

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 30/Rjt/2019
निर्धारण वर्ष/Asstt. Years: 2014-2015

Shri Himatlal Kanjibhai Raval, 21-Avkar, Arvind Park Society, Dolatpara, Junagadh-370001. PAN: AGOPR9485J	Vs.	I.T.O., Ward-2, Junagadh.
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Assessee by :	Shri Mehul Ranpura, A.R
Revenue by :	Shri B.D. Gupta, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **06/02/2023**
घोषणा की तारीख/**Date of Pronouncement**: **24/03/2023**

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)-3, Rajkot, dated 13/12/2018 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 2014-15.

2. The assessee has raised following grounds of appeal:

1.0 *The grounds of appeal mentioned hereunder are without prejudice to one another.*

2.0 *The Id. Commissioner of Income-tax (Appeal)-2, Rajkot [hereinafter referred as to the "CIT(A)"] erred on fact as also in law in alleging that the appellant failed to furnish any cogent evidence to controvert the finding of the AO and thereby upholding action of the AO in making addition of Rs.15,35,680/- u/s.69B of the Income-tax Act, 1961 [hereinafter referred as to the "Act"] on account of alleged unexplained investment in FDRs with the Junagadh Commercial Co-operative Bank. The addition confirmed is totally unjustified on facts as also in law and may kindly be directed to be deleted.*

2.1 *The Id. CIT(A) further erred in not considering the facts on record that the assessment made by the AO is without providing any opportunity of being heard to the appellant and against the principal of nature justice which deserves to be annulled and may kindly be annulled.*

3.0 *The Id. CIT(A) erred on **fact** as also in law in confirming addition of Rs.1,21,573/- on account of alleged undisclosed interest received on FDRs held with bank. The addition confirmed is totally unjustified on facts as also in law and may kindly be directed to be deleted.*

4.0 *Your Honor's appellant craves leave to add, amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.*

3. The interconnected issue raised by assessee is that the learned CIT(A) erred in confirming the addition of the AO for Rs. 15,35,680/- on account of unexplained investment and addition of Rs. 1,21,573/- being interest on such investments.

4. The necessary facts are that the assessee is an individual and engaged in the business of letting vehicles on hire. The assessee for the year under consideration declared total income of Rs. 2,14,550/- which includes interest income of Rs. 22,551/- only. However, the AO on verification of ITS data found that the assessee received interest income of Rs. 1,30,160/- and Rs. 13,934/- on FDR held with The Junagadh Commercial Cooperative Bank and Bank of Baroda respectively. Likewise, the AO further noticed that the assessee in the balance sheet disclosed FDR balance of Rs. 7,33,190/- only whereas as per report submitted by The Junagadh Commercial Cooperative Bank and Bank of Baroda FDR balance stand at 20 lakh and Rs. 2,68,870/- respectively.

5. The assessee, on question by the AO, submitted that during the year he earned interest income of Rs. 56,565/- on FDR of Rs. 11,25,435/- only. He further submitted the FDRs with the Junagadh Commercial Cooperative Bank were made out of joint account held with his brother namely Shri Labhshankar Raval who was a government employee and received retirement benefit Rs. 11.50 lakh which was utilized for making FDR. In other words, out of FDR of Rs. 20 lakh, FDR of Rs. 11.50 lacs with the Junagadh Commercial Cooperative Bank belongs to his brother.

6. However, the AO was not convinced with submission of the assessee for the reason that the FDR was in the name of assessee only. The AO also found that there was no cogent evidence brought by the assessee suggesting that the retirement benefit received by his brother were utilized for making such FDRs. Therefore, the AO treated amount of Rs. 15,35,680 being difference between the amount of FDR as per bank (Rs. 22,68,870/-) and amount of FD disclosed in the books (Rs. 7,33,190) as unexplained investment of the assessee and added to the total income. Likewise, the AO also made addition of Rs. 1,21,573/- being difference between amount of interest credited to assessee as per ITS data and amount of interest offered by the assessee.

7. Aggrieved assessee contested the addition made by the AO before the learned CIT(A) who also confirmed the addition made by AO by holding that the AO made cross examination with bank where it was confirmed that the FDRs solely belong to the assessee only. The assessee was provided sufficient opportunity by the AO to establish that retirement benefits received by his brother were utilized for making FDR but no cogent evidence furnished.

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

9. The learned AR before us filed a paper book running from pages 1 to 16 and contended that an amount of Rs. 11.50 lakh was representing the FDR out of the money receipts from the brother's account. Therefore, to this extent, there cannot be any addition to the total income of the assessee. Likewise, the interest earned by the assessee on the amount of FDR's made out of the money received from the brother cannot be made subject to tax in the hands of the assessee.

10. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the assessee was having FDR with two Banks namely, The Junagadh Commercial Cooperative Bank and Bank of Baroda and earned interest income of Rs. 1,30,160/- and Rs. 13,934/- on the same. The assessee in the books of account has the shown FDRs at Rs. 7,33,190/- only and offered income of Rs. 22,551/- only. The assessee contended with respect to the FDRs of The Junagadh Commercial Cooperative Bank that he utilized an amount of Rs. 11.5 lakh of his brother who received retirement benefit from Junagadh Municipal Corporation and interest income to this extent belongs to his brother only. The explanation of the assessee was not accepted by the both the lower authorities and the difference between the FDR & interest credited as per bank viz-a-viz amount shown by the assessee in the books were added to total income.

11.1 With regard to the claim of the assessee that his brother was employee of Junagadh Municipal Corporation (JMC) and received retirement benefit, we note that the learned AR before us has furnished certificate of JMC stating that assessee's brother Shri Labhshankar Kanjibhai Raval received retirement benefit of Rs. 15,66,915/- in the following manner:

Shri Labhshankar Kanjibhai Raval was serving in Health Department as permanent cadre. He is retired on 03.06.2013 due to age limit and he was given following ellonumnets which is hereby certify.

1. P.F -Rs.9,38,305/- Cheque No.000645 Dt.01.08.2013
2. Gratuity -Rs.3,50,000/- Cheque No.70150 Dt.01.10.2013

3. *Priviledge Leave -Rs.2,78,610/- Cheque No.70173 Dt.29.11.2013*

11.2 The above amount was credited to the bank account of Shri Labhshankar Kanjibhai Raval held with State Bank of India which is placed on pages 9 to 11 of paper book. Out of total credit of retirement benefit, an amount of Rs. 11.5 lakh was transferred to the joint bank account of assessee and Shri Labhshankar Kanjibhai Raval held with The Junagadh Commercial Cooperative Bank which is placed on pages 12 to 13 of paper book and on the same day, the impugned amount was transferred to FDR account which can be verified bank certificate placed on page 14 of paper book. The details of FDR created out of such amount received from his brother and interest thereon are detailed as under:

FDR No	FDR date	FDR amount	Interest
1	08-08-2013	Rs. 1 lakh	Rs. 6,803/-
2	08-08-2013	Rs. 1 lakh	Rs. 6,803/-
3	08-08-2013	Rs. 1 lakh	Rs. 6,803/-
4	08-08-2013	Rs. 1 lakh	Rs. 6,803/-
5	08-08-2013	Rs. 1 lakh	Rs. 6,803/-
7	30-08-2013	Rs. 1 lakh	Rs. 6,171/-
8	10-10-2013	Rs. 3.5 lakh	Rs. 17,545/-
220	06-12-2013	Rs. 2 lakh	Rs. 6,425/-
Total		Rs. 11.5 lakh	Rs. 64,156/-

11.3 Thus, from the above, the source of new FDR aggregating to Rs. 11.5 Lakh made with The Junagadh Commercial Cooperative Bank, got established and same belong to the brother of the assessee. Accordingly, the interest on the same for Rs. 64,156/- also belongs to the brother of the assessee and no addition on this can be made in the hand of the assessee.

11.4 Moving ahead, we hold that the remaining FDR of Rs. 8.5 lakh with The Junagadh Commercial Cooperative Bank and FDR of Rs. 2,68,870/- with Bank of Baroda and interest thereon for Rs. 66,004 & Rs. 13,934/- belong to assessee. However, the assessee in the books of account has shown FDR investment of Rs. 7,33,190/- only and offered income of Rs. 22,551/- for which no cogent explanation was submitted by the assessee either before the lower authorities or

before us. Therefore, in our considered view, the addition on account on unexplained investment for Rs. 3,85,680/- (8,50,000 + 2,68,870 – 7,33,190) and interest thereon for Rs. 57,387/- (66,004 + 13,934 – 22,551) needs to sustained. Hence, the ground of appeal of the assessee is partly allowed.

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

Order pronounced in the Court on 24/03/2023 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER
(True Copy)

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 24/03/2023
Manish