

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.905/AHD/2019
निर्धारण वर्ष/Asstt. Year:2014-2015

Shri Chetankumar Ratilal Shah, 6, Pratik Appartments, Nr. Shipalaya Char Rasta, Vasna, Ahmedabad-380007. PAN: AQNPS3125R	Vs.	Income Tax Officer, Ward-5(1)(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Parimalsingh B. Parmar, A.R
Revenue by :	Shri Atul Pandey, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **29/09/2022**
घोषणा की तारीख / **Date of Pronouncement**: **11/11/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-5, Ahmedabad, dated 20/03/2019 arising in the matter of assessment order passed under s. 144 r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The only issue raised by the assessee is that the learned CIT-A erred in sustaining the addition of Rs. 10,40,800/- made by the AO on account of cash deposit, treating the same as unexplained cash under section 69A of the Act.

3. The facts in brief are that the assessee is an individual and engaged in the grocery business, share and commodity trading. The assessee for the year under consideration declared sale from grocery business at Rs. 4,75,700/- and net profit at Rs. 3,17,065/- only. The AO from the bank statement of the assessee observed that the assessee has made cash deposits of Rs. 10,40,800/- only in his personal saving bank account.

4. On question about the source of cash deposit, the assessee submitted that cash was deposited out of loan and advances recovered in the current year which were given in the preceding year and out of cash withdrawal and also out of the profit earned from business during the year.

4.1 However, the explanation of the assessee was not accepted by the AO on the reasoning that the assessee was having opening cash balance of Rs. 1,412/- only and the loan advances given by the assessee also increased during the year from Rs. 6,53,000/- to Rs. 8,13,000/- only. Likewise, the assessee has not shown any withdrawal for household expenses throughout the year and also made withdrawal from the bank on 4 occasion only. Further, the cash was deposited just before making payment to Bhumika Commodities Pvt Ltd. for making investment in shares and commodities. Therefore, the AO held that assessee's explanation that cash was deposited out of withdrawal and recovery of cash received from loan and advances was not tenable. Hence, the AO made addition of Rs, 10,40,800/- under section 69A of the Act.

5. The aggrieved assessee carried the issue before the learned CIT(A).

6. The assessee before the learned CIT-A furnished copy of balance sheet for the year ending 31st March 2013 and 2014, cash book for FY 2013-14 and list of loan parties. The list of loan parties was containing details of loan amount and detail of documentary evidences such as copy of confirmation, PAN, Adhar card and in some cases copy of ITR. The learned CIT-A forwarded the submission of the assessee to the AO for the remand report.

7. The AO vide letter dated 16-01-2019 submitted that the contention of the assessee that cash was deposited out of cash realized from the loan and advances given in the earlier year is not acceptable for the reason that, there is net increase in loan and advances in the year under consideration. Likewise, as per the cash book submitted, there were negative cash balances on several occasion. The AO also found that initially cash was deposited and thereafter withdrawal was made, therefore, the contention that deposit was made out of withdrawal was also not acceptable. Thus the AO in view of the above drew cash flow statement as per which only an amount of Rs, 2,39,637/- was available with the assessee in cash. The assessee in rejoinder submitted that he has furnished possible documentary evidences in order to prove the genuineness of loan parties, however the AO without making independent inquiry brushed aside the same. The Assessee also submitted that the cash flow drawn by the AO have certain deficiencies. Thus, the assessee has submitted fresh cash flow statement showing net cash available of Rs. 5,03,131/- only. The assessee further submitted working of peak cash balance at Rs. 4,23,000/- and contended that if any addition is made then the same should not exceed the amount of peak cash balance.

8. The learned CIT-A after considering the facts in totality confirmed the order of the AO by observing as under:

4.7 I have considered the facts of the case, assessment order, remand report from the AO and rejoinder filed by the appellant. It is noted that the AO in the assessment order found that the explanation for cash deposit in bank is no justifiable. During the appellate proceeding, the appellant filed additional evidence alongwith the written submission. On

additional evidence, in the remand the AO thoroughly examined the facts of the case and the documents submitted by the / appellant and given the finding that the assessee's contention that the cash deposits is out of cash loan received back is factually wrong.

4.8 *The appellant filed rejoinder on the similar line as submitted in the assessment order and in the remand report. It is noted that the appellant could not substantiated the contention that the cash balance available with him and cash deposits in bank is out of previous withdrawal and receipt of past loan given. Therefore in view of the factual report given by the AO the contention of the, appellant is not tenable.*

4.9 Reliance is placed on the following decision where it has been held that cash deposited in the banks, if not supported with the proper evidence, will be treated as unaccounted deposit u/s.68 of the Act.

1. *Sudhir Kumar Sharma HUF Vs, CIT Punjab Si Hariyana 46 taxrnan.com 340 held as under:-*

"Section 68 of the Income-tax Act, 1961 - Cash credits (Cash deposits) - Assessment year 2007-08 - During assessment proceedings, Assessing Officer noticed that assessee had deposited huge amount of cash in his bank account - In view of failure of assessee to explain source of said deposits, Assessing Officer added amount so deposited to assessee's taxable income by invoking provisions of section 68 - Tribunal confirmed said addition - Whether since various amounts in cash were deposited in bank account of assessee, onus was upon assessee to explain nature and source of said cash deposits -Held, yes - Whether since assessee failed to give list of persons who advanced cash to him along with their confirmation in respect of said cash credits, impugned addition was to be confirmed - Held, yes [Para 9] [In favour of revenue]

FACTS

- During assessment proceedings, the Assessing Officer noticed that assessee had deposited huge amount of cash in his bank account, in view of failure of assessee to explain source of said deposits, the Assessing Officer added amount so deposited to assessee's taxable income by invoking I provisions of section 68.*

The Commissioner (Appeals) confirmed a part of said addition on basis of peak deposits.

On cross-appeals, the Tribunal restored the order passed by Assessing Officer.

On appeal HELD

A perusal of the findings recorded by the authorities below clearly spells out that admittedly, various amounts in cash were deposited in the bank account of the assessee and the onus was upon the, assessee to explain the nature and source of the said cash deposits. The assertion of the assessee in this regard was that it was the amount received from his clients.

However, the assessee failed to give the list of persons along with confirmation in respect of the said cash credits nor any of the persons were produced for examination, who had advanced cash to him, before the Assessing Officer The assessee also failed to bring on record any evidence to prove that it was the amount received from such persons who were his clients. The Assessing Officer had repeatedly provided opportunities to the assessee to produce the persons but they were not produced. The Tribunal had also noticed that in spite of opportunity having been provided to the assessee, in such circumstances, there was no justification to allow the appellant further opportunity to produce the persons. The parameters for leading additional evidence were not fulfilled.

Further, the Tribunal had rightly held that there were cash deposits in the bank account and thereafter cheques were issued to different parties and in such circumstances, the theory of peak credit could not be accepted. Moreover, the assessee had not been able to show that there existed any nexus whereby the amount deposited in cash had been withdrawn in cash and thereafter redeposited to take benefit under peak credit theory. [Para 9]
m In view of the above, no substantial question of law arises. The assessee's appeal stands dismissed. [Para 11]"

SLP against the decision was dismissed by the Hon'ble Supreme Court and the addition made by the AO was upheld by the Apex Court.

2. *Kavita Chandra Vs. CIT Punjab & Hariya HC 217 PIOL - 611 - HC*
"Cash deposit can be treated as unexplained income if the assessee was unable to link the cash withdrawn from the bank account in the cash deposit."

4.10. *The issue is also covered by the recent decision of Hon'ble Ahmedabad ITAT, Hon'ble Gujarat High Court and Hon'ble Supreme Court in the case of Pavankumar M. Sanghavi v/s ITO. The Hon'ble ITAT (81 taxmann.com 308) has held that when Assessee received unsecured loan but could not produce lenders for verification and these lenders were found to be shell companies, said loan transactions could not be said to be genuine merely because assessee filed loan confirmations copies of ledger accounts and other supporting evidences. The relevant observation of the ITAT is also reproduced herein below:*

"8 As I proceed to deal with genuineness aspect, it is important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-a-vis the ground realities The facts of the case cannot be considered in isolation with the ground realities It will, therefore, be useful to understand as to how the shell entities, which the loan creditors are alleged to tie, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions to give it color of a normal business entity, used as a vehicle for various financial maneuvers. A shell entity, by itself, is not a financial illegal entity but it is their act of abatement of, and being part of, financial maneuverings to legitimise illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial maneuverings for the benefit of its clients, or, with that predominant underlying objective, to give the color of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities."
The Hon'ble Gujarat High court has confirmed the decision of the ITAT and held as under:-

"3 Perusal of the orders on record and in particular, the above quoted portion of the order of the Tribunal would make it clear that the entire issue is based on appreciation of evidence on record and thus factual in nature. The Tribunal has given elaborate reasons to come to the conclusion that the entire transaction was not genuine. In absence of any perversity, we do not see any reason to interfere.

4. Learned counsel for the assessee however vehemently contended that the assessee had received loans through cheques from lenders who had confirmed the same. Their accounts are audited and filed before the Revenue authorities. Thus, the genuineness of the transactions, the capacity of the lender and the factum of lending all have been established. Addition under section 68 of the Act there could not have been made. However, as noted, the Tribunal has minutely examined the position of the lenders, the circumstances under which, the amounts were allegedly loaned to come to the conclusion that the "transactions were not genuine,"

The Hon'ble apex court on 01.5.2018 also dismissed the SLP filed against the order of the Hon'ble Gujarat High Court .

4.11. Considering the facts and the decisions cited above, the addition made by the AO is confirmed and ground of appeal is dismissed.

9. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before the ITAT.

10. The learned AR before me filed a paper book running from pages 1 to 198 and made various contentions to justify the source of cash deposited in the saving bank account. The 1st contention of the learned AR was that there was cash available with the assessee for making the deposits in the bank on account out of recoveries of loan and advances given by the assessee in the earlier years, out of cash withdrawal and the profit on in the year under consideration. According to the Id. AR, there was the cash book prepared by the assessee justifying the availability of cash in his hands for making the deposits in the bank account.

11. On the other hand the learner DR vehemently supported the order of the authorities below.

12. I have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case revolves about the source of cash deposited by the assessee in his bank account to the tune of Rs. 10,40,800/-. The assessee in support of the deposits of cash in his saving bank account has filed the cash book which is available on pages 145 to 159 of the paper

book. This source of cash deposit was explained by the assessee in the manner as detailed below:

- i. Recoveries of the loan given in the earlier year amounting to Rs. 5,18,000/-.
- ii. Withdrawal from the bank which was utilized for the deposit of cash in the bank for Rs. 8,59,000/- only.
- iii. Business income declared by the assessee to the tune of Rs. 3,17,065/- only.

12.1 It was submitted that the assessee has made advances to certain parties in the preceding year which was shown as opening loans and advances amounting to 5,18,000/- and this fact was also not disputed by the AO. According to the assessee, there was recovery of such loan and advances to the tune of ₹ 5,18,000/- which was utilized for making the deposit in cash in the bank. The assessee with respect to the recoveries of loan from various parties has filed the necessary documents such as confirmation, identity of the parties, copies of the income tax return in case some parties which are available on pages 1 to 144 of the paper book. At this juncture, it is not out of the place to mention that the assessee has shown opening loans and advances at Rs. 5,18,000/- which was not disputed by the AO but the assessee has shown closing balance of such loans and advances at Rs. 6,08,000/- only. Thus, there is no ambiguity to the fact that the amount of loan advances was increased in the year under consideration in comparison to the earlier year. Accordingly the AO did not believe the reply made by the assessee that there was recovery of the loan/advances which was utilized for making the cash deposits in the bank. In this regard I have perused the cash book and other details in support of the recoveries of the loan shown by the assessee and find that the assessee after recovery of the loan has shown deposits in the bank account which was subsequently withdrawn and again the advance was made by the assessee to the same parties. In many of the cases I have perused the confirmation and find that the assessee after recovery of the loans and advances has again made the loans and advances in the short span of time. Therefore it is difficult to believe the version

of the assessee that he has recovered loan & advances in cash and deposited the same in the bank and again given the loans and advances to the same parties after making withdrawal from the bank. Indeed, the transaction shown by the assessee with respect to such loans and advances certainly seems to be abnormal but the same cannot be rejected until and unless it is cross verified from the concern parties. As such no addition can be made based on surmise and conjecture. Had there been any doubt about the credibility of the loan shown by the assessee, the onus was upon the revenue to disprove the contention of the assessee based on the relevant documentary evidence. Accordingly in the absence of any cross verification, we are not inclined to uphold the finding of the authorities below about the source of cash deposit to the tune of ₹ 5,18,000/- only.

12.2 With respect to the bank withdrawal, we note that the assessee has claimed to have withdrawn a sum of ₹8,59,000/- from the bank which is evident from the order of the authorities below. Admittedly, the advances were made by the assessee to the tune of Rs. 6,08,000/- as on 31 March 2014, thus it is transpired that withdrawal from the bank was utilized for making such loans and advances to the extent of the amount discussed above. However there was some amount left out of the withdrawal from the bank amounting to Rs. 2,51,000/- (8,59,000/- – 6,08,000/-) which probably has been utilized by the assessee for making the cash deposit in the bank.

12.3 Likewise, the assessee has declared an income of Rs. 3,17,065/- in the income tax return and therefore a presumption can be drawn that there was cash available with the assessee to the tune of such profit declared by the assessee in the income tax return which probably has also been utilized to some extent for making the deposits in the bank. Thus a cumulative reading of the above stated facts reveals that there was sufficient cash available with the assessee for making the deposits in cash in the bank. Accordingly we set aside the order of the learned

CIT(A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is hereby allowed.

13. In the result appeal of the assessee is hereby allowed.

Order pronounced in the Court on 11/11/2022 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 11/11/2022
Manish (True Copy)