

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.249/Ahd/2022  
Asstt.Year : 2012-13

Henkumar Vinodchandra Parikh 2, RangVarsha Society Nr. Sharda Mandir Road Paldi, Ahmedabad. PAN : AAUPP 1902 A	Vs	ITO, Ward-7(2)(4) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri Hardik Vora, AR
Revenue by :	Shri Mukesh Sharma

सुनवाई की तारीख/Date of Hearing : 20/09/2022  
घोषणा की तारीख /Date of Pronouncement: /09/2022

**आदेश/ORDER**

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), dated 27.4.2022 pertaining to Asst.Year 2012-13.

2. Sole issue relates to cash deposits in the bank account of the assessee remaining unexplained amounting to Rs.10,38,500/-. The assessee has raised before us both legal grounds challenging the validity of the assessment framed u/s 147 of the Act as well grounds relating to the merits of the case as under:

1. *The ld.CIT(A) erred on facts and in law in confirming addition of Rs.10,38,500/- by invoking provision of the section 69 of the Act.*
2. *Ld. CIT(A) erred on the fact an in upholding the order of Assessing officer passed u/s 144 r.w.s. 147 of the Act without appreciating that reopening u/s 147 was not valid in absence of any escapement of Income on which tax and interest could be charged and computed, consequently order passed u/s 144 is invalid.*
3. *Ld. CIT(A) erred on facts and in law in upholding the ex-parte assessment order without appreciating that A.O. was expected to make best judgment assessment while invoking provision of section 144 of the Act and such best judgment was possible only on making necessary inquires with the bankers which have not been made at all.*
4. *Ld. CIT(A) erred on facts and in law is not appreciating the fact that deposit of cash per se is not the income assessable under the Act as only income portion embodied there in at the most could be charged to tax.*
5. *The Appellant seeks liberty to add, alter and/or delete any of the grounds at the time of hearing of the appeal.”*

3. Ground no.2 is with regard to reopening of the case of the assessee under section 147 of the Act being not in accordance with law. It was pointed out that reopening was resorted to on the basis of the information with the AO that there was cash deposit in the bank account of the assessee to the tune of Rs.10,38,500/- and no return of income was filed by the assessee. Our attention was drawn to para-1 and 2 of the assessment order pointing out the aforesaid facts. The ld.counsel for the assessee contended that mere fact of cash deposits in the bank was not sufficient information for formation of belief of escapement of income so as to assume jurisdiction to frame assessment under section 147 of the Act. The ld.DR on the other hand vehemently contested this plea of the assessee.

4. I have heard both the parties. I am in agreement with the ld.counsel for the assessee that information in the possession of the AO was not sufficient to assume jurisdiction to reopen the assessment under section 147 of the Act. Undoubtedly, there was

no return filed by the assessee and the information was of cash deposit of Rs.10,38,500/-. Firstly, the fact of cash deposit does not automatically lead to the presumption that it represents income; there has to be more information with the AO to form a belief that cash deposits represented his income. Considering the fact that the amount was not very large amount, but only an amount of Rs.10,38,500/-, which any assessee should have collected from near and dear one or relatives or friends or even from his own sources and savings, I find that this information definitely was not enough for formation of believe of escapement. Therefore, reopening in the present case was not in accordance with law and the order passed by the AO needs to the set aside for this reason alone.

5. Even on merits, I find that the assessee has explained source of cash deposits as being withdrawal from his own bank account. The ld.counsel for the assessee contended that Revenue authorities have dismissed this contention of his, stating that the assessee had failed to substantiate his explanation. He countered this by pointing out that the information of cash deposits in the bank was with the Revenue authorities who had reopened the case of the assessee for this reason ,therefore to now say that copy of the bank statement was not available was contrary to the facts of the case. He therefore contended that rejection of this explanation of the assessee was not correct.

I am in agreement with the ld.counsel for the assessee in this regard. The Revenue being in possession of information of cash deposits in the bank account of the assessee and the assessee explaining source of said cash deposits as being from withdrawal made from this same bank account, this explanation could not possibly be rejected by the Revenue on the ground that the assessee

had not substantiated it, when the Revenue itself was in possession of the bank statement of the assessee, from where information of cash deposits was made available to the Revenue authorities. In view of the above, even on merits, I direct deletion of the impugned addition, and allow the appeal of the assessee.

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

**Order pronounced in the Court on 28<sup>th</sup> September, 2022 at Ahmedabad.**

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

Ahmedabad, dated 28/9/2022