

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 331/Srt/2019 (Assessment Year: 2010-11)
(Physical hearing)

Farha S Kadri, 762, Bazar Street, Bunder Road, Bilimora (Gujarat)-396321 PAN No. ANNPK 8150 B	Vs.	I.T.O. Ward-2, Navsari.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Rushi Parekh, AR
Respondent represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	07/12/2022
Date of pronouncement	16/01/2023

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 learned Commissioner of Income Tax (Appeals), Valsad (in short, the Id. CIT(A) dated 12/04/2019 for the Assessment year (AY) 2010-11. The assessee has raised following grounds of appeal:

- "1. That CIT(A) Appeal erred in confirming addition of Rs. 10,38,785/-.*
- 2. That appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of Appeal."*

Vide application dated 07/12/2012, the assessee has raised following additional grounds of appeal:

- "1. The assessee objects against the reopening as there is no nexus between reasons recorded and belief formed as to escapement of income.*
- 2. The assessee objects against the reopening on the basis of borrowed satisfaction being reopening only from information on ITD portal.*
- 3. The assessee objects against the reopening on the ground of absence of sanction of chief CIT as the reopening is beyond four years.*

5. *The AO erred in reasons recorded that the entire cash deposits of Rs. 11,20,785/- as income of the assessee.”*
2. Brief facts of the case are that the assessee has not filed her return of income for the A.Y. 2010-11. The Assessing Officer was having information that the assessee has made cash deposit of Rs. 11,20,785/- in her savings bank account in Bank of Baroda. In order to verify the information, the Assessing Officer issued notice to the assessee on 20/02/2017 to furnish the source of cash deposit during the relevant financial year. The Assessing Officer recorded that no information was furnished by the assessee. On the basis of AIR information available with the Assessing Officer, the Assessing Officer recorded reasons that the cash deposited in the bank account is nothing but income of the assessee for AY 2010-11 and as such income chargeable to tax to the extent of Rs. 11,20,785/- has escaped assessment within meaning of Section 147 of the Income Tax Act, 1961 (in short, the Act) and he is satisfied that case of assessee is a fit case for action under section 148. The Assessing Officer after recording reasons, issued notice under Section 148 of the Act on 28/03/2017. In response to notice under Section 148, the assessee filed her return of income on 14/09/2017 declaring total income of Rs. 95,930/-. The Assessing Officer after serving notice under Section 143(2), proceeded for assessment.
3. During the assessment, the Assessing Officer issued show cause notice to the assessee to explain the nature and source of cash deposit in bank

of Baroda. The assessee filed her reply dated 06/11/2017. In the reply, the assessee stated that she belongs to an agricultural family and have agricultural income, they are also doing dairy farming and have income from sale of milk, which is shown in the return of income of Rs. 95,670/-. She has no other source of income. During the relevant financial year, the assessee earned net agricultural income of Rs. 3,63,260/-. The assessee furnished record of agriculture holding in the form No. 7/12 and 8A, and vouchers of sales of mangos. The assessee also furnished cash flow statement. The assessee also submitted that she received gift from her relative to finance the education of her daughter in law in abroad. To substantiate such fact, copy of demand draft of fees payment of her daughter in law was furnished. The assessee also stated that she received gift of Rs. 3.50 lacs from her brother in law namely Salim Chhajumiya Usmaniya. The reply of assessee was considered by the Assessing Officer and the same was not accepted. The Assessing Officer on perusal of copy of land record in the form of 7/12 and 8A, held that the assessee has no share in the land. The bills of sales of Mango is not in her name. There is no address of seller and buyer of such bills. So far as the gift disclosed by assessee of Rs. 3.50 lacs from Salim Chhajumiya Usmaniya, the assessee has not furnished any supporting evidence, therefore, the gift was also not accepted as genuine by assessing officer. The Assessing Officer recorded that the

assessee was given another opportunity to explain as to why the total cash deposit of Rs. 11,20,785/- should not be treated as unexplained income. The Assessing Officer recorded that no further reply was filed by assessee nor any documentary evidence was furnished. The Assessing Officer added Rs. 11,20,785/- in the income of assessee by passing assessment order dated 28/11/2017 under Section 143(3) r.w.s. 147 of the Act.

4. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). In the grounds of appeal, the assessee has not challenged the validity of reopening under Section 147/148 of the Act. The assessee filed her detailed written submissions. Though, in the written submissions, the assessee submitted that her case was reopened under Section 147 of the Act. In response to notice under Section 148, the assessee filed return of income on 14/09/2017. In the notice under Section 148, it is not clear whether notice under Section 148 was issued with the permission of Commissioner or Chief Commissioner of Income Tax as per provisions of Section 151 of the Act. The notice under Section 148 was issued after expiry of four years from the end of relevant assessment year so the sanction of Commissioner was required. The assessee stated that "it appears that the same is either not obtained or found not to be on record". The assessee also took objection that the Assessing Officer has not disposed

of objection against the reopening. The assessee further stated that there was no case to make a believe that income of assessee has escaped assessment. On merit, the assessee submitted that the entire cash deposit is not income as has been held by the Delhi Tribunal in Bir Bahadur Singh Sijwali ITA No. 3814/Del/2011 reported in 68 SIT 197 (Del). To support her various submissions, the assessee relied on certain case laws. The assessee also reiterated that the assessee belongs to an agriculturist family, copy of land holdings were produced before the Assessing Officer, the husband of assessee is having land of 2.35-75 (hector). The Sarpanch of gram panchayat has issued a certificate of income of Rs. 9.00 lacs per annum from cultivation of mango. The assessee further explained that Rs. 1.10 lacs were his opening cash in hand on 01/11/2008. The assessee has withdrawn Rs. 2,94,223/- prior to 01/04/2009 out of the available balance of Rs. 3,64,195/- as on 01/11/2008. The bank balance was accumulated from foreign gift received from her son. The assessee further withdrawn Rs. 21,300/- prior to cash deposit of Rs. 2,78,585/-. The assessee also withdrawn Rs. 3,44,300/- on 30/06/2009 to support cash deposit of Rs. 82,000/- on 15/06/2009. The assessee received cash gift of Rs. 3.50 lacs from her brother in law which further accumulates the cash balance of Rs. 7,62,438/-. The assessee made deposit of Rs. 6,75,000/- and Rs. 85,000/- on 02/07/2009 and 03/07/2009. The assessee received

remittance of Rs. 3,44,250/- on 02/06/2009 from her son Asmat Saiyad who is British Citizen. On the basis of such contention, the assessee justified the cash deposit which was either on account of withdrawal or redeposit. The assessee claimed cash withdrawal of Rs. 6,63,023/- and cash sales of milk in dairy farming of Rs. 95,926/-, thus a total of Rs. 7,58,949/- was claimed to be justified. Further a cash gift of Rs. 3.50 lacs were received from brother in law of assessee. To substantiate cash gift, from her brother in law, filed notarised confirmation. The assessee further stated that she has furnished name, address of donor and made request to issue notice under Section 133(6) or 131 of the Act to examine such donor. No such notice was issued by Assessing Officer. Thus, in absence of any enquiry from donor, no addition can be made under Section 68 of the Act of Rs. 3.50 lacs. The assessee finally submitted that she has substantiated cash deposit of Rs. 11,20,785/- from cash accumulated of Rs. 12,18,949/- (Rs. 1,10,000/- + Rs. 6,63,023 + 95,926 + Rs. 3,50,000/-).

5. The Id. CIT(A) after considering the submission of assessee, held that from the details furnished by assessee, cash deposit of Rs. 2,78,585/- on 02/06/2009 cannot be accepted as out of opening cash in hand as there was a cash withdrawal of Rs. 21,000/- on 02/05/2009, which clearly corroborates that the assessee has no opening cash balance on 02/05/2009. Further a cash deposit of Rs. 6.75 lacs on 02/07/2009 and

Rs. 85,000/- on 03/07/2009 which are claimed to be out of Rs. 3,44,000/- cash withdrawal on 03/06/2009 and cash gift of Rs. 3.50 lacs from brother in law of assessee. No evidence about the capacity of donor for making such gift is filed. Gift deed is a self-serving document. So far as cash withdrawal of Rs. 3,44,000/-, Rs. 82,000/- on 15/06/2009, Rs. 6.75 lacs on 02/07/2009 and Rs. 85,000/- on 03/07/2009, is concerned, the Id. CIT(A) held that there is a cash withdrawal entry of Rs. 3,500/- on 16/06/2009, thus, only cash deposit of Rs. 82,000/- can be considered to be out of withdrawal of Rs. 3,44,000/- on 03/06/2009. As cash withdrawal of Rs. 3,500/- on 16/06/2009, it can be said that such cash withdrawal of Rs. 3,44,000/- was not available with the assessee for making deposit of cash on 02/07/2009 and 03/07/2009. The claim of agricultural income is already disallowed by the Assessing Officer for the reasons that the land holding documents are not in the name of assessee. During the appellate stage, the assessee has not filed any other evidence to explain the agricultural income in her hand. On the basis of aforesaid observation, the Id. CIT(A) held that only cash deposit of Rs. 82,000/- on 15/06/2009 can be accepted out of cash withdrawal and remaining balance of Rs. 10,38,785/- (Rs. 11,20,785 - Rs. 82,000) was confirmed as unexplained fund. On the submission against validity of reopening, the Id. CIT(A) held that neither grounds of appeal were raised at the time of filing of

appeal nor any additional ground of appeal was filed, thus, the submission of validity of reopening was not entertained, resultantly dismissed. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

6. I have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have gone through the orders of lower authorities carefully. The Id. AR of the assessee submits that the case of assessee was reopened under Section 147 of the Act on basis of information about the cash deposit in savings bank account with bank of Baroda. In response to notice issued by the Assessing Officer, the assessee submitted that she has income of dairy farming and while filing return of income, the assessee offered income of Rs. 95,670/- on account of agricultural income. The assessee also filed evidence of gift from relative of Rs. 3.50 lacs. The deposits in the bank was on account of withdrawal and redeposit within an interval of 30 to 45 days. Such cash was not kept for a long period at home as the assessee is residing in a village from where she is not frequently using banking facility. The cash was kept at her home as her husband was not keeping good health. The gift of Rs. 3.50 lacs were received from Salim Chhajumiya Usmaniya. Though, the assessee could not furnish return of income of Salim Chhajumiya Usmaniya, therefore, the genuineness and

creditworthiness of donor was doubted. The Id. AR submits that the assessee was having sufficient cash withdrawals from 19/11/2008 to 02/06/2009. Before the Id. CIT(A), the assessee has explained the complete withdrawals as well as cash deposits and also furnished cash flow statement for Financial Year 2009-10.

7. The Id AR for the assessee further submits that he has raised additional ground of appeal. The additional grounds of appeal are legal in nature. The additional grounds of appeal may be admitted as no new facts are required to be brought on record for adjudication. To substantiate, additional grounds of appeal, the Id. AR of the assessee submits that the notice under section 148 was received by the assessee, nowhere from such notice it is not clear that if such notice was issued with the permission of Joint Commissioner or Chief Commissioner of Income Tax as mandated under the provisions of Section 151 of the Act. In case of assessee, notice under Section 148 was issued after four years from the end of relevant assessment year, so the sanction of Commissioner of Income Tax is required. From the contents of notice, it appears that, no such sanction was obtained, thus in absence of proper sanction, the reopening under Section 148 is not valid. Since reopening is not valid, therefore, subsequent action of Assessing Officer is *void ab initio*. The Id. AR further submits that the Assessing Officer made reopening on the basis of borrowed satisfaction. It is an admitted fact that the

information was received from Investigation Wing, therefore, cannot be any reassessment proceedings on such information. On receipt of information or material, the Assessing Officer was required to apply his mind on such material to make a belief that income has escaped assessment. Without forming such opinion, the Assessing Officer solely and mechanically relied on such information from other sources, he cannot proceed for reassessment. To support such submission, the assessee relied upon the decision of Hon'ble Delhi High Court in CIT Vs Kamdhenu Steel & Alloy Ltd. (2012) 248 CTR 33 (Del) and CIT Vs Multiplex Trading & Ind. Co. Ltd. (2015) 128 DTR 217 (Del).

8. The Id. AR further submits that the Assessing Officer has not disposed of the objection against the reopening, thus, the Assessing Officer passed the assessment order in violation of principle laid down by the Hon'ble Apex Court in GKN Driveshaft (I) Ltd. 259 ITR 19 (SC). The Id. AR further submits that the entire cash deposit cannot be treated as income of assessee, as has been held in a series of decisions by the Tribunal including in case of CIT Vs Indo Aram Air Services (2016) 283 CTR 92 (Delhi) and Delhi Tribunal in Bir Bahadur Singh Sijwali (supra). The Id. AR of the assessee also relied on the following case laws:

- (i) Amrik Singh Vs ITO 159 ITO 329 (Asr)
- (ii) Praveen Kumar Jain Vs ITO 1331/D/2015 dated 22/01/2015
- (iii) Munni Devi ITA No. 3534/Del/2014 dated 15/09/2016

(iv) Parmitti Setti Setharamamma Vs CIT 57 ITR 532 (SC)

9. On the other hand, the Id. Sr. DR for the revenue supported the order of Id. CIT(A). The Id. Sr. DR for the revenue submits that the cash deposit of Rs. 2,78,585/- on 02/06/2009 cannot be accepted as the deposit out of opening cash in hand as the assessee herself has withdrawn Rs. 21,000/- on 02/05/2009 which clearly shows that the assessee was not having such cash balance available with her. The Id. Sr. DR for revenue submits that the Id. CIT(A) while considering the case of assessee has granted relief which would have been possible in case of assessee. The assessee has not explained nature of deposits and withdrawals. The assessee was receiving huge fund from unknown sources.
10. I have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. I have also deliberated on various case laws relied by Id AR for the assessee. I find that the assessee has raised additional grounds of appeal for challenging the validity of reopening under Section 147 on legal as well as on factual ground. On perusal of assessment, I find that the assessee has not filed any objection against the reopening. The Id. AR for the assessee in his submission, submitted that no new facts is to be brought on record for adjudicating the additional grounds of appeal. As I find that the assessee has not raised any ground of appeal while filing appeal before

the Id. CIT(A) except making reference in her submission. No facts relating to her objection against the validity of reopening or sanction of Joint Commissioner or Commissioner of Income Tax as required under Section 151 of the Act was raised. Thus, I find that the facts relating to additional grounds of appeal are not emanating from the facts of lower authorities. The Ld. AR also argued that the objection of assessee was not disposed off by the Assessing Officer. I find that the assessee has not placed on record copy of such objection, if any raised before the Assessing Officer. No such facts are emanating from the order of lower authorities, thus, in absence of facts which are not emanating from the orders of lower authorities, I am not convinced with the submission of Id. AR of the assessee, therefore, the additional grounds of appeal raised by the assessee are not admitted for adjudication, resultantly rejected unadmitted.

11. Now advertng to the merits of the case, I find that in the original grounds of appeal, the assessee has challenged the addition of Rs. 10,38,785/-. I find that the Assessing officer made addition of Rs. 11,20,785/- on the basis of information received in IDS system that the assessee has made huge cash deposit in her bank account. The assessee was issued show cause notice to substantiate such deposit. The Assessing Officer gave clear finding that the assessee has not furnished any explanation and in absence of explanation, the entire

deposits in the bank account of assessee was treated as unexplained income. Before the Id. CIT(A), the assessee filed detailed written submissions which I have recorded above. I find that the Id. CIT(A) after considering the submission of assessee, granted partial relief to the assessee with regard to deposit of Rs. 82,000/- deposited on 15/06/2009 and remaining addition to the extent of Rs. 10,38,785/- was upheld. Before me, the Id. AR of the assessee vehemently tried to justify that the assessee was having sufficient cash balance of Rs. 6,75,000/- on 16/06/2009. Further the assessee has received a gift of Rs. 3.50 lacs from her bother in law. To substantiate the genuineness of such gift, the assessee filed confirmation of donor. In the confirmation, the donor has confirmed that such gift was given to assessee to meet out the education expenses of her daughter in law. The assessing officer has not investigated fact independently before disallowing the claim of Gift from close relative. Considering the confirmation of the donor I allow the Gift as genuine. So far as other deposits and withdrawal of cash is concerned, the explanation given by the assessee does not inspire confidence, as the assessee on one hand took stand that the money was deposited for the education of her daughter in law and on other hand that her son was remitting money to her. However, still keeping in view the age, status and family back ground of the assessee, I further allow benefit of doubt of Rs. 2.00 lacs, which the

assessee may have received from her close relative and other family member on various occasions. Thus, the assessee is given further relief of 5.50 lacks and remaining addition of Rs. 4,88,785/- (10,38,785 – 5,50,000) is upheld. In the result, the original ground No.1 of the appeal is partly allowed.

12. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 16th January, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 16/01/2023

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat