

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.20/SRT/2023

Assessment Year: (2010-11)

(Physical Hearing)

Mukeshbhai Kishorbhai Lakahni, 201, Patel Mansion, 20 Sadhana Soc. Opp. Jain D, Lambe Hanuman Road, Varach Matawadi, Surat – 395006.	Vs.	The ITO, Ward – 3(3)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABPPL9388Q		
(Appellant)		(Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	23/08/2023
Date of Pronouncement	04/09/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by assessee, pertaining to Assessment Year (AY) 2010-11, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 20.10.2022, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 31.08.2017.

2. At the outset, I note that appeal filed by the assessee, for assessment year (AY) 2010-11, is barred by limitation by eighteen (18) days. Learned Counsel for the assessee, has moved a petition, for condonation of delay and explained the reasons for delay. The ld

Counsel stated that assessee had instructed his advocate/CA to take care of income tax matters, however the consultant did not pay the adequate attention, therefore because of the mistake committed by the advocate/consultant, the delay has occurred. I have heard both the parties on this preliminary issue. The Id DR for the Revenue opposed the prayer of assessee for condonation of delay and stated that delay may not be condoned. I note that delay has occurred because of mistake committed by the consultant of the assessee and since the assessee's consultant has committed the mistake, the assessee should not be penalized. Therefore, I note that Id Counsel has explained the sufficient reasons therefore having regard to the reasons given in the petition, I condone the delay and admit the appeal for hearing.

3. The grounds of appeal raised by the assessee are as follows:

"1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in re-opening the assessment u/s 147 of the Act and issuing notice u/s 148 of the Income Tax Act.

2. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.33,65,094/- on account of cash deposits in bank account of HDFC Bank treated as alleged unexplained investment u/s.69A of the Income Tax Act, 1961.

3. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax (Appeals) has not offered ample opportunities to hear the case and passed ex-parte order, hence the case may please be set aside and restored back to the CIT(A) or A.O.

4. It is therefore prayed that the above penalty may please be deleted as learned members of the tribunal may deem it proper.

5. Appellant craves leave to add, alter or delete any ground (s) either before or in the course of the hearing of the appeal."

4. The relevant material facts, as culled out from the material on record, are as follows. During the course of assessment proceedings for assessment year (A.Y.) 2010-11, it was observed by the assessing officer that assessee held undisclosed bank account No. 05331530007430 maintained with HDFC Bank, Poddar Arcade Branch Surat. Therefore, Assessing Officer had called for bank statement of the said bank account from the date of opening to till 31.03.2016. On perusal of the same, it was noted by the assessing officer that during the Financial Year (F.Y) 2009-10 relevant to assessment year (A.Y.) 2010- 11, a total of Rs. 33,65,094/- was found to be credited in the said account. Further, return of income filed by the assessee for the said assessment year (A.Y.) has been perused by the assessing officer and assessing officer observed that the assessee had shown a total turnover of Rs.14,16,654/- for the year under consideration. The turnover shown by the assessee for A.Y. 2010-11 did not commensurate with the total credits/deposits made in the said bank account. During the assessment proceedings, the assessing officer allowed lot of opportunities, however assessee did not submit documents and explanation, Therefore, assessing officer made addition of Rs.33,65,094/- on account of unexplained investments.

5. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the addition made by the Assessing Officer, therefore, assessee is in appeal before this Tribunal.

6. Shri P. M. Jagasheth, Learned Counsel for the assessee argued that in the first para of the assessment order, the Assessing Officer has himself stated that assessee has not disclosed the bank a/c No.05331530007430 maintained with HDFC Bank, Poddar Arcade

branch, Surat. The Assessing Officer obtained the bank statement from HDFC bank and noted that in AY.2010-11 a total of Rs.23,24,831/- was found to be credited. Since, the assessee has not explained and replied to the assessee during the assessment proceedings in respect of the entries of the bank statement, therefore Assessing Officer made addition to the tune of Rs.33,65,094/- which includes contra and cancelled cheques. The Ld. Counsel submitted that in the said bank account, there are contra-entries on account of cheque returned/cancelled, the summary of contra-entries in bank statement is reproduced below:

MUKESHBHAI KISHORBHAI LAKHANI		
FY 2009-10		
Date	Cheque Return	Cheque Credit
31.08.2009		100000
31.08.2009		100000
01.09.2009	100000	
01.09.2009	100000	
07.09.2009		4500
07.09.2009		2000
08.09.2009	4500	
08.09.2009	2000	
06.10.2009		75000
06.10.2009	75000	
15.10.2009		500000
15.10.2009	500000	
05.01.2010		18000
05.01.2010		50000
05.01.2010		50000
05.01.2010	18000	
05.01.2010	50000	
05.01.2010	50000	
26.03.2010		70000
26.03.2010	70000	
	969500	969500

Total Credit	3362499
Total Chq. Rtn.	-969500
Total Credits	2392999

7. Therefore, Ld. Counsel contended that in the assessment order, the Assessing Officer, at the beginning stated that the amount credited in the bank account was to the tune of Rs.23,24,831/-, and the said amount does not include contra/returned cheques. However at the conclusion, the assessing officer made the addition to the tune of

Rs.33,65,094/-, which includes contra/returned cheques. Therefore, ld Counsel contended that real addition should be at Rs.23,24,831/-.

8. The Ld. Counsel further contended that it is the mistake of the assessee not to disclose the above said bank account, however the assessee should not be penalized by making addition of all the entries of bank statement, therefore Ld. Counsel argued that a reasonable profit may be estimated on the total credit in the bank account. The Ld. Counsel stated that total credit in bank account is to the tune of Rs.23,24,831/-, and 5% of the same may be reasonable estimate of income.

9. On the other hand, the Senior Departmental Representative (ld. Sr. DR) for the Revenue submitted that assessee has not submitted the details of contra-entry/returned cheques, during the assessment proceedings, therefore this issue may be remitted back to the file of the Assessing Officer for examination of contra-entry/returned cheques.

10. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. I do not find merit in the submission of the ld. Sr. DR for the Revenue, to the effect that assessee has not filed the details of contra-entry/cancelled cheques, in the bank statement. I note that the details of contra-entry/ cancelled cheques, are there in the bank statement and the Assessing Officer could have examined these contra-entries *suo moto* while making the assessment, however the Assessing Officer has failed to do so. Therefore, just to file a

summary of the same bank statement, (which was available in the file the AO), by the assessee, before the Bench, in the form of contra-entry (cheque dishonour), is not an additional evidence, as these contra-entries / (cheque dishonour) details were available in the bank statement, which could be examined by the Assessing Officer, during the assessment stage. Therefore, I note that the details of contra-entry/ cancelled cheques were on the file of the Assessing Officer, hence the second inning should not be given to the assessing officer to examine the same facts again.

11. I note that the total credit in the bank statement, after eliminating contra-entries, comes to Rs.23,24,831/-. Therefore, I am of the view that to meet the end of justice an addition at the rate of 5% on total credit in the bank statement of Rs.23,24,831/- may be a reasonable addition in the hands of the assessee. For this, I rely on the judgment of Co-ordinate Bench of ITAT, Surat in the case of Smt. Krushangi Keyur Bhagat vs ITO, in ITA No.2706/Ahd/2015 for AY.2008-09, order dated 26.09.2018, wherein the Tribunal sustained the addition at the rate of 5% of total deposits. The findings of the Co-ordinate Bench of ITAT, are reproduced below:

“7. We have heard the rival submissions and perused the relevant material on record. We find that the assessee is a salaried person and deriving salary from Kalyani Multilink Pvt. Ltd. The deposits appearing in the bank account under consideration has not been disclosed. However, the pattern of deposits in bank account would show that these are there are some transaction in which cheque has been issued. There are debit entries in this bank account. The assessee has claimed that this bank account pertained to her business in trading. Ongoing through bank statement and facts of the case we observe that there are frequent transaction of cash as well as cheques. On careful consideration of facts, we are of the view that entire deposits in bank account cannot be considered for addition. Since the bank account is reflecting deposits as well as withdrawals, hence, there is every likely that bank account has been used for unrecorded business transactions as claimed by the assessee. Therefore, it would be in the interest of justice that only profit eliminate @ 5% is considered for tax

of total deposits of Rs. 18,32,079. Therefore, the assessing officer is directed to consider net profit @ 5% of total deposits of Rs.18,32,079 which worked out to Rs. 91,600. Accordingly this addition of Rs.14,76,614 is restricted to Rs. 91,600. This ground is therefore, partly allowed.”

12. Based on these facts and circumstances, as narrated above, I direct the Assessing Officer to make the addition in the hands of the assessee to the tune of Rs.1,16,242/- (5% of Rs.23,24,831/-). Hence the assessee's appeal is allowed partly.

13. In the result, the appeal of the assessee is partly allowed to the extent indicated above.

Order is pronounced on 04/09/2023 in the open court.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 04/09/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat