

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
SMT.SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.114/Ahd/2021  
Assessment Year :2011-12

Yaminiben Sandkumar Bhatt 1, Patel Chakla I.P. Patel Road Borsad, Anand. PAN : ACOPB 2290 F	Vs.	DCIT (Int.Taxation) Vadodara.
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ITA No.115/Ahd/2021  
Assessment Year :2011-12

Sanatkumar Hariprasad Bhatt 1, Patel Chakla I.P. Patel Road Borsad, Anand. PAN : ACAPB 7580 N	Vs.	DCIT (Int.Taxation) Vadodara.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
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Assessee by :	Shri Dhrunil Gandhi, AR
Revenue by :	Shri Ravindra, Sr.DR

मुनवाई की तारीख/Date of Hearing : 01/07/2022  
घोषणा की तारीख /Date of Pronouncement: 28/09/2022

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

Present appeals have been filed by the assesseees against separate orders passed by the ld. Commissioner of Income-Tax(Appeals)-13, Ahmedabad [hereinafter referred to as "Ld.CIT(A) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) of even dated 22.03.2021 pertaining to the Asst.Year 2011-12.

2. The ld.counsel for the assesseees pointed out before us that the assesseees are related as spouses and the issue involved is inter-linked and co-related addition being made in both the cases on account of cash found deposited in their joint bank accounts. The ld.counsel for the assessee stated that primary pleadings and arguments against the additions made was that it tantamounted to duplicate addition since cash deposited related to only one bank account ,each in HDFC Bank and Dena Bank, jointly held in the names of both the assesseees, while the Revenue had held that there was separate bank accounts in relation to which addition of cash found deposited had been made in the hands of both the assessee. The ld.counsel for the assessee, therefore, contended that since his arguments would be common in both the assesseees appeals therefore both appeals needed to be heard together. Ld.DR had no objection to the same.

3. Ld.Counsel for the assessee thereafter began with drawing our attention to the facts of the case. He pointed out that in the case of both the assesseees reassessment proceedings, u/s 147 of the Act, for the impugned year were initiated after almost a gap of six years, on 30.3.2018, for the reason that cash was found deposited in the bank accounts which were in the joint names of both the assesseees. In the case of the assessee, Mrs.Yaminiben Sanatkumar Bhatt ,cash to the tune of Rs.31 lakhs was allegedly found deposited ,while in the case of her husband the other assessee before us, Sh.Sanantkumar Hariprasad Bhatt , cash to the tune of Rs.26.90 lakhs was found deposited, in both cases in the HDFC and Dena Bank joint account of the assesseees.

The ld.counsel for the assessee pointed out that the primary assertion of the assessee before the ld.CIT(A) was that there was only

one joint bank account of both the assesseees each in Dena Bank and HDFC bank, wherein total cash deposit during the year were to the tune of Rs.26.90 lakhs, and therefore, the additions of the said amount of cash deposits in any case could have been made only in the hands of one of the assesseees and not both. He pointed out that details of the correct bank accounts was also submitted to the ld.CIT(A) along with the details of cash deposited therein, which he pointed out was reproduced at page no.3 of the ld.CIT(A) as under:

Sr No	Name of Bank	Account No	Date of deposit	Amount in Rs
01	HDFC Bank Borsad	07491930000591 joint account with wife Yaminiben Bhatt	04/02/2011	90000/-
02	HDFC Bank Borsad	07491930000591 joint account with wife Yominiben Bhatt	08/02/2011	500000/-
03	HDFC Bank Borsad	07491930000591 joint account with wife Yaminiben Bhatt	16/02/2011	500000/-
04	Deno Bank	00641002153 joint account with wife Yaminiben Bhatt	05/07/2010	100000/-
05	Deno Bank	00641002153 joint account with wife Yaminiben Bhatt	08/07/2010	800000/-
06	Dena Bank	00641002 153 joint account with wife Yaminiben Bhatt	01/02/2011	700000/-
	Total			2690000/-

4. He pointed out that identical submissions were made in the case of both the assesseees, but the ld.CIT(A) noted that the bank accounts in two cases were different and accordingly upheld the additions made in the case of both assesseees. In this regard, he drew our attention to the finding of the ld.CIT(A) in the case of assessee, Shri Sanatkumar H. Bhatt, at para 5.6 of the order as under:

*“5.6 An appeal vide acknowledgement no.416286311020219 dated 02.02.2019 filed by Smt. Yaminiben Sandkumar Bhatt (PAN: ACOPB2290F) against the assessment order dated 22.12.2018 made u/s.144 rws 147 for AY 2011-12 determining total income of Rs.55,55,400/- with addition of*

*Rs.54,89,600/- has been located wherein the written submission dated 04.02.2020 have also been received in ITBA Portal. On the perusal of said assessment order it is seen that there were cash deposits of Rs. 1,00,000/-, 8,00,000/- and 7,00,000/- in Dena Bank account no.006410002153 and of Rs.5,00,000/- in HDFC Bank account no.07491930004660 and of Rs.5,00,000/- and Rs.5,00,000/- in account no.07491930000591 (held jointly with Sanatkumar H Bhatt) and purchase of shops for a consideration of Rs.20,50,000/- (the Jantri rate being Rs..23,89,600/-) which led to addition of Rs.54,89,600/- against returned income of Rs.65,800/- in the return of income filed on 25.04.2018 in response to notice dated 30.03.2018 u/s.148 of the Act. Whereas the addition of Rs.26,90,000/- in the case of the appellant Shri Sanatkumar H Bhatt is on account of cash deposit of Rs.10,90,000/- in HDFC Bank account no.70370600000131 and of Rs.16,00,000/- in Dena Bank account no.70386500000235 (held jointly with Yamini S Bhatt). Thus it is seen that the bank accounts no. in the case of Shri Sanatkumar H Bhatt and Smt. Yamini S Bhatt are different and accordingly the issues of cash deposits are separate, distinct. Moreover, it is categorically mentioned in the assessment order in the case of the appellant that the AO has obtained the bank statements from the banks u/s. 133(6) of the Act. Prima facie there is no case of double taxation of the same amount and also the appellant and his Ld. AR and the appellant's spouse and her Ld. AR have failed to evidence and establish the case of double taxation of the same amount. The submission is very generic and does not help the appellant.*

5. Ld.Counsel for the assessee stated that the finding of the ld.CIT(A) in the case of the wife was identical while upholding addition of Rs.31 lakhs of cash deposited in her bank account.

He stated therefore that while the case of the assesseees was that there was only one joint account each of both the assesses in the two Banks ,HDFC Bank, Borsad, Account No.07491930000591 and Dena Bank A/c No.000641002153,the case of the department, on the other hand, was that there were two other bank accounts also in HDFC Bank i.e. 70370600000131 and Dena Bank Account No.70386500000235 of Shri Sanatkumar H. Bhatt jointly with his wife Yamini S. Bhatt. That the Revenue had accordingly treated cash deposited in the two such sets of joint bank accounts of the ssesseees in their hands, Rs.26,90,000/- in the hands of the assessee, Shri Sanatkumar H. Bhatt and Rs.31 lakhs in the hands of Mrs.Yamini S. Bhatt.

6. Ld.counsel for the assessee thereafter pointed out that this finding of fact by the Revenue was apparently based upon bank statement obtained from the bank under section 133(6) of the Act as mentioned in the order of the Ld.CIT(A). He contended that the assessee had placed on record before the Ld.CIT(A) the copies of the actual bank accounts of the assessee. He contended that he had even obtained certificate from the bank stating that with respect to the other two set of bank accounts in HDFC and Dena Bank, no such accounts was maintained by the Banks. He drew our attention to this certificate placed in the PB page no.21 and 22. He thereafter pointed out the facts of the case stating that the assessee, Shri Sanatkumar H. Bhatt and his wife were senior citizens who had moved to America way back in 1998 and they had two bank accounts jointly held in their names in HDFC Bank and Dena bank, and there were no other bank accounts operated by them. He pointed out that even the cash found deposited by the AO on different dates in both the cases tallied with the deposits in one set of bank accounts only belonging to the assessee, and his wife. He therefore pleaded that the Ld.CIT(A) having gravely erred in not properly adjudicating this issue and making total addition in the hands of the assessee and his wife, the matter needs to be reconsidered by the Ld.CIT(A) after appreciating all evidences filed by the assessee. He further pointed out that with regard to the source of cash deposits, it had been explained to the Ld.CIT(A) that the same related to money which had been transferred to the relatives in India through Western Union and had been returned to the assessee in cash when the assessee and his wife had come to India briefly for two months in January and February, 2011. He drew our attention to the submissions in both the cases in this regard reproduced in the order of the Ld.CIT(A) also. He also produced before us the

evidence from Western Union showing transfer of money by the relatives from US to India, which he claimed to have received back from his relative on visit to India in Feb. 2011. The ld.counsel contended that even this evidence filed by him was not appreciated by the authorities below and additions upheld stating that the assessee had failed to discharge his onus of proving the genuineness of the source of cash deposit in Bank. Our attention was drawn to the finding of the ld.CIT(A) at para 5.4 of the order in the case of Yamaniben S. Bhatt.

7. The ld.DR, on the other hand, relied on the order of the ld.CIT(A).

7. We have heard both the parties and have also gone through the orders of the authorities below.

8. We find that the ld.counsel for the assessee has fairly made out a case before us that the issue of addition in the hands of both the assessee of cash deposit in Banks needs further inquiry and investigation to be conducted. The finding of fact by the Ld.CIT(A) that there existed two separate sets of joint bank accounts of the assesses in HDFC Bank and Dena Bank, on the basis of which separate additions of cash deposit of Rs31,90,000/- and Rs.26,90,000/- have been made in the hands of both the assesses, cannot be said to be conclusively established and found. The assessee has placed before us certificates issued by both the banks disclaiming the existence of Bank accounts which the Revenue had alleged belonged to the assesses. The assessee has all along claimed that it had only one set of joint bank accounts in both the banks and had placed copies of the same before the Ld.CIT(A), given details of its bank account numbers and also the details of cash deposited therein. We have also noted from the submissions of the assessee

before the Ld.CIT(A), reproduced in his order, that they had offered to submit any further evidences which was required to prove his case. But the Ld.CIT(A) simply dismissed this contention of the assessee stating that copies of the other alleged bank accounts had been obtained from the banks by the Revenue u/s 133(6) of the Act. The assessee was neither provided copy of these bank accounts nor given any further opportunity to prove that these Bank accounts never belonged to the assessee .The Ld.CIT(A) simply relied on this information obtained and dismissed assesses arguments completely. Now before us the assessee has produced certificates from the Bank denying existence of any such Bank accounts. This is a very crucial piece of information for adjudicating the issue at hand. And as noted above the assessee was barely provided any opportunity to produce it before the Ld.CIT(A).These evidences now filed by the assessee before us are therefore being admitted by us for adjudicating the issue.

9. Further, we have also noted that the assessee has explained source of cash deposited in their bank accounts, as has being related to the moneys which they had earlier lent to friends and relatives in India by transferring to them through Western Union and had substantiated the explanation by producing documents evidencing transfer of money by the assesseees through Western Union. Even these evidences have not been properly appreciated by the authorities below. The assesseees had stated to the authorities below that both of them were senior citiziens and had moved to USA way back in 1997-98.That they used to come to India only for brief visits. That on requests from relatives they had on several occasions transferred money to them through Western Union. And when they visited India briefly in the impugned year, in January – February 2011, these relatives returned back some of the money earlier lent to

them in cash which was deposited in their bank accounts. The Revenue has not controverted the fact that the assesses are NRI's and senior citizens. Copies of documents of Western Union evidencing money transfer by the assesses to India was filed to the Revenue authorities. There is no finding of any source of income of the assesses in India, by the Revenue. The veracity of the assesses explanation ought to have been considered by the Revenue in this backdrop of facts. But they chose to apply strict standards of proving genuineness of cash credits by filing confirmations and other documents from the purported depositors.

Since the basic issue of existence of actual bank accounts of the assesses, in our considered view needs reconsideration, we restore both the cases back to the AO to first establish this basic fact and thereafter proceed to determine the issue of cash deposits whether explained or not, in accordance with law. Needless to add the assessee be granted due opportunity of hearing in this regard.

10. In the result, both the appeals of the assesseees are allowed for statistical purpose.

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

*Sd/-*  
**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

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

Ahmedabad, dated 28/09/2022