

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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1153/AHD/2015

निर्धारण वर्ष/Asstt. Year: 2011-2012

Shri Kalpesh N. Akhani-HUF, 4, Agam Apartments, Barrage Rod, Vasna, Ahmedabad. PAN: AAGHK4080C	Vs.	Income-tax Officer, Ward-10(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Hiren J. Trivedi, A.R
Revenue by :	Ms. M.M. Garg, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **29/11/2022**
घोषणा की तारीख / **Date of Pronouncement**: **21/12/2022**

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), Ahmedabad-5 dated 23/02/2015 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case, the order of learned CIT(A) is bad in law and deserved to be quashed and set aside.*

2. *On the facts and in the circumstances of the case, the learned CIT(A) has erred in upholding the addition of Rs.15,47,500/- under section 69 of the Act on account of alleged unexplained cash deposit in the Bank.*

3. *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs.50,000/- on account of labour expenses, out of total disallowance made by Assessing Officer out of total disallowance of Rs.3,14,175/-*

The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

3. The first issue raised by the assessee is that the Ld. CIT(A), erred in upholding the order of the AO by treating the cash deposit of Rs. 15,47,500/- as unexplained cash deposit in the bank.

4. The facts in brief are that the assessee in the present case is HUF and engaged in the activity of labour contractors. The assessee in the year under consideration has deposited cash of Rs. 15,47,500 on different dates in the bank namely M/s Nutan Nagrik Sahakari Bank Ltd. The assessee to justify the source of cash deposit has filed the cash book vide letter dated 08/08/2013. However, the AO was not satisfied with the reply of the assessee on the reasoning that no explanation based on documents was furnished about the source of cash deposits. The AO also observed that the cash book prepared by the assessee has been manipulated. Thus, the AO treated the amount of cash deposit of Rs. 15,47,500/- as unexplained investment u/s 69 of the Act, and added to the total income of the assessee.

5. Aggrieved, assessee preferred an appeal before the Ld. CIT(A).

6. The assessee before the Ld. CIT(A), contended that the cash book contains the details about the source of cash deposits in the bank account which has not been doubted by the AO based on any cogent reason. As such the AO without providing any reason has just concluded that the cash book has been manipulated

without bringing any material on record. The assessee also submitted that the cash was deposited in the bank account out of withdrawal from the bank on earlier occasions. To this effect, the assessee has given the details about the cash withdrawal from the bank on earlier occasions within the Financial Year.

7. However, the Ld. CIT(A), disregarded the contention of the assessee by observing that the assessee has not produced any details about the inflow of money in the bank account by way of cheque deposit/cheque transfer which was necessary to justify the source of cash deposit. Thus, in the absence of necessary details the Ld. CIT(A), confirmed the order of the AO.

8. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

9. The Ld. AR before us filed a paper book running from pages 8 to 9 and contended that the Ld. CIT(A), has not directed the assessee to produce the details about the deposits made in the bank account by way of cheque deposit/cheque transfer. Had the Ld.CIT(A), have given the opportunity to the assessee, the same could have been complied with.

9.1 The Ld. AR further filed the application under Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 by submitting additional evidence which are available on record. As per the Ld. AR, the additional evidence justifying the deposit in the bank account of the assessee by way of cheque deposit/cheque transfer. The Ld. AR further prayed before us that this additional evidence should be admitted and matter should be set aside to the Ld. CIT(A) for fresh adjudication as per the provision of law and in the light of additional evidence filed by the assessee.

10. Per contra, the Ld. DR did not raise any objection if the matter is set aside to the file of the Ld. CIT(A) for fresh adjudication in the light of additional evidences filed by the assessee and as per the provision of law.

11. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the Ld. CIT(A) has decided the issue against the assessee by observing that the assessee has not explained/furnished the necessary details about the deposit of cheque in the bank account of the assessee. To this effect, we find that the Ld.CIT(A), has reached to this conclusion without giving any opportunity to the assessee which is against the principle of the natural justice. Thus, in the interest of justice and fair play, we exercise our power granted u/s Rule 29 of Income-tax (Appellate Tribunal) Rules, 1963 and admit the additional evidence filed before us. As these additional evidences have not been considered by the authorities below, therefore, in the interest of justice and fair play we set aside this issue to the file of the Ld. CIT(A), for fresh adjudication after considering the additional documents filed by the assessee and as per the provision of law. Hence, the ground of appeal of the assessee is hereby allowed for the statistical purposes.

12. In the result, the appeal filed by the assessee is allowed for the statistical purposes.

Order pronounced in the Court on 21/12/2022 at Ahmedabad.

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

(True Copy)

Ahmedabad; Dated 21/12/2022

Manish