

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 103 to 105/Rjt/2021
(निर्धारण वर्ष / Assessment Years : 2008-09, 2010-11 & 2011-12)

Shri Kanjibhai Tapubhai Patel Plot No.3990, GIDC, Phase-III, Dared, Jamnagar	बनाम/ Vs.	The Income Tax Officer Ward 3(2), Jamnagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACTPP6152H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Chetan Agarwal, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri B. D. Gupta, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	01/11/2022
घोषणा की तारीख /Date of Pronouncement	25/01/2023

ORDER

PER Ms. MADHUMITA ROY - JM:

This bunch of three appeals at the instance of the Assessee are directed against the orders dated 28.07.2021 (for A.Ys. 2008-09 & 2011-12) & 27.07.2021 (for A.Y. 2010-11) passed by the National Faceless Appeal Centre

(NFAC), Delhi, arising out of the assessment order dated 12.02.2016, 15.12.2017 & 11.12.2017; respectively, passed by the Learned ITO, Ward-3(2), Jamnagar, under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Years 2008-09, 2010-11 & 2011-12.

ITA No. 104/Rjt/2021 – A.Y. 2010-11

2. The assessee, an individual engaged in the business of manufacturing and trading of brass parts, filed its return of income for A.Y. 2010-11 on 03.08.2010 declaring total income at Rs.3,06,610/-. The case was reopened under Section 147 of the Act in relation to the inquiry of suspicious transactions carried out against Late Shri Chhotalal V. Doshi (Prop. of Abhi Enterprise) and it was found that he used to lend his bank account to other persons for commission of Rs. 300/- per Lakh. Further that only current accounts and personal accounts were used to receive unaccounted cash deposits of other parties from all over India through cash withdrawals/cheques clearance, the said cash was handed over to the concerned persons involved in under invoicing and out of the books sales. Five diaries were also impounded wherein unaccounted credits of Rs. 34,15,391/- were written /mentioned against name of the assessee before us during the previous year relevant to assessment year 2010-11. The said unaccounted credits were, according to the Revenue, was unexplained and required to be verified. The Revenue was of the belief that the income chargeable to tax has escaped assessment and the matter was reopened under Section 147 of the Act. It is also a fact that the said information provided by the ADIT was completely relied upon by the Ld.

AO and made addition of Rs.34,15,391/-, which was, in turn, upheld by the Ld. CIT(A). Hence, the instant appeal before us. On the other hand, the case of the assessee is this that they have not carried out any transactions with said Late Shri Chottalal Doshi or his family neither there is any evidence available with the Revenue to establish the said fact as of the further case made out by the assessee. In fact, in order to save the skin of Late Shri Chottalal Doshi from taxation of his unaccounted money and/or unaccounted transactions, these allegations against the assessee was made. The assessee further requested to provide cross examination of Shri Dharmendra Doshi on the basis of whose statement, the case was reopened and addition was made, which was further denied. Under these circumstances, as no opportunities have been given to the assessee to cross examine the said party, the addition on account of unexplained cash credits in the books of third person has been claimed to be not sustainable in the eye of law as of the ultimate case made out by the assessee before us. In support of this, he has further relied upon the judgment passed in the matter of Shri Mukeshkumar Vrajlal vs. ITO in ITA Nos. 54 & 55/Rjt/2021. The Ld. DR, however, failed to controvert such submission made by the Ld. AR. However, he relied upon the order passed by the authorities below. Thus, addition was made and upheld by the Ld. CIT(A).

3. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record. We have further considered the judgment relied upon by the assessee in the case of Shri Mukeshkumar Vrajlal vs. ITO (supra). While granting relief on the identical issue, the Co-ordinate Bench was pleased to observed as follows:

“4. In appeal, Ld. CIT(A), the assessee claimed that the addition cannot be made based on the third party allegations without any evidences and without considering the submissions made after cross examination of the third party. However, the Ld. CIT(A) dismissed the assessee’s appeal with the following observations:

8.1 It is seen that the appellant sought cross examination of Shri Dharmendra Doshi son of Late Shri Chhotglal V. Doshi on whose statement the reopening was made. The appellant was provided with an opportunity to cross examine the said Dharmendra Doshi during the assessment proceedings. It is claimed by the appellant that the said Dharmendra Doshi had made entries in the diary based on the directions of his late father and the said Dharmendra Doshi had admitted during the cross examination that he did not know the appellant. It is also claimed by the appellant that the said Dharmendra Doshi has not produced any evidence of persons depositing the cash in their accounts. It is claimed by the appellant the said Dharmendra Doshi had entered the names of various persons only to avoid payments of tax on his own transactions. It is claimed that no liability should be fastened on him without any supporting evidence. The appellant also relied on various case judgements:- (a) Dhakeswari Cotton Mills Ltd. Vs. CIT 26 ITR 775 (SC) (b) Krishna Chand Chela Ram Vs. CIT 125 ITR 713 (SC) (c) Andaman Timber Industries Vs. CIT (2015) 62 Taxmann.com 3 (SC) (d) Ayubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors. (Civil Appeal No. 7728 of 2012 dated 08/11/2012) (e) Khem Chand Vs. Union of India (AIR 1958 SC 300) (f) Amitabh Bansal Vs. ITO Ward-46(4), [2019] 102 taxmann.com 229 (g) CIT Vs. Indrajit Singh Suri [2013] 33 taxmann.com 281 (Guj) (h) PCIT Vs. Kanubhai Maganlal Patel [2017] 79 taxmann.com 257 (Guj) (i) Late Harbhajan Singh Makkar Vs. ACIT (ITAT Delhi) (ITA No. 2451/Del/2015 dated 16/10/2019) (j) State of MP Vs. Chintaman Sadashiv Vaishampayan (AIR 1961 SC 1623)

8.2 The various claims have been analysed. It is a fact that the said Dharmendra Doshi is a Hawala operator and it is unlikely that he would be knowing all the clients who availed his services. He is also not expected to know the persons who have deposited the cash in their bank accounts except for on whose behalf it is deposited, as the same needs to be withdrawn and be given to the beneficiaries. In such Hawala operations, it is not possible for all the records to be maintained in the manner in which the appellant seeks now. In view of the peculiar manner of Hawala operations, the various claims made by the appellant are not acceptable. Therefore, there is a reasonable probability that the said transaction pertains to the appellant based on the entry in the diary and it is also not mandatory under the Income Tax that the evidence should be beyond doubt to assess a transaction. Considering the same, the addition made is upheld and the ground nos. 2 & 3 are dismissed.

5. Before us, the counsel for the assessee submitted that that the said Late Shri Chhotlal V. Doshi who was a Hawala operator has expired and the entire addition was made on the basis of statement of son of Late Shri Chhotglal V. Doshi i.e. Dharmendra Doshi. He submitted that the additions have been made only on the basis of submissions made by Shri Dharmendra Doshi, which cannot be relied upon. He submitted that in the cross examination of Dharmendra Doshi, he could not give any sort of evidences that alleged transactions were carried out by the assessee, and it is only on the basis of oral instructions from his father he has mentioned the assessee’s name in the fabricated diary. In cross-

examination, therefore Shri Dharmendra Doshi was unable to submit any evidence of whatsoever nature, either direct/indirect/corroborative/substantive to establish that the assessee has carried out any sort of financial transactions with late Shri Chhota Lal Doshi (proprietor of Abhi Enterprises). Shri Dharmendra Doshi has only stated that he has written the assessee's name in the diary on the basis of oral instructions from his father late Shri Chhota Lal Doshi who expired on 12- 11-2010. Other than oral instruction of his father, he has no evidence to prove that the assessee has engaged in the financial transactions on the basis of which the additions have been made by the AO. Further, Shri Dharmendra Doshi was unable to submit names of parties who have deposited cash and bank account of late Shri Chhota Lal Doshi (proprietor of Abhi Enterprises). In this regard, counsel for the assessee drew our attention to page 69 of the paper book, wherein Shri Dharmendra Doshi has stated "as have already stated that the amount deposited in said bank account was sales consideration of all businessmen of Jamnagar. I was just providing service to them on commission basis. I don't know about parties who have deposited the amount. Since the said amount represents out of books sales/sale consideration of businessmen of Jamnagar, hence liable to pay taxes on them". The counsel for the assessee relied upon the case of ACIT v. Lata Mangeshkar 97 ITR 696, wherein it was held that entries made in the accounts of third-party regarding payment to the assessee is not sufficient as there is no guarantee that the entries were genuine in absence of any corroborative evidence. The counsel for the assessee submitted that the statement of Shri Dharmendra Doshi was accepted by the ADIT at face value, without any further investigation about the veracity of the answers. In response, Ld. D.R. relied upon the observations made by the AO and CIT in their respective orders.

6. We have heard the rival contentions and perused the material on record. We observe that in the instant set of facts, there is no corroborative evidence has been placed on record to show that it was the assessee who had deposited the said amount in the bank accounts operated by Late Shri Chhotalal V. Doshi, who was a Hawala operator. The entire additions were made only on the basis of statement recorded of son of Late Shri Chhotalal V. Doshi, who has stated that he had written the name in the diary so maintained by him, on the basis of instructions of his father. Apart from this, no evidence has been placed on record to substantiate that the money deposited in bank account maintained by Late Shri Chhotglal V. Doshi, belonged to the assessee. We observe that even the Ld. CIT(A) while passing the order has made following observations: "The various claims have been analysed. It is a fact that the said Dharmendra Doshi is a Hawala operator and it is unlikely that he would be knowing all the clients who availed his services. He is also not expected to know the persons who have deposited the cash in their bank accounts except for on whose behalf it is deposited, as the same needs to be withdrawn and be given to the beneficiaries. Therefore, there is a reasonable probability that the said transaction pertains to the appellant based on the entry in the diary and it is also not mandatory under the Income Tax that the evidence should be beyond doubt to assess a transaction. Considering the same, the addition made is upheld and the ground nos. 2 & 3 are dismissed. Therefore, from the above observations of the Ld. CIT(A) while passing the order, it is evident that the additions were made only on the basis of a "reasonable probability" that the money belonged to the assessee, and no substantive corroborative evidence has been adduced to show that the money belonged to the assessee.

6.1 In the case of Abhay Kumar Bharamgouda Patil [2018] 96 taxmann.com 377 (Panaji - Trib.), a survey was carried out in case of society carrying on banking business. In course of survey, a diary was impounded which was maintained by one AGM of said society. The

Assessing Officer noted that diary contained entries of deposits received from various persons. He thus recorded statement of said AGM, who admitted that said deposits were undisclosed money of depositors and assessee was one of them. On basis of said statement, Assessing Officer made addition of unexplained money to assessee's income. It was noted that said AGM could not even identify persons who brought money to him or denominations in which money was brought. Moreover, survey operations did not bring on record any acknowledgment/receipt in respect of money received from assessee. Further, said AGM could not substantiate his statements by bringing any other credible or corroborative evidence on record. Accordingly, the Tribunal held that in aforesaid circumstances, impugned addition made in hands of assessee deserved to be set aside.

6.2 In the case of Pradeep Amrutlal Runwal v. TRO [2014] 47 taxmann.com 293 (Pune - Trib.), during search proceedings in case of 'D Group', some loose papers were seized wherein certain amounts were written against name of assessee. The Assessing Officer made addition of said amount as undisclosed income in name of assessee. The ITAT held that since no evidence was found relating to existence of any transaction between assessee and 'D Group' and no corroborative evidence was found to suggest that assessee had actually received said amount, no addition could be made merely on basis of noting in loose papers found during search proceedings in case of 'D Group' against name of assessee.

6.3 In the case of Jawaharbhair Atmaram Hathiwala v. ITO [2010] 128 TTJ 36 (Ahmedabad) (UO), the Ahmedabad Tribunal held that where assessee was alleged to have paid a sum as 'on money' for purchase of flat I.T.A Nos. 54 & 55/Rjt/2021 A.Y. 2010-11 & 2011-12 Page No Shri Mukeshkumar Vrajlal Akbari 9 but no evidence could be brought on record by Revenue to show that in fact assessee had paid 'on-money' to developers, and no document containing signature of assessee or handwriting of assessee to corroborate above making of payment by assessee was found during course of search, addition on account of such alleged payment was not justified.

7. In light of the decisions cited above and on appreciation of facts of the case, we are of the considered view that the Revenue has not brought forth any substantive/corroborative evidence to demonstrate that the money deposited in the bank account operated by Late Shri Chotalal V. Doshi, belonged to the assessee. Accordingly, in light of the judgement cited above, we are hereby deleting the additions made by the Department.

8. In the result, the appeal of the assessee is allowed.”

4. As the Revenue has not brought on record any corroborative evidence to demonstrate that the money deposited in the Bank Account operated by Late Shri Chotalal Doshi belong to the assessee, the Co-ordinate Bench has been pleased to delete the addition made by the authorities below. We, under the identical facts and circumstances of the case, do not find any reason to deviate from such stand taken by the Co-ordinate Bench. Hence, respectfully,

relying upon the same, we delete the addition made by the authorities below.
The appeal preferred by the assessee for A.Y. 2010-11 is, thus, allowed.

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5. The decision in ITA No. 104/Ind/2021 for A.Y. 2010-11 shall apply mutatis mutandis in ITA Nos. 103 & 105/Rjt/2021.

6. In the combined result, all three appeals of assessee are allowed.

This Order pronounced on 25/01/2023

Sd/-
(SHRI WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 25/01/2023
S. K. SINHA

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,
Ahmedabad
6. गार्ड फाईल / Guard file.

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot