

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

ITA No. 651 & 652/Srt/2018  
(Assessment Years: 2006-07 & 2007-08)  
(Virtual hearing)

Shri Vijay Kanaiyalal Savani, Flat No. 402, Divyakranti Appt., Althwalines, Parle Point, Surat. <b>PAN No. FZTPS 8203 L</b>	Vs.	I.T.O., Ward-1(3)(3), Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Tushar P Hemani, Senior Advocate with Shri Parimalsinh B Parmar, Advocate
Respondent represented by	Shri Ritesh Mishra, CIT-DR
Date of hearing	11/10/2022
Date of pronouncement	22/11/2022

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by the assessee are directed against the separate orders of learned Commissioner of Income Tax (Appeals)-2, Surat (in short, the Id. CIT(A) both dated 03/07/2018 for the Assessment years (AY) 2006-07 and 2007-08 respectively. In both these appeals, the assessee has raised common grounds of appeal, except variation of addition in the foreign bank account. Facts in both these years are almost similar, therefore, both these appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For

appreciation of facts, the appeal for the A.Y. 2006-07 is treated as a "lead case". In this appeal, the assessee has raised following grounds of appeal:

*"(I) Reopening of Assessment:*

- 1. The Commissioner of Income Tax (Appeals) erred in confirming the reopening of the assessment when the necessary conditions for valid reopening were not satisfied.*
- 2. On the facts and circumstances of the case and laws, the reopening is required to be quashed.*

*(II) Reopening of Assessment:*

- 1. The Commissioner of Income Tax (Appeals) erred in confirming addition on account of credits in bank accounts when there was no ownership of the bank accounts of the assessee.*
- 2. The appellant respectfully submits that the assessee has clearly denied to having the ownership of the bank accounts, the addition is required to be deleted.*
- 3. The appellant submits that the Id. Commissioner of Income Tax (Appeals) has not appreciated the facts and went with the extraneous considerations while presuming and confirming the addition and there was no justification whatsoever for ownership of bank accounts, just based on passport copy and on the facts and circumstances of the case and laws, the said addition is required to be deleted.*

*(III) Miscellaneous:*

*The appellant craves leave to add, alter or vary any of the grounds of appeal."*

2. Brief facts of the case are that the assessee is an individual and engaged in the business of diamond cutting and repairing jobs. No return of income has ever been filed by assessee. The Assessing officer received information that the assessee is resident of 907, Shree Apartment, Dutch Road, Makai Bridge, chowk Bazar, Surat-395001 was holding offshore bank account number 5091290819 in HSBC bank, Suisse SA Geneva, Switzerland with

code BUP 5090150053 and Per No. 150053 opened on 09/03/2000. As per the information, the assessee made deposit the following amounts:

Period	Classification	Month	Amount (en \$)
11.2005	Fiduciary Deposits		9,62,192.82
11.2005	Liquid Assets		10,546.18
		11/2005	9,72,729.00
12.2005	Fiduciary Deposits		9,67,411.61
12.2005	Liquid Assets		7,534.31
		12/2005	9,74,945.92
01.2006	Fiduciary Deposits		9,70,759.26
01.2006	Liquid Assets		10,565.54
		1/2006	9,81,524.80
02.2006	Fiduciary Deposits		10,74,545.86
02.2006	Liquid Assets		8,228.62
		2/2006	10,82,774.48
03.2006	Fiduciary Deposits		13,20,686.63
03.2006	Liquid Assets		71,032.57
		3/2006	13,91,719.20

3. The Assessing Officer noted that on perusal of base sheet of HSBC bank, the details of passport No. A7890624 of assessee, issued on 09/06/1999 by the passport office Ahmedabad was given an identity proof to open this bank account. On the basis of such information, the Assessing Officer noted that the assessee has opened the aforesaid bank account which is not declared with Income Tax Department. On the basis of such information, the Assessing Officer had reason to believe that the income of assessee has escaped assessment. Notice under Section 148 of the Income Tax Act, 1961 (in short, the Act) dated 26/11/2014 was issued after

obtaining approval of Additional Commissioner dated 26/11/2014. The notice under section 148 was served upon the assessee. The Assessing Officer noted that despite service of notice under section 148, no compliance was made. The Assessing Officer on the basis of information available with him, proceeded for reassessment and recorded that on 19/01/2015, the authorised representative (AR) of the assessee attended the proceedings and filed reply wherein it was stated that the assessee is out of India and in his absence, it is not possible to file return of income. The Assessing Officer further recorded that the assessee was given final opportunity to submit required details on or before 13/02/2015, wherein it was clearly stated that on failure of assessee, assessment would be completed under Section 144 of the Act. The Assessing Officer in para 9 of assessment order recorded that the assessee filed return of income for A.Y. 2006-07 on 15/05/2015 declaring income of Rs. 48,920/-. Return was filed with new PAN number (FZTPS 8203 L). No details of bank account as required in ITR for was furnished. Such column was left blank. Though, the assessee was maintaining bank account with Janata Sahakari Bank Limited, Girgaon Branch, Mumbai and offshore bank account in HSBC, Geneva, Switzerland. The assessee was again issued show cause notice dated 28/05/2015 requiring the assessee to furnish the copy of passport, details of bank account of assessee in his own name or in the name of

family member in India or abroad, details of purchase of flat No. 402, Divyakranti Apartment, Parle Point, Surat and his household expenses, source of movable and immovable properties. The Assessing Officer further recorded that no compliance was made by the assessee. However, on 19/06/2015, the Id. AR of the assessee submitted that the assessee did not have any foreign bank account nor have any other PAN except FZTPS8203L.

4. The Assessing Officer issued summon to the assessee under Section 131 of the Act. No compliance was made by assessee against such summon. The Assessing Officer in absence of information, as required by him, rather on the basis of information available with him, concluded that the particulars mentioned on the base sheet clearly indicate that the assessee opened bank account in the year 1999. The Assessing Officer on the basis of material available with him made addition of Rs. 4,75,76,130/- under Section 68 of the Act while passing assessment order dated 27/01/2016 under Section 143(3) r.w.s. 147 of the Act.
5. Aggrieved by the addition in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee assailed the reopening as well as addition under Section 68 of the Act. Before the Id. CIT(A), the assessee filed his written submission. The written submissions of assessee is recorded in para 5 of the order of Id. CIT(A). In

the submission, the assessee stated that the case of assessee was reopened on the basis of some information which contains the details of deposit made in bank account and it contains the details of passport & PAN of assessee. During his statement, the assessee stated that he do not have any foreign bank account, just because the account contains the details of passport, the assessee cannot be held liable, the Assessing officer has not brought any evidence except the base sheet, where the name and address of assessee was mentioned. Except base sheet, no further evidence was put to prove the ownership of the account. The Assessing Officer mentioned PAN number AXRPS2712B, such PAN was never held by assessee. The assessee filed his return of income with his PAN number FZTPS8203L. The address on PAN number AXRPS2712B contains address of railway station, Boriwali, Mumbai which is no-way connected with the assessee, simply due to passport detail matches with the account, it cannot be said that said bank account is owned by the assessee. The assessee during the assessment, stated that the account proceeds in the bank account may be kept by the department, the assessee do not have any objection as he does not own such account. During the assessment, the assessee repeatedly requested for providing copy of all such documents on which the Assessing Officer relied with the copy of statement of assessee recorded during the assessee. Except copy

of base sheet, no other evidence or document was provided to the assessee. The assessee also requested to provide copy of old passport. The assessee stated that he is not aware as to who has given his passport and he has not opened such account. The Assessing Officer made addition on the basis of 'base sheet' without any corroborative evidence, particularly when the assessee denied the ownership of bank account. The Assessing Officer has not disproved the argument of assessee regarding disowning the foreign bank account. The Assessing Officer has not given any material except the information about the bank deposits.

6. On reopening, the assessee stated that the Assessing Officer reopened the assessment on borrowed satisfaction as there was no material against the assessee for formation of belief for escapement of income. The re-assessment proceedings cannot be initiated for the reasons to suspect and these are not for the investigation or for roving enquiries. The Assessing Officer made addition on the basis of suspicion. The assessee repeatedly stated that the bank account does not belong to assessee.
7. The Id. CIT(A) after considering the submission of assessee concluded that hearing of appeal was fixed for more than ten times. The assessee except filing written submission, no supporting evidence was filed. Since the assessee was not making compliance of various notices issued by the Id. CIT(A), the Id. CIT(A) recorded that the assessee seems to be not

interested. The Id. CIT(A) after considering the submissions of assessee, upheld the reopening by taking a view that the assessee has filed return of income after time specified in notice under Section 148 of the Act. Hence, failure of assessee to file return within 30 days debars him to raise question on the jurisdiction of Assessing officer.

8. On merit, the Id. CIT(A) held that the assessing officer was having information about the assessee having offshore bank account in HSBC Bank, Geneva opened on 09/03/2000. The information revealed that the assessee made deposit in the said bank account of US dollar \$1391719/- equivalent to Rs. 4,75,76,132/-. Such deposits were made during the Financial Year (FY) 2006-07. The assessee has made total deposit in A.Y. 2006-07 and 2007-08 of Rs. 8,77,68,310/-. The Investigation Wing of department carried out detailed investigation with regard to offshore bank account maintained by assessee. The base sheet, which contains account opening details clearly states the name of assessee, the date of birth, place, profession as diamond cutter, identified by passport issued by passport authority, Ahmedabad. The assessee in his statement recorded on 18/02/2013 under Section 131 of the Act denied of having such bank account. The assessee was asked to produce old passport but assessee failed to produce the same. The assessee merely took a stand that he does not possess any such bank account. However, the enquiry conducted by

the department that the assessee was having bank account with Janata Sahakari Bank Limited, Girgaon, Mumbai which is operational since 1991. The assessee wilfully avoided to provide information of his prevailing details and passport despite several opportunities. The base sheet clearly indicates the details of bank account holder with Indian passport holder. The base sheet contains the account number 5091290819, BUP Code No. 5090150053 and Per No. 150053 having the details of address of assessee, marital status, date of birth, profession, passport number, account was opened in individual capacity and the name of his wife Savani Vijay Meena and his cousin Mr. Savani Deepak K has been indicated as attorney holder.

9. The Id. CIT(A) on his observation recorded that such facts and circumstances clearly established the bank account was opened by assessee himself. Though, the assessee repeatedly took the same stand that the foreign bank account and the PAN which was mentioned, not belonging to him. The Id. CIT(A) vide order sheet entry dated 15/03/2017 directed the assessee to provide the specific document required by the Assessing Officer. The Id. CIT(A) recorded that assessee despite providing opportunity, not furnished the required details.
10. The Id CIT(A) obtained information from NSDL and UTIITSL about the different PAN numbers. The information from NSDL was received on 15/01/2018 along with documents furnished by assessee for obtaining PAN

numbers. As per information from NSDL, the PAN No. AXRPS2712B in the name of Vijaybhai Kanaiyalal Savani, application for allotment of PAN was received from Vijaybhai Kanaiyalal Savani at the address of 1, ground floor, Manek Apartment, Timaliyawad, Nanpura, Surat on 08/02/2012. ITD allowed this PAN number and was printed and dispatched on 17/02/2012. PAN number FZTPS8203L was issued on application in the name of Vijaykumar Kanaiyalal Savani and PAN was allotted on 09/03/2015. The date of birth and father's name in both the applications are common. The address in both the applications were different. Information from UTIITSL was also received on 02/02/2018 wherein the assessee filed application for issuance of PAN on 21/7/2011. The date of birth in all three cases was the same. However, address in all three applications are different, in which two addresses of Surat and one of Mumbai.

11. After recording all the discrepancies by the Id. CIT(A), he referred all the details to the Assessing Officer to furnish his remand report vide order dated 09/02/2018. The Assessing Officer furnished his remand report on 09/03/2018 and on 16/03/2018 and again on 21/05/2018. In the remand report dated 21.05.2018, the Assessing Officer mentioned that he conducted enquiry regarding issuance of election ID card, which was used as an ID proof for identification for opening the PANs revealed that as per office of Assistant Electoral Registration No., the assessee was issued voter

card No. GJ/14/099/210467, which was tampered and manipulated to change information for obtaining different PAN numbers. This fact shows that the assessee was aware about the funds being transferred to HSBC account in Switzerland, therefore, various manipulations were made for obtaining more than one PAN card by furnishing forged and manipulated documents. The conduct of assessee clearly shows that the assessee is avoiding for furnishing information to prove that the HSBC bank account was not opened and operated by him. The document which could have been proved that the assessee's claim of not having visited Switzerland during the period when the account in the HSBC bank was opened was the Visa and immigration stamp on the Passport of Swiss Authorities. The assessee has not produced these details which proves that he does not want to produce the passport which has the immigration stamp on the Passport of Swiss Authorities. The primary onus was on the assessee to prove the genuineness of transactions supported with evidence. The assessee has not discharged his onus. On such observation, the Id. CIT(A) confirmed the addition made by the Assessing Officer. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

12. We have heard the submissions of Shri Tushar P. Hemani, learned Senior Advocate with Shri Parimalsinh B Parmar, Advocate hereinafter called as learned Senior Counsel and Shri Ritesh Mishra, learned Commissioner of

Income Tax-Departmental Representative (Id. CIT-DR) for the revenue and have gone through the orders of the lower authorities. The Id. Senior Counsel for the assessee submits that the Assessing Officer made the addition by taking a view that the assessee has not provided required details and evidence, which were demanded from the assessee. The Id. CIT(A) also confirmed the addition by taking a view that the assessee was given sufficient opportunity to file the required documents and evidences as required by the Assessing Officer. The lower authorities took their view that the assessee was having two PAN cards and the bank details in HSBC, Geneva, Switzerland was matching with the name, address, father's name and date of birth. Further the Passport of assessee was used as an evidence of address.

13. The Id. Senior Counsel for the assessee submits that the case of assessee was reopened on the basis of information that the assessee was maintaining bank account with HSBC bank, Switzerland. No information was provided to the assessee except the base sheet. The assessee was repeatedly asking to provide the detailed information in the power and possession and came to notice of Assessing Officer. No such information e.g. the copies of passport, bank details in HSBC and any other investigation carried out or in the possession of assessing officer was not provided to the assessee. The assessee, before Assessing officer as well as

Id. CIT(A) categorically took stand that the assessee never opened an offshore bank account and that any amount if lying in such bank account may be forfeited or may be claimed by the Government of India. The assessee still on his stand that he never opened such bank account nor have ever such income for making such deposit in foreign bank. The amount in such bank account may be claimed by the Government of India. The Id. Senior Counsel submits that the Assessing officer as well as the Id. CIT(A) conducted certain enquiries or investigation from the agencies which were maintaining record of PAN card as well as election card record. However, such information was not provided to the assessee. All such information was used against the assessee to make huge additions. The Id. Senior Counsel submits that since the high pitch assessment is made against the assessee and the assessee has no source of such income, the matter may be restored to the file of Assessing Officer, with the direction to supply all such material in power and possession of assessing officer and to allow the assessee to contest the case on merit. The assessee undertake to attend the hearing before the lower authorities. The assessee is further ready to given any undertaking or declaration for seeking further detail from bank account which was allegedly opened in the name of assessee. The department was asking the assessee to prove negative. The Ld. Senior Counsel submits that it seems that somebody has misused the

Passport of the assessee. The assessee never signed or filled up any account opening form or made any deposit in such bank account. The Id. Senior Counsel further retreated that deposit in such bank account may be forfeited in favour of Government of India and the assessee is ready to cooperate with the authorities. The Id. Senior Counsel has relied on the decision of Delhi Tribunal in the case of Shyam Sunder Jindal Vs ACIT (2017) 81 taxmann.com 123/164 ITD 470 (Delhi Trib).

14. On the other hand, the Id. CIT-DR for the revenue supported the orders of lower authorities. The Id. CIT-DR for the revenue submits that the assessee was given ample opportunities to prove that the impugned bank account in HSBC Bank, Geneva, Switzerland is not in the name of assessee or the assessee is not the beneficiary of such bank account. The Id. CIT-DR submit that it has been proved beyond doubt by the activity of assessee by not providing necessary details of his Passport, his visit of foreign countries and the period of stay. The Id. CIT-DR submits that the order of Id. CIT(A) may be confirmed.
15. We have considered the rival submissions of both the parties and perused the orders of lower authorities carefully. We find that the case of assessee was reopened on the basis of information of base sheet received by the Assessing officer that the assessee was having bank account with HSBC, Geneva, Switzerland and assessee was not filing return of income nor

disclosed such foreign bank account to the department. The Assessing Officer after giving various opportunities to the assessee to provide details of deposit in such bank account, made addition of aggregate of deposit by taking a view that the assessee merely denied of having any foreign bank account. The assessing officer also held that from the base sheet, it is established that the bank account is opened by assessee. The Id. CIT(A) also confirmed the addition by taking a view that the assessee failed to discharge the onus lies upon him and has not furnished the required evidence and details required by the Assessing officer during the assessment.

16. Before us, the Id. Senior Counsel for the assessee vehemently argued that neither the assessee ever opened such bank account nor made any deposit in such bank account and that the amount if any lying in such bank account may be forfeited in favour of Government of India and that the assessee is ready and willing to make or sign any such form/format/declaration for seeking further information about the bank account. The Id. Senior Counsel also vehemently argued that the information and documents available with him was not provided to the assessee to counter such evidence. The department was asking the assessee to prove negative. Considering the peculiar facts and circumstances of the case that the assessee has fully disowning his

connection with the alleged bank account in HSBC, Geneva, Switzerland and has agreed to sign or undertake on any declaration for seeking further details of the bank account and ready to discharge his onus if all the documents and information in power and possession is provided to the assessee. Therefore, we deem it appropriate to restore the issue back to the file of Assessing Officer. The Assessing Officer is directed to provide all the information and evidence in his power and possession either received or gathered or collected to the assessee. The assessee is also directed to make full cooperation with the Assessing Officer and to file all the information, document or evidence with regard to his Passport, his various visit to foreign countries and the details of Visa (s). The assessee is further directed to give his consent for obtaining further information regarding the base sheet and to sign necessary declaration, undertaking or any other application or declaration as required by the Assessing Officer for obtaining information from foreign countries including impugned bank account with HSBC Bank, Geneva, Switzerland. So far as issue related with the reopening is concerned, we find that the learned Senior Counsel has not made specific submissions, therefore, those issue is treated as not pressed and dismissed as such. However, ground No. (II) is allowed for statistical purpose.

17. In the result, this appeal of assessee is allowed for statistical purposes.
18. Now we take appeal for the A.Y. 2007-08 being ITA No. 652/Srt/2018 wherein the assessee has raised similar grounds of appeal as raised in appeal for AY 2006-07, except variation of addition. Considering the fact that we have restored the appeal of assessee in A.Y. 2006-07 before the Assessing officer, therefore, considering the principle of consistency, the appeal of ITA No. 652/Srt/2018 for the A.Y. 2007-08 are also allowed with similar directions.
19. In the result, both these appeals of the assessee are also allowed for statistical purposes only.

Order pronounced in the open court on 22<sup>nd</sup> November, 2022.

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

Surat, Dated: 22/11/2022

*\*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