

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 76/Srt/2017 (Assessment Year: 2009-10)
(Physical hearing)

Shri Hiteshbhai H Tahilramani, Flat No. 101, Sukan Appt., B/h Pandav Bunglow, Athwalines, Surat. PAN No. AASPT 1898 F	Vs.	I.T.O., Ward 1(3)(2), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	None
Department represented by	Shri Ashok B Koli, CIT-DR
Date of hearing	11/11/2022
Date of pronouncement	15/11/2022

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-2, Surat (in short, the Id. CIT(A) dated 09/06/2017 for the Assessment year (AY) 2009-10. The assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in reopening assessment by issuing notice u/s 148 of the I.T. Act, 1961.*
- 2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in passing the ex parte order u/s 144 of the I.T. Act.*
- 3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making addition of Rs.*

5,92,65,550/- u/s 69A of the I.T. Act as explained cash deposit in bank account.

- 4. It is therefore prayed that above the assessment order may kindly be quashed or in the alternative, additions made by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.*
- 5. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. Brief facts of the case are that the assessee has not filed return of income for the A.Y. 2008-09. The Assessing Officer was having information that the assessee has made a cash deposit of more than Rs.10,00,000/- in his bank account in ICICI bank and further credit entry of Rs. 3.47 crores in Surat People’s Cooperative Bank Limited during the relevant financial year. On the basis of such information, the Assessing Officer made his belief that the income of assessee has escaped assessment. The Assessing Officer after recording reasons of reopening, issued notice under Section 148 of the Income Tax Act, 1961 (in short, the Act) on 23/03/2016. The Assessing Officer noted that despite service of notice under Section 148 and other various notices under Section 142(1) of the Act, the assessee neither filed return of income nor responded to various notices. The Assessing Officer levied penalty under Section 271(1)(b) for non-compliance of such notices and proceeded for assessment. During the assessment, the Assessing Officer issued notice under Section 133(6) of the Act to the bankers of the assessee. The bankers of the assessee furnished

required details. Such details were compiled by the Assessing Officer in the following manner:

S. No.	Bank Name	Account number	Amount deposited in bank during the year (in Rs.)
1.	ICICI	005201507185	0
2.	-do-	005205004705	2,08,52,841/-
3.	-do-	005201533283	6,69,023/-
4.	The Surat People's Co-operative bank	Current deposit 00503	3,58,98,365/-
5.	-do-	104131261295	1,35,954/-
6.	-do-	Cheque Saving deposit	13,86,113/-
7.	-do-	104131234158	3,23,258/-
8.	Kotak Mahindra Bank (RBS)	Loan account No. 9454744	
Total amount credited to bank accounts			5,92,65,554/-

3. On the basis of aforesaid information, the Assessing Officer found that there were total cash deposit/credit entries of Rs. 5.92 crores in various bank accounts. The assessee was again issued final show cause notice vide notice dated 12/11/2016. The contents of show cause notice is recorded by the Assessing officer on page 4 of assessment order. The Assessing Officer noted that the assessee has not filed any reply to the final show cause notice, accordingly, in absence of any detail, the Assessing Officer treated the entire deposit/cash credit as unexplained cash deposit and made addition of Rs. 5.92 crores while passing the assessment order under Section 144 r.w.s. 147 of the Act on 02/12/2016.

4. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). In the appeal, the assessee has only challenged the addition of Rs. 5.92 crores. No grounds of appeal against the reopening was raised by the assessee. Before the Id. CIT(A), the assessee filed detailed written submissions. The submission of assessee is recorded in para 5 of order of Id. CIT(A). In the submission, the assessee stated that he is engaged in the business of retail trading of cloths. Sales are done in cash and even by cheques on retail basis. Whatever cash is received by assessee as a sale consideration was deposited in bank. The payments of expenses were made either by cash after withdrawing the same in cash or by way of cheque. All the transactions in the banks are business transactions. There is net margin of 2% in such business. The assessee has not earned such profit which is a taxable profit. As per the assessee, for which the amount earned by him was not chargeable to tax and it was below the maximum amount not chargeable to tax, therefore, no books of account were maintained. He has earned 3% gross margin and less than 2% net martin after deducting all the business expenses. The amount deposited in bank is not net income. Perusal of bank statement reveals that the amounts were paid to the textile firms, which proved that the assessee was in textile trading business. The assessee was doing business in the name of Samarth Enterprises. There is current

account in the name of proprietary concerned 'Samarth Enterprises' wherein highest number of transactions are done. The assessee also stated that he has prepared peak credit in each bank account, date-wise and the combined peak of all accounts in banks together in current as well as savings bank account at Rs. 10,69,745/-. The details of such peak credit was also furnished. The assessee also stated that as per Section 44AF, 5% of income on total turnover can be declared under the deemed provision. Even if the said peak theory is not considered the whole amount credited in the bank is not income but certain percentage of turnover is the income of assessee. In the business of assessee, only profit margin is 2% and in no circumstances, profit exceed 5% of turnover.

5. The Id. CIT(A) after considering the submission of assessee and the assessment order held that the assessee neither filed return of income in response to notice under Section 148 of the Act nor furnished any evidence relating to business activities as claimed by him. The assessee is not registered with the competent authorities for carrying out business activities such as commercial tax, VAT, registration under Shop and Establishment Act, which can prove that he was carrying out any business activity. The assessee expressed his inability to provide name and address of the parties with whom he has dealt during his business activities and to file confirmation. On the contention of assessee that

only gross profit on the total transaction may be added and not the complete cash/credit deposit, the Id. CIT(A) held that the assessee failed to file any evidence regarding existence of business. No detail of any kind of registration under VAT, sales tax authority or registration with local authorities is furnished. The cash/credit deposit in the bank account was found on the basis of sources of department and the assessee has not disclosed such bank accounts as no return of income was filed. When the bank account was discovered by use of technology and collection of information by the Income Tax Department regarding high value of transactions, then such bank accounts were detected. When such bank account was confronted, the assessee has not offered any explanation. As per the regulation of Reserve Bank of India, a savings bank account cannot be opened for business purposes. The primary onus was on the assessee to prove the source of cash/credit deposit with the support of evidence. The assessee has not discharged his onus by showing source of such deposit with evidence, therefore, the plea of assessee about the business transaction was rejected. The alternative plea of assessee for making the addition of peak credit, the Id. CIT(A) held that the benefit of peak credit in the bank account can only be given to the assessee if he is committed to give name, address and PAN of the parties from whom he receives the money which was found credited in his bank account. The amount debited by

cheque/cash can be held to be available for rotation only if the assessee can prove that same amount came back to him for which he has to give the details of debit and credit entries appearing in his bank account. The Id. CIT(A) further held that there are two concepts, one peak credit and the other maximum balance in the bank account during the year. The assessee is offering for taxation the maximum amount outstanding and not the peak credit. The latter can be calculated only if the assessee provides complete details of all debit and credit transactions and establishes that the amount withdrawn by cheque or cash was available for rotation or recycling. The assessee failed to do so. The Id. CIT(A) accordingly rejected this plea as well. The Id. CIT(A) further held that no evidence or books of account were produced during the assessment or appellate proceedings. No evidence has been produced to show that the assessee earned business income, thus, the assessee failed to demonstrate the source and utilization of cash deposit and withdrawal in the bank account and confirmed the additions. Further aggrieved, the assessee has failed the present appeal before this Tribunal.

6. This appeal was filed on 31/08/2017. The assessee, since beginning was seeking date through his authorised representative (Id. AR) on one ground or the other. On 10.11.2022, Shri Kishore Mali, C.A. from the office of M/s Sapnesh Sheth & Co., A.R appeared on behalf of assessee

and submitted that the assessee is not providing any detail to make their submission. Their officer has already informed instructing C.A. namely Shri Manish Bhajikhau, about the date of hearing and consistent non-compliance. The Id. AR submitted that they may be allowed to withdraw their authority from the present case and they have informed the instructing C.A. on a number of times and intimated letter dated 08/11/2022 sent through registered courier. On taking such stand, the Id. AR of the assessee was directed to furnish copy of such letter on record and case was adjourned for 11/11/2022. On 11/11/2022 we find that the Id. AR has already placed on record the letter sent to assessee on 08.11.2022. None appeared on behalf of assessee on 11/11/2022, therefore, we left no option except to hear the submission of Id. CIT-DR for the revenue and to decide the appeal on the basis of information available on record.

7. The Id. CIT-DR for the revenue has vehemently supported the orders of lower authorities. The Id. CIT-DR submits that the assessee has not filed any reply to various notices nor any evidence to substantiate the cash credit/deposit in various bank accounts was from the sale proceed of business transaction. The Assessing Officer passed the assessment order under Section 144 of the Act making addition of Rs. 5.92 crores. Before the Id. CIT(A), the assessee claimed that the credit in the various bank accounts were on account of business transaction. The

assessee again failed to show the place of business or any piece of evidence to substantiate that he was really engaged in any kind of business or in the business of retail trading of cloths. The Id. CIT(A) after considering the entire facts of the case, upheld the addition made by the Assessing officer. The Id. CIT-DR prayed for dismissal of appeal.

8. We have considered the submission of Id. CIT-DR for the revenue and have gone through the orders of lower authorities carefully. As recorded above, the Assessing Officer made addition of aggregate of deposit in the various bank accounts of assessee as recorded in para 5 of assessment order (supra), for want of any evidence. Before the Id. CIT(A), the assessee claimed that he was engaged in the trading of cloths. The assessee has not given any evidence of his business activities. The Id. CIT(A) in an elaborate discussion, dismissed the appeal of assessee by considering all his pleas.
9. Before us, the assessee filed this appeal in the year 2017, however, till date, not a single document is either filed on record. The Id. Counsel ultimately withdrawn his authority from the proceeding. Considering the fact that the assessee failed to bring an iota of evidence to prima facie show that the cash credit or credit entry in various bank accounts was a result of any business activity. In absence of any evidence, we do not find any reason to deviate from the orders of lower authorities which

we affirm. In the result, all the grounds of appeal raised by the assessee are dismissed.

10. In the result, this appeal of assessee is dismissed.

Order pronounced in the open court on 15th November, 2022 and the result was also placed on the Notice Board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 15/11/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By order

Sr.Private Secretary, ITAT, Surat