have been made by the AO. Further, Shri

Dharmendra Doshi was unable to submit names of parties who have deposited cash and bank account of late Shri Chhota Lal Doshi (proprietor of Abhi Enterprises). In this regard, counsel for the assessee drew our attention to page 69 of the paper book, wherein Shri Dharmendra Doshi has stated “*as have already stated that the amount deposited in said bank account was sales consideration of all businessmen of Jamnagar. I was just providing service to them on commission basis. I don’t know about parties who have deposited the amount. Since the said amount represents out of books sales/sale consideration of businessmen of Jamnagar, hence liable to pay taxes on them*”. The counsel for the assessee relied upon the case of **ACIT v. Lata Mangeshkar 97 ITR 696**, wherein it was held that entries made in the accounts of third-party regarding payment to the assessee is not sufficient as there is no guarantee that the entries were genuine in absence of any corroborative evidence. The counsel for the assessee submitted that the statement of Shri Dharmendra Doshi was accepted by the ADIT at face value, without any further investigation about the veracity of the answers. In response, Ld. D.R. relied upon the observations made by the AO and CIT in their respective orders.

6. We have heard the rival contentions and perused the material on record. We observe that in the instant set of facts, there is no corroborative evidence has been placed on record to show that it was the assessee who had deposited the said amount in the bank accounts operated by Late Shri Chhotglal V. Doshi, who was a Hawala operator. The entire additions were made only on the basis of statement recorded of son of Late Shri Chhotglal V. Doshi, who has stated that he had written the name in the diary so

maintained by him, on the basis of instructions of his father. Apart from this, no evidence has been placed on record to substantiate that the money deposited in bank account maintained by Late Shri Chhotglal V. Doshi, belonged to the assessee. We observe that even the Ld. CIT(A) while passing the order has made following observations: *“The various claims have been analysed. It is a fact that the said Dharmendra Doshi is a Hawala operator and it is unlikely that he would be knowing all the clients who availed his services. He is also not expected to know the persons who have deposited the cash in their bank accounts except for on whose behalf it is deposited, as the same needs to be withdrawn and be given to the beneficiaries. Therefore, there is a reasonable probability that the said transaction pertains to the appellant based on the entry in the diary and it is also not mandatory under the Income Tax that the evidence should be beyond doubt to assess a transaction. Considering the same, the addition made is upheld and the ground nos. 2 & 3 are dismissed.”* Therefore, from the above observations of the Ld. CIT(A) while passing the order, it is evident that the additions were made only on the basis of a “reasonable probability” that the money belonged to the assessee, and no substantive corroborative evidence has been adduced to show that the money belonged to the assessee.

6.1 In the case of **Abhay Kumar Bharamgouda Patil [2018] 96 taxmann.com 377 (Panaji - Trib.)**, a survey was carried out in case of society carrying on banking business. In course of survey, a diary was impounded which was maintained by one AGM of said society. The Assessing Officer noted that diary contained entries of deposits received

from various persons. He thus recorded statement of said AGM, who admitted that said deposits were undisclosed money of depositors and assessee was one of them. On basis of said statement, Assessing Officer made addition of unexplained money to assessee's income. It was noted that said AGM could not even identify persons who brought money to him or denominations in which money was brought. Moreover, survey operations did not bring on record any acknowledgment/receipt in respect of money received from assessee. Further, said AGM could not substantiate his statements by bringing any other credible or corroborative evidence on record. Accordingly, the Tribunal held that in aforesaid circumstances, impugned addition made in hands of assessee deserved to be set aside.

6.2 In the case of **Pradeep Amrutlal Runwal v. TRO [2014] 47 taxmann.com 293 (Pune - Trib.)**, during search proceedings in case of 'D Group', some loose papers were seized wherein certain amounts were written against name of assessee. The Assessing Officer made addition of said amount as undisclosed income in name of assessee. The ITAT held that since no evidence was found relating to existence of any transaction between assessee and 'D Group' and no corroborative evidence was found to suggest that assessee had actually received said amount, no addition could be made merely on basis of noting in loose papers found during search proceedings in case of 'D Group' against name of assessee.

6.3 In the case of **Jawaharbhair Atmaram Hathiwala v. ITO [2010] 128 TTJ 36 (Ahmedabad) (UO)**, the Ahmedabad Tribunal held that where assessee was alleged to have paid a sum as 'on money' for purchase of flat

but no evidence could be brought on record by Revenue to show that in fact assessee had paid 'on-money' to developers, and no document containing signature of assessee or handwriting of assessee to corroborate above making of payment by assessee was found during course of search, addition on account of such alleged payment was not justified.

7. In light of the decisions cited above and on appreciation of facts of the case, we are of the considered view that the Revenue has not brought forth any substantive/corroborative evidence to demonstrate that the money deposited in the bank account operated by Late Shri Chotalal V. Doshi, belonged to the assessee. Accordingly, in light of the judgement cited above, we are hereby deleting the additions made by the Department.

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

ITA No. 54/Rjt/2021 Assessment Year 2010-11

9. This is an appeal filed by the assessee for A.Y. 2010-11 against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 25-03-2021, in DIN & Order No. ITBA/NFAC/S/250/2020-21/1031742657(1), in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short "the Act".

10. The assessee has raised the following grounds of appeal:-

“1) Ld. CIT(A) erred in law as well as on fact in confirming order passed by AO for reopening assessment u/s. 147 of the Act.

2) Ld. CIT(A) erred in law as well as in fact in confirming addition of Rs. 7,21,125/- only on the basis of allegation of third party without any evidences of any short and without considering our submission after cross examination.”

11. We observe that since the facts and issued for consideration for both the years are identical, the aforesaid decision for assessment year 2011-12 would equally apply to the assessment year 2010-11 as well.

12. Accordingly, the appeal of the assessee is allowed for assessment year 2010-11 as well.

13. In the combined result, the appeals of the assessee are allowed for both assessment years 2010-11 and 2011-12.

Order pronounced in the open court on 21-09-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 21/09/2022

Sd/-
(SIDHHARTHA NAUTIYAL)
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,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot