

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

ITA No. 514/Srt/2019 (Assessment Year 2007-08)

(Virtual hearing)

Popat Yasin Abdulganibhai, Son & L/H of Late Gani Mohammad Popat, Bombay Market, Zanda Chowk, Near S.T. Bus Depot, Vapi. PAN No. AKVPP 0747 J	Vs.	I.T.O., Ward-3, Vapi.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Ms. Amrin Pathan, AR
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	28/02/2023
Date of pronouncement	02/05/2023

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 10/05/2016 for the Assessment Year (AY) 2007-08. The assessee has raised following grounds of appeal:

- "1. The learned Commissioner of Income Tax (Appeals), Valsad ["CIT(A)"] erred in fact and in law in passing the order without giving proper opportunity of being heard.*
- 2. The learned CIT(A) erred in fact and in law in confirming the action of learned Income Tax Officer, Ward-3, Vapi ["the AO"] in reopening the assessment by invoking the provisions of section 147 of the Income Tax Act, 1961 ("the Act").*
- 3. The learned CIT(A) erred in fact and in law in confirming the action of the Id. AO in invoking the provisions of section 147 despite the fact that the Id. AO had no reason to believe that any income chargeable to tax had escaped assessment.*

Without prejudice to above:

- 4. The learned CIT(A) erred in fact and in law in confirming the action of Id. AO in making an addition of Rs. 8,08,000 as undisclosed income of the Appellant.*

5. *The learned CIT(A) erred in fact and law in confirming the action of Id. AO in making the addition of undisclosed income on account of cash deposit despite the fact that the source of the cash deposit of Rs. 8,08,000 was explained by the Appellant.*
 6. *The learned CIT(A) erred in fact and law in confirming the action of the Id. AO in making the addition of undisclosed income on account of cash deposit without controverting the explanation of source furnished by the Appellant and without bringing on record any other source of cash deposit.*
 7. *The learned CIT(A) erred in fact and law in confirming the action of the Id. AO in making the addition of undisclosed income without appreciating the facts in proper perspective.*
 8. *The learned CIT(A) erred in fact and law in confirming the action of Id. AO in making the addition of undisclosed income on the basis of assumptions, surmises and conjectures.*
 9. *Without prejudice to above, the learned CIT(A) erred in fact and in law in not directing the Id. AO to verify the evidences filed by the Appellant and allow appropriate relief to the Appellant.*
 10. *The learned CIT(A) erred in fact and in law in confirming the action of the Id. AO in charging interest u/s. 234A of the Act.*
 11. *The learned CIT(A) erred in fact and in law in confirming the action of the Id. AO in charging interest u/s. 234B of the Act.*
 12. *The learned CIT(A) erred in fact and in law in confirming the action of the Id. AO in initiating penalty u/s 271(1)(c) of the Act.*
 13. *Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.”*
2. Initially, this appeal was filed on 11.11.2019, under the signature of assessee. After filing appeal, the assessee died on 05.07.2021. The legal heir of assessee filed an application for bringing legal heir of assessee on record vide application dated 02/12/2022. In the application, the son of assessee namely Popat Yasin Abdulganibhai prayed for substituting his name in place of his father as legal heir. The applicant Popat Yasin Abdulganibhai has also filed fresh Form No. 36 substituting his name. The Assessing Officer/Revenue has not filed any objection against impleading

Popat Yasin Abdulganibhai as legal heir of deceased assessee. Considering the contents of application, fresh Form No. 36 is taken on record and the name of Popat Yasin Abdulganibhai was substituted in appeal.

3. On further perusal, I find that the impugned order was passed by the Id. CIT(A) on 10/05/2016, however, the present appeal was filed only on 11/11/2019. The applicant/deceased assessee filed application for condonation of delay. In the application it was contended that the impugned order was passed on 10/05/2016 and was received on the same date and this appeal was required to be filed on or before 09/07/2016. However, the appeal was filed after a lapse of more than three years of period of limitation. The assessee further contended that he was as super senior citizen aged 87 years and was suffering age related physical problem and memory loss. The assessee was not well besides old age related problems. The assessee was suffering from blood pressure, diabetes and kidney and was under treatment for last 10 years. The assessee was living with his wife who is also a super senior citizen. Due to ill-health and medical problem, the assessee was unable to forward the order of Id. CIT(A) to his consultant to enable him to file appeal before the Tribunal. The assessee was also having mental problem. Due to old age, the assessee forget about the receipt of order due to old age related memory loss. The son and daughter of the

assessee resides in London (UK), who was not aware about such proceedings. On visit to assessee on account of social occasion, they found that there are some income tax paper lying alongwith postal documents. Ongoing through such document and order of appeal, they realized to send those papers to his consultant and on their advice, filed appeal before the Tribunal. It is further stated that failure to file appeal is not intentional but beyond the control of assessee. The assessee prayed for condoning the delay. The assessee also referred various case laws in his application.

4. The learned Authorised Representative (Id. AR) of the assessee while referring the contents of application for condonation of delay submitted that the delay in filing appeal was neither intentional nor deliberate but for the reasons that the assessee was quite aged person and suffering due to old age related ailment and memory loss and ultimately died on 05/07/2021 due to old age. The assessee was suffering by various old age ailment coupled with memory loss. The appeal was filed by assessee when his family members visited him on some social function in November, 2019. The Id. AR of the assessee submits that lenient view may be taken and delay may be condoned as the delay in filing appeal was not deliberate or intentional and the assessee is not going to be benefited by filing appeal belatedly.

5. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that no evidence of any ailment or treatment of any age related ailment is filed on record. The Id. Sr. DR submits that the assessee has failed to explain the delay in proper manner.
6. I have considered the submissions of both the parties and considering the fact that the assessee is/was 87 years of age at the time of filing appeal and age related problem including memory loss are quite often in such age. Though, no documentary evidence to support the age related ailment is filed, yet it is a fact of common knowledge that such age related issue are quite obvious. Considering the facts and circumstances of the case, I am inclined to condone the delay in filing appeal and I condone the delay in filing appeal and admit the same for adjudication on merit. Now adverting to the merit of the case.
7. Briefly stated facts of the case are that for the A.Y. 2007-08, the assessee filed return of income on 31/03/2008 declaring income of Rs. 1,50,857/- . Subsequently, the case of assessee was reopened under Section 147 of the Income Tax Act, 1961 (in short, the Act). Notice under Section 148 of the Act was issued on 08/04/2014. The case of assessee was reopened on the basis of information that the assessee has made cash deposit of Rs. 10.00 lacs in his savings bank account in Sardar Bhiladwala Pardi People's Co-Operative Bank Ltd., Vapi. The Assessing Officer after

recording reasons that income of assessee has escaped assessment and served notice under Section 148 of the Act. Reasons recorded were supplied to the assessee. The Assessing Officer has not recorded whether return in response to notice under Section 148 was filed or not. The Assessing Officer after serving statutory notices, proceeded for reassessment. During the assessment, the Assessing Officer issued show cause notice dated 11/03/2015. In the show cause notice, the Assessing Officer asked the assessee to explain the source of cash deposit to the extent of Rs. 8,68,000/- (Rs. 10,00,000/- - Rs. 1,32,000/- rental income shown by assessee) should be treated as unexplained cash deposit. The assessee filed his reply dated 25/03/2015. In the reply, the assessee stated that he has received Rs. 60,000/- as deposited from tenant against letting of shop, Rs. 60,000/- was received from Afsana Market being a member of AOP and income disclosed in the return of income, Rs. 2,89,000/- received from Shri Iqbal Sarang, son in law of assessee, who is settled in U.K., receipt was furnished, Rs. 2.00 lacs as loan amount received from Smt. Hanifa S. Popat, sister in law of assessee and Rs. 2,59,000/- has assessee's own savings. On the basis of aforesaid bifurcation, the assessee submits that the amount of Rs. 8,68,000/- has been explained.

8. The Assessing Officer not accepted the reply of assessee. The Assessing Officer recorded that the cash deposit of Rs. 8.00 lacs in bank account

was deposited on one time, hence, it is difficult to appreciate that the assessee got all the amounts from all the persons as per his bifurcation. No substantive proof or evidence about the loan from Iqbal Sarang and Smt. Hanifa S. Popat were furnished despite giving opportunity to the assessee. The Assessing Officer accepted Rs. 60,000/- received from AOP (Afsana Market being a member) as explained and remaining of Rs. 8,08,000/- was treated as unexplained and added accordingly.

9. On appeal before the Id. CIT(A), the assessee challenged the additions on merit only. No grounds of appeal against reopening was raised. To substantiate the deposit in bank account, the assessee filed his submission. The submission of assessee is recorded in para 5 of order of Id. CIT(A). The assessee almost repeated the similar contention as submitted before the Assessing Officer. In addition to the assessee, he submits that the assessee could not produce the persons from whom the assessee received cash as Smt. Hanifa S. Popat died, Sh. Iqbal Sarang is not living in India and the tenant was not reachable. Copy of passbook, URO exchange confirmation of 3400 UROS received from Iqbal Sarang was furnished.
10. The Id. CIT(A) after considering the submission of assessee, upheld the addition by taking a view that no documentary evidence to support the contentions were tendered. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

11. I have heard the submissions of Id. AR of the assessee and the Id. Sr. DR for the revenue. Ground No. 1 of the appeal relates to not giving proper opportunity by the Id. CIT(A). I find that no submission was made against this ground of appeal, therefore, this ground of appeal is treated as not pressed and dismissed accordingly.
12. Grounds No. 2 and 3 of the appeal relates to validity of reopening under Section 147 of the Act. The Id. AR of the assessee submits that reopening is merely based on deposit in bank account is mere assumption that the income of assessee has escaped assessment and reopening on such mere cash deposit is not valid. To support such submission, the Id. AR of the assessee relied upon the following decisions:
- (i) Bir Bahadur Singh Sijwali Vs ITO (2015) 53 taxmann.com 366 (Delhi Trib)
 - (ii) Gurpal Singh Vs ITO (2016) 71 taxmann.com 108 (Amritsar Trib)
13. On merit, the Id. AR of the assessee submits that the assessee was a senior citizen and has fully explained about the source of cash deposit. The assessee received Rs. 2.89 lacs from his son in law which was fully explained, Rs. 2.00 las was received from his sister in law and Rs. 2.59 lacs was assessee's own savings. Apart from that the assessee also received Rs. 60,000/- as deposits from tenant against letting of shop. Thus, the assessee has fully explained such deposits.
14. On the other hand, the Id. Sr. DR for the revenue submits that no grounds of appeal against validity of reopening was raised by the assessee before the Id. CIT(A). The assessee has not filed any objection before the

Assessing Officer against reopening of the case. The assessee all of a sudden has challenged the validity of reopening once the assessee accepted by not raising objection against reopening and thereafter not raising ground of appeal before the Id. CIT(A) thereby now estopped from raising such ground of appeal. Moreover, the facts related to opening is not emanating from the orders of lower authorities. Issue of reopening is mixed question of fact and law which cannot adjudicate at this stage. The case laws relied by Id AR for the assessee are not applicable as the facts of the present case are quite different.

15. On merit, the Id. Sr. DR for the revenue submits that the assessee has not filed even a single piece of evidence to substantiate that any such amount as claimed by assessee was received either from relative or from tenant as a deposit against letting of shop. In absence of evidence, the assessee failed to substantiate the cash deposit which was deposited in one time. The Id. Sr. DR submits that the assessee has not deserve any further relief.
16. I have considered the submissions of both the parties and perused the record carefully. I find that grounds No. 2 and 3 of the appeal relates to validity of reopening, the Id. AR of the assessee relied on the decision of Coordinate Bench of Delhi Tribunal in Bir Bahadur Singh Sijwali Vs ITO (supra) and Amritsar Bench in Gural Singh Vs ITO (Supra), I find that facts of both the case laws relied by the Id. AR of the assessee at little

variance. In the said case, the Assessing Officer reopened the case straightway by making belief that there was cash deposit in the bank account of assessee and the Assessing Officer has reason to believe that income of assessee has escaped assessment. However, in the present case, the Assessing Officer before reopening, issued various notices under Section 142(1) to furnish the complete details and explanation with justification at source of cash deposit. Moreover, no such objection was raised either before the Assessing Officer nor before the Id. CIT(A). Therefore, I do not find any justification in raising the grounds of appeal straightway before the Tribunal. In the result, grounds No. 2 and 3 of the appeal are dismissed.

17. Grounds No. 4 and 5 of the appeal relates to addition of Rs. 8,08,000/- as undisclosed income. The Assessing Officer made addition by taking a view that no evidence about the loan received from Iqbal Sarang, Hanifa S. Popat is filed. Similarly, no evidence against deposits against letting out of shop was filed. The Id. CIT(A) also confirmed the addition with the similar view. I find that before the Id. CIT(A), the assessee contended that he has filed affidavit of source and copy of passbook and copy of EURO exchange confirmation about the loan received from Iqbal Sarang. I find that no such finding on such evidence is given by the lower authorities, therefore, in my view, the loan amount of Rs. 2.89 lacs is explained. I further noted that the assessee was income tax payee and

was regularly filing return of income by showing income from house property and AOP and has claimed savings of Rs. 2.59,000/-, therefore, the assessee is also given benefit of doubt to that extent.

18. So far as the amount received from deposits from letting out the shop, no evidence is filed, therefore, the addition of Rs. 60,000/- is confirmed. So far as the loan of Rs. 2.00 lacs from Smt. Hanifa S. Popat is concerned, no evidence in the form of confirmation, affidavit or statement is filed by the assessee throughout the proceedings, therefore, the addition of Rs. 2.00 lacs is also confirmed. Accordingly, the assessee is given relief against the loan received from Iqbal Sarang and his own savings, resultantly, the addition of Rs. 2.60 lacs is confirmed.

19. In the result, this appeal of assessee is partly allowed.

Order announced in open court on 02nd May, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 02/05/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat