

IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND MRS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 240/Rjt/2022

निर्धारणवर्ष/Assessment Year: 2009-10

Smt. Nazima Zahir Abbas, Ground Floor, Naval Complex, Khaji Street, Khatkiwad, Daman-396210 PAN : AAFPZ 1308 R	Vs.	Income Tax Officer, Ward-2, Gandhidham
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Hardik Vora, AR	
Revenue by :	Shri B.D. Gupta, Sr. DR	

सुनवाई की तारीख/Date of Hearing : 16.02.2023

घोषणा की तारीख /Date of Pronouncement: 28.02.2023

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

Present appeal has been filed by the assessee against order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 25.07.2022 passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Assessment Year (AY) 2009-10.

2. The grounds raised are as under:-

*"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming addition of Rs.8,22,442/- on account of cash deposit in bank account.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in confirming addition of cash deposit in joint bank account, which was admittedly disclosed in her husband books.*

*3. It is therefore prayed that the above addition/disallowance made by the Assessing Officer may please be deleted."*

3. The solitary issue in the present appeal relates to addition made to the income of the assessee on account of cash found to be deposited in her bank account amounting to Rs.44,32,942/- remaining unexplained.

4. Before the Assessing Officer, the assessee did not attend the proceedings and, therefore, the Assessing Officer made addition of entire cash deposits to her income. Before the learned CIT(A), the assessee contended that the impugned bank account was a joint account of the assessee, being second account holder, with her husband being the first account holder. The assessee had contended that all the transactions in the impugned bank account related to her husband only which had been considered and scrutinized during assessment proceedings in the case of her husband and no addition was made to his income. All evidences in this regard were filed before the learned CIT(A) who forwarded the same to the Assessing Officer for his comments. The Assessing Officer in his remand report admitted that the impugned bank account was reflected in the balance-sheet of the husband of the assessee who had been subjected to scrutiny assessment for the impugned year under Section 143(3) of the Act and an addition of only Rs.28,091/- had been made in his case on account of disallowance of miscellaneous expenses. He pointed out that the assessee's husband was engaged in the business of footwear; however, he stated in the remand report that since the husband had reflected business income of only Rs.36.10 lakhs while the cash deposits in the bank account were to the tune of Rs.44.32 lakhs, the difference was to be considered as undisclosed income of the assessee. The relevant portion of the remand report reproduced at paragraph No.3.1 of the learned CIT(A)'s order is as under:-

*"3.1 On perusal of above submission made by the appellant as verification of case records of appellant and her husband Zahir Abbas, following facts emerges which put before your honour for consideration :-*

*1. The assessee first contention before your honour that*

*"During the year under consideration the appellant was holding joint account(2nd) with her husband Mr. Zahir Abbas Manjra who is the first*

account holder of the account No.380010100006439 maintained with Axis Bank, Daman. Please find enclosed herewith copy of bank account statement reflecting first holder name as Zahir Abbas Manjra and second holder as Nazima Zahir Abbas."

In the above connection, it is submitted that on pursual of Bank statement of Axis Bank Account No.380010100006439 for the Period 01.04.2008 to 31.03.2009 as available on case record of the appellant (Copy attached for reference as Annexure-1), it is seen that the customer name mentioned as Mr. Zahir Abbas and joint holder name shown as Nazima Zahir Abbas. In this regard, the case record of the appellant has been gone through, in which AIR information sheet is available. In the AIR information (copy enclosed for reference as Annexure-2), it is mentioned in respect of the above-mentioned account that 1st party is Zahir Abbas and 2nd party as Nazima Zahir Abbas.

1. The assessee second contention before your honour that

"During the year under consideration, my husband and 1st account holder of the bank account Mr. Zahir Abbas Manjra was running a proprietary concern business in the name and style of M/s. Moonstar Footwear which is engaged in the business of trading of footwears. Copy of license from Shop and Establishment is enclosed for ready reference. During the year under consideration, my husband as 1st account holder, Mr. Zahir Abbas Manjra has made cash/credit deposition in the account No.380010100006439 maintained with Axis Bank, Daman. These cash/credit deposition were out of the regular business activities carried out by him in the name and style of M/s. Moonstar Footwear."

In the above connection, the case record of the assessee's husband Shri Zahirabbas Ismail Manjara for A.Y.2009-10 available in this office has been gone through. On perusal of details available on record, it is seen that the said case was selected through CASS for verification of AIR information of Cash transaction. The said assessee filed return of income for A.Y.2009-10 declaring total income at Rs.3,54,871/-. As per case record, it is seen that during the course of assessment proceedings, various details/evidence salongwith books of accounts were called for by the AO which submitted/produced by the assessee for verification and assessment was finalized u/s143(3) of the Act on 22.11.2011 determining total income at Rs.3,82,960/- after making addition of Rs.28,091/- on disallowance of Misc. expenses. In the said assessment order, it was mentioned that the assessee is engaged in the business of Footwear. Further on perusal of return of income for A.Y.2009-10 of Sh. Zahirabbas Ismail Manjara (relevant part of return attached for reference as Annexure-3), the Nature of business is mentioned as Trading- Retailers on the name of Moonstar Footwear.

Further, on perusal of balance sheet available on case record of the assessee's husband Shri Zahirabbas Ismail Manjara for A.Y.2009-10 (copy attached for reference as Annexure-4), it is seen that there is mentioning of bank A/c Axis

Bank Ltd SA with closing balance at Rs.6,03,010/-. However, on perusal of trading Account available on case record of the assessee's husband Shri Zahirabbas Ismail Manjara for A.Y.2009-10, it is seen that sales has been shown as Rs.36,10,500/- whereas the total cash/credit the Period 01.04.2008 to 31.03.2009 in the Bank Account No.380010100006439 held with Axis Bank Ltd was Rs.44,32,942/-, which was the amount actually added in the case of the Appellant in the A.Y.2009-10 in respect of above bank account as undisclosed income. Even, for a moment, it is considered that the above-mentioned bank Account No.380010100006439 held with Axis Bank Ltd was considered to be disclosed in the hand of the assessee's husband Shri Zahirabbas Ismail Manjara for A.Y. 2009-10, even then the reason/explanation for differential amount between sales turnover of Rs.36,10,500/- disclosed by the assessee's husband Shri Zahirabbas Ismail Manjara in A.Y.2009-10 and the total cash deposit/credit entries amounting to Rs.44,32,942/- in the bank account No.380010100006439 has required to be further explained by the appellant before your honour with the supporting evidences. 4. In view of above facts and discussion made in preceding paras, the above arguments/details/evidences deserve no cognizance as these were never presented before the AO during the assessment proceedings despite enough opportunity was given as well as the case of the assessee has not satisfied to any condition laid down in Rule 46(a)(1). Considering the above facts of the case, it is requested before your honour that the arguments of the assessee may kindly be rejected and the order of the A.O. may kindly be decide on merit of the case.

*Submitted for kind perusal."*

5. The learned CIT(A) agreed with the findings of the Assessing Officer in his remand report as above and upheld addition to the extent of difference between the cash deposited in the bank account and the turnover declared by the husband of the assessee amounting to Rs.8,22,422/-. His findings at paragraph nos. 5.6.1 to 5.6.4 of his order are as under:-

*"5.6.1 Ground No.2 of the appeal pertain to the addition of Rs.44,32,942/- by the Assessing Officer. The appellant has contended that the bank account is used by her husband for his business and the deposits have been duly considered by him in his return, which has been duly assessed by the Department u/s 143(3) of I.T. Act.*

*5.6.2 The Assessing Officer has clarified in the Remand Report that the appellant's husband Mr. Zahir Abbas had shown total sales of Rs.36,10,500/- in his accounts, whereas the total credit in the bank account amounted to Rs.44,32,942/- and that the difference required to be explained.*

5.6.3 *The appellant has not offered any explanation in respect of this difference between the total sales declared by her husband (Rs.36,10,500/-) and the total deposit in the joint account (Rs.44,32,942/-). Her only explanation is that she is the second holder and the amount in question has already been considered her husband.*

5.6.4 *The explanation offered by the appellant in respect of the difference (Rs.44,32,942/- - Rs.36,10,500/-) is not satisfactory. The appellant is one of the holders of the joint account. She can not deny about the transactions without offering satisfactory explanation regarding the same. It is not a case that the account did. not belong to her and belonged to someone else. The fact that her husband had shown turnover of business at Rs.36,10,500/- shows that the balance amount was not out-of the business activities of the appellant's husband. The appellant had deliberately not complied with any of the statutory notices and even in the appellate proceeding, has not explained the source of the cash deposit, in excess of the amount of turnover of her husband's business. In these circumstances, the onus is on the appellant to explain the source of the balance cash deposit, over and above the business turnover of her husband, which has not been discharged by her. In these circumstances, the addition of Rs.36,10,500/- is deleted as the same has been duly considered in the hands of the appellant's husband, but addition in respect of the balance amount (Rs.44,32,942/- minus Rs.36,10,500/-) Rs.8,22,442/- is confirmed. The Assessing Officer shall give consequential effect."*

6. We have gone through above and we are not in agreement with the findings of the learned CIT(A). As long as it is an admitted fact on record that the impugned bank account was a joint account of the husband of the assessee and the assessee - husband being the first account holder and the said bank account was reflected in the balance-sheet of the husband of the assessee, it stands confirmed and accepted that all transactions in the bank account pertained to the assessee's husband only duly reflected in his financial statements. Moreover the fact that the assessee's husband had been scrutinized by the department for the impugned year, it shows that the bank account was scrutinized and all entries therein found pertaining to the husband of the assessee by the Department. There is no reason, therefore, thereafter to make any addition on account of the transactions in the bank statement in the hands of any other person, leave alone the assessee. Even otherwise, there is no basis for attributing the difference in the cash deposited in the bank account and the

turnover disclosed by the assessee's husband to be attributable to the assessee as her income. The entire addition of Rs.8,22,442/-, we find, in the present case has been made merely on the basis of surmises, conjectures and unreasonable presumptions. The addition, therefore, of Rs.8,22,442/- is not tenable and is directed to be deleted.

7. In effect, the appeal of the assessee is allowed.

Order pronounced in the open Court on 28/02/2023 at Ahmedabad.

Sd/-

Sd/-

(MADHUMITA ROY)  
 JUDICIAL MEMBER

(ANNAPURNA GUPTA)  
 ACCOUNTANT MEMBER

Ahmedabad; Dated 28/02/2023

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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 प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Rajkot,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)  
 आयकर अपीलीय अधिकरण  
 ITAT, Rajkot