

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.252/Ahd/2021
Asstt.Year : 2017-18

Mistry Niranjani Ishwarbhai C/14, Arvindpark Society Nr. Ranchod Park VIP Road Karelibaug Vadodara. PAN : ANBPM 6820 E	Vs	ITO, Ward-4(1)(9) Vadodara.
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(Applicant)	(Responent)
Assessee by :	Shri Sanket Bakshi, AR
Revenue by :	Shri Mukesh Sharma,

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), National Faceless Appeal Centre (NFAC), Delhi in short referred to as ld.CIT(A)) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), 10.8.2021 pertaining to Asst.Year 2017-18.

2. Registry has pointed out that appeal filed by the assessee is time barred by two days. After hearing both the parties, looking to the minuscule delay of just two days, I incline to condone the delay and take up appeal for hearing on merit.

3. Grounds raised by the assessee are as under:

"1. The Addition made by the Ld. AO is unlawful and it is in violation of Law of Justice as addition is made without providing sufficient opportunity to appellant. The addition has been made on the basis of hypothetical situation which is not permissible to arrive at such a conclusion. Assessee had provided statement of credit card but he was not allowed further opportunity to provide evidence for source of cash deposited in Credit Card Account.

2. Further, an important point to note is that there was still time left for completing assessment but the Ld. Assessing Officer had passed the order in a hurried manner without investigating in to the facts of the appellant case. The Ld. Assessing Officer has failed to discharge his duties in properly investigating the facts of the case.

3. Nevertheless, the A.O. apart from claiming cash deposits as - Unexplained- based on pure assumptions, has not brought on record any material to justify such suspicions and assumptions. In the instant case, the A.O. did not carry any of his doubts to a logical conclusion by converting them into hard facts on the basis of evidences during the assessment proceedings neither Ld. AO sent any notice / summons to the parties involved for evidences / confirmations.

4. The observations of the A.O. based on the same are far from realities as well as without proper verification/consideration as well as understanding of the material and details available on record. By this, The Ld. AO erred while making conclusion on payments to Credit Card dues as "unexplained cash deposits" and while making addition u/s 69A of the IT. Act, 1961."

4. As transpires from orders of the authorities below, the grievance of the assessee is on the issue of addition made to his income on account of cash deposit for settling credit card bills amounting to Rs.6,46,600/-, source of which remained unexplained. The facts relating to the case being that the assessee was having credit card with State Bank of India bearing No.0004377486941586313. During the impugned year, cash deposits were made in it towards the outstanding dues. In the faceless assessment framed, addition of Rs.6,46,600/- was made on account unsatisfactory explanation being given by the assessee of the source of cash so deposited. Before the Id.CIT(A), we find that the assessee filed detailed explanation of the source which reproduced at page no.8 of the CIT(A)'s order as under:

Date	Amount	Source of cash deposits for credit card payment
23/4/2016	49000.00	Cash deposited through available cash on hand, from small savings and capital available on hand.
25/5/2016	33200.00	Such amounts were paid from withdrawal of Rs.3,54,000/- on 7/5/2016 from Account No.024801503050 of ICICI Bank, Karelibaug Branch (IFSC Cide:ICIC000024B)(As per Annexure-2 attached).
25/5/2016	40000.00	
25/6/2016	36500.00	
25/6/2016	47400.00	
26/7/2016	37000.00	
26/7/2016	49900.00	Such amounts were paid from 4,00,000/- withdrawn on 1/7/2016 from Account No.30998491125 of State Bank of India's Harni Road Branch (IFSC Code SBIN0004725). Originally above mentioned amount was personal loan taken on 30/6/2016 for his personal use (As per Annexure-3 attached).
23/8/2016	35000.00	
24/8/2016	49900.00	
24/9/2016	49900.00	
25/9/2016	49900.00	
26/10/2016	49900.00	
24/11/2016	40000.00	
26/11/2016	30000.00	

25/1/2017	49000.00	
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5. As is evident from the above, the assessee had explained source of cash deposits as being from his cash on hand, withdrawals made from his bank account in ICICI Bank and SBI Bank. The

CIT(A), NFAC surprisingly took no cognizance of this explanation of the assessee at all, and upheld addition for the reason that in assessment proceedings the assessee had given some other explanation of source, as being paid by his friends, who had used his card and this present explanation furnished by the assessee was not sufficient since the assessee had given no valid reason as to why he kept so much in cash, when he was holding bank account. While confirming the addition his finding in para 6.4 reads as under:

“6.4 During the Assessment proceedings the appellant explained that his friend Brijesh Dadhich had used his credit card for her personal use and paid cash in his account against bill payment but did not furnish any evidence in support of the explanation.

Now during the first appeal proceedings the appellant stated earlier savings and withdrawals as the sources for the cash deposits totalling to Rs.6,46,600/- but did not furnish any valid reason as to why he kept so much cash with him when he was holding a bank account.”

5. I have gone through the above, and I do not find any merit in the basis of the Id.CIT(A) in upholding the addition. It is a fact on record that the assessee had explained source of cash payment of Rs.6.46 lakhs giving source of every cash payment towards his credit card as being from withdrawals from his bank accounts or from opening cash balance in hand. This explanation could not have been rejected merely for the reason that the assessee had given some other explanation in the assessment proceedings. As long as the explanation of the assessee is duly substantiated, the same has to be accepted notwithstanding the fact that a different explanation was offered by the assessee in an earlier point of time. What is relevant is that the assessee's explanation is duly substantiated with evidence. Whichever explanation fulfils this criteria is undoubtedly the correct and valid explanation for all purposes. Any other explanation of the assessee is of no relevance. If the assessee is able

to demonstrate through evidence, in the appellate proceedings, the source of cash deposits, the same needs to be considered, examined, verified and only then a finding be given on the same. It could not be rejected or dismissed solely for the reason that some other explanation was given in the assessment proceedings. As for the other reason given by the ld.CIT(A) for dismissing assessee's explanation that there was no reason for the assessee to keep so much cash with him, I find the same to be also irrelevant. It is upto the assessee to keep how much cash as he requires, hence, this is not a criterion for making any disallowance in the income tax proceedings. For that matter, how much cash an assessee keeps cannot be reason for dismissing the explanation regarding payment made in cash. In the present case, the assessee having explained the cash deposits as withdrawals from his bank account, the Ld.CIT(A) having not found any infirmity in this explanation of the assessee, I see no reason for upholding the addition of Rs.6,46,600/-. This addition is accordingly directed to be deleted. The appeal of the assessee is allowed.

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

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

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 28/9/2022