

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.21/Ahd/2021
Asstt.Year : 2016-17

Niren Chandrakant Soni H-104, Iscon Platinum SP Ring Road, Bopal Cross Road Ahmedabad. PAN : AUDPS 9718 G.	Vs	ITO, Ward-2 Int. Tax, Ahmedabad.
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(Applicant)		(Responent)
Assessee by :		Shri Tej Shah, AR
Revenue by :		Shri Mukesh Sharma, DR

सुनवाई की तारीख/Date of Hearing : 19/09/2022

घोषणा की तारीख /Date of Pronouncement: 28 /09/2022

आदेश/O R D E R

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-13, Ahmedabad (in short referred to as ld.CIT(A)) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 30.8.2019 pertaining to Asst.Year 2016-17.

2. Sole issue in the present appeal relates to addition made to the income of the assessee on account of cash deposits amounting to Rs.8.00 lakhs remained unexplained under section 69 of the Act.

3. The assessee has raised before us both legal grounds challenging validity of the order framed in the absence of valid notice under section 143(2) of the Act and has also raised grounds challenging merits of the addition as under:

“1. The ld.CIT(A) erred in law and in the facts of the case in confirming the action of the AO in not issuing notice u/s.143(2) of the Act.

2. The ld.CIT(A) has erred in law and in the facts of the case in confirming the order of the AO in making an addition of Rs.8,00,000/- u/s.69 of the Act.”

4. I shall first deal with the ground raised on the merits of the case.

5. The ld.counsel for the assessee pointed out before us that source of cash deposits was duly explained to the authorities below with cash book for the impugned year along with all preceding three years details being filed to the Revenue authorities showing cash balance as at the beginning of the year being Rs.7,59,774/- and also pointing out from cash book of the impugned year that majority deposits of Rs.8 lakhs was made from 18.9.2015 to 30.9.2015 – two amounts of Rs.2.00 lakhs each, two amounts of Rs.1.5 lakhs each and one amount of Rs.1.74 lakh was deposited in this period; amounting to total deposits being Rs.8.74 lakhs; that prior to this date, the assessee had withdrawn Rs.6 lakhs in cash from his bank in Bank of Baroda and Sardar Vallabhbhai Sah. Bank. Therefore, clearly source of deposits to this extent of Rs.6.00 lakhs was attributable to the cash withdrawn by him on the previous date, and the balance could be attributed to his opening cash amount, duly reflected in his bank book. Our attention was drawn to the copy of the cash book placed at PB Page No.54 to 56. He therefore stated that the addition made was not justified.

6. The ld.DR, the other hand, relied on the order of the ld.CIT(A) at para 6.1 as under:

“6.1 I have carefully considered assessment order and submission filed by appellant. The AO has observed that appellant has deposited cash of Rs 8,00,000 with Sardar Vallabhbhai Sahakari Bank Limited . The appellant has claimed before AO that such deposits were made out of cash on hand available with him. The AO has not accepted such claim on the ground that appellant is doing business of trading in shares & commodities hence generation of cash is not possible and no prudent person would keep such cash in hand with him. The appellant has submitted cash book for the year under consideration. The appellant has shown opening cash balance of Rs 7,59,774. The appellant has not submitted how such opening cash is generated with him nor submitted cash book for earlier year hence his contention that he was having sufficient opening cash balance cannot be accepted. It is observed that even though appellant was having cash on hand of Rs 7.56 lacs, he was withdrawing cash of Rs 65,000 on 04/05/2015. Even when cash balance is of Rs 9.18 lacs, he is withdrawing cash of Rs 1,00,000 from bank of Baroda on 01/06/2015 which itself prove that he was not having any cash balance as on the date of withdrawal. No prudent person would keep on withdrawing funds from bank without any use. It is observed that appellant had alleged cash balance of Rs 8.13 lacs, and thereafter he has withdrawn Rs 4,00,000 from Bank on 31/08/2015 and further followed by bank withdrawal of Rs 1,00,000 on 04/09/2015 which itself prove that theory of appellant that he was having sufficient cash on the day of bank deposit cannot be accepted.

7. I have gone through order of the Id.CIT(A) and also carefully considered contentions of the Id.counsel for the assessee.

I have noted that the assessee had demonstrated source of cash deposits, as being out of the cash withdrawal made from his bank account earlier prior to the deposits, and the amount attributable to his opening cash account. This contention of the assessee has been dismissed by the Id.CIT(A) not on facts, but on probability and assumption stating that the assessee being in the business of trading in shares there is no question of generation of cash and no prudent person would keep cash in his hand. Further, despite claiming to have such huge cash of Rs.7.6 lakhs, he still withdrew cash which the Id.CIT(A) stated proved that he did not have sufficient cash in hand. Thus, the finding of the Id.CIT(A) are neither here nor there. The facts demonstrating that the assessee had withdrawn sufficient cash prior to deposits, from the bank account of the assessee, and Revenue being unable to demonstrate

any utilisation of the cash so withdrawn, it has to be taken, as contended by the counsel for the assessee, that the cash deposits were made out of the cash so withdrawn. In view of the above, ld.CIT(A) having given no cogent reason for rejecting the assessee's contention, the order of the ld.CIT(A) upholding the addition ignoring the vital facts submitted by the assessee in this regard, is set aside, and the amount of cash deposits is treated as duly explained. Addition made of Rs.8,00,000/- is deleted.

Since we have allowed the assessee's appeal on merits, we are not dealing with the legal grounds raised by the assessee.

8. In the result, the appeal of the assessee is allowed in above terms.

Order pronounced in the Court on 28th September, 2022 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 28/9/2022