

IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" BENCH, SURAT  
BEFORE DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.516/SRT/2023

(निर्धारण वर्ष / Assessment Year: (2011-12)

(Physical Court Hearing)

Shri Yogesh Gunvantlal Ronvelia 704-B/Riddhi Siddhi Apartment, Halar Road, Valsad-396001	Vs.	Income Tax Officer, [ <i>International Taxation</i> ], Surat, 107 Anavil Business Centre, Adajan Hajira Road, Surat- 395009
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AMVPR 5835 P		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	Shri Rajesh Upadhyay, AR
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाईकीतारीख/Date of Hearing	21/09/2023
घोषणाकीतारीख/Date of Pronouncement	12/10/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-13, Ahmedabad [in short "Ld. CIT(A)"] dated 30.05.2023, which in turn arises out of an assessment order passed by the Income Tax Officer, under section 144 r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 20.12.2018.

2. Grounds of appeal raised by the assessee are as follows:

*"1. Ld. CIT[A], has erred in law and on facts to upheld A.O's reopening of assessee's assessment u/s 147 and issue of notice u/s 148 of I.T Act.*

*2. Ld. CIT(A) has erred in law and on facts to uphold addition of Rs.9,00,000/- out of A.O's addition of Rs.11,00,000/- made on account of cash deposit in assessee's bank account with Central Bank of India ignoring the evidences and facts that assessee's father has withdrawn cash from the said bank account prior to make deposit."*

3. Appeal arises this way. The assessee before us is an Individual and non-resident. As per information available with the Department, the assessee had deposited cash amount of Rs.11,50,000/- in his saving bank account under Central Bank of India, during financial year 2010-11 relevant to assessment year (AY) 2011-12. The cash amount of Rs.11,50,000/- deposited in his bank account during financial year 2010-11 remained unexplained therefore, the case of assessee was selected for re-assessment after taking approval u/s 151(1) of the Act, from Pr. CIT (IT&TP), Ahmedabad, vide approval letter dated 27.03.2018. Accordingly, notice u/s 148 was issued on 29.03.2018 and served upon the assessee. In response to notice u/s 148 the assessee did not file any return of income. Thereafter notice u/s 142(1) r.w.s.129 of the Act was issued on 18.09.2018 and duly served upon assessee. During the course of assessment proceeding following notice was issued to the assessee, the details of notice are as under:

*“2.1 Notice u/s 148 issued to assessee on 29.03.2018 and validly served to assessee by speed post and requested to furnish return of income within 30 days. Assessee did not attend nor was any submission and ITR made by assessee.*

*2.2 A detailed questioner and notice u/s 142(1) r.w.s 129 of the I.T Act was issued to assessee on 18.09.2018 and served to assessee by speed post and date of hearing was fixed on 28.09.2018 to represent his case. Assessee did not attend nor was any submission made by assessee to justify sources of cash deposits and issues raised in questioners.”*

4. However, the assessee failed to furnish details/submission to justify the cash deposits in respect of cash deposit in above mentioned bank account. Therefore, assessing officer noted that assessee has nothing to submit in respect of cash deposit made by him in his saving account, hence the Assessee completely failed to discharge his duty. Therefore, assessing officer held that the cash deposited of Rs.11,50,000/- is nothing but assessee`s undisclosed income which has been earned during the year

under consideration and as the source of deposit / investment remains unexplained hence addition of Rs.11,50,000/- was being made as unexplained investment u/s 69 of the Act.

5. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before NFAC/Ld. CIT(A) who has confirmed the action of Assessing Officer. In respect of legal ground raised by the assessee challenging the reopening of assessment, the Id CIT(A) noted that the assessment proceedings u/s 147 of the Act on the ground that the assessee is a resident of USA and hence the notice u/s 147 may be issued but not served on the assessee, is not tenable, as the notice u/s 147/148 was duly served on the address mentioned in the Income Tax Return. The assessee also raised a plea before Id CIT(A) that issuance of notice u/s 148 was due to the fact that an amount of Rs.11,50,000/- was deposited in his bank account and that he had not filed return of income (ROI) for the assessment year, is not an adequate reason to reopen assessment, as assessee had no source of income in India or business in India and mere deposit in a bank account does not cast any doubt that the assessee had to file ROI in India and it is only a presumption that he had taxable income. However, Id CIT(A) rejected the contention of the assessee and held that reopening of assessment is on valid reasons and the reasons recorded do not contain any mistake/error, therefore, Id CIT(A) rejected the legal ground raised by the assessee.

6. On merit, the Id CIT(A) has considered the submission of the assessee and in the interest of justice, fresh evidences filed by the assessee were admitted under Rule 46A of the Rules. The cash book filed by the assessee detailing the withdrawals and balances is self-serving in nature, as it only tries to give credence to the claim of the assessee that the deposits

are out of cash withdrawals made earlier and is not contemporaneous so rejected by Id CIT(A). Further, June 2009 withdrawals were made by wife Alka Ronvelia *whereas* March 2009 withdrawal are by self-cheques. To keep such cash in hand for such a long period fails the test of human probabilities. However, in the interest of justice, since Rs.2,50,000/- was withdrawn on 08/01/2011 and deposits started from 17/01/2011, credit to this much amount was given by Id CIT(A). Hence, Rs.9,00,000/- (Rs.11,50,000 - Rs.2,50,000) addition was confirmed by Id CIT(A), therefore, Id CIT(A) provided part relief to the assessee.

7. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before this Tribunal.

8. Shri Rajesh Upadhyay, Learned Counsel for the assessee, argued in respect of Ground No.1, which relates to challenging the re-assessment proceedings u/s 147 of the Act, that reasons recorded by the Assessing Officer is defective. The Ld. Counsel stated (vide paper book page-14) that Assessing Officer has re-opened assessment, based on the fact, that assessee has deposited cash in his bank account to the tune of Rs.11,50,000/-. The amount of Rs.11,50,000/- was deposited by the assessee out of known sources, hence Rs.11,50,000/- is not income of the assessee. Therefore, Assessing Officer should not have reopened the assessment u/s 147/148 of the Act.

9. On merits, Ld. Counsel for the assessee submitted that cash so deposited was out of maturity amount of fixed deposit in bank account. The assessee submitted bank statement of Central Bank of India (CBI) from dated 1/4/2008 to 31/3/2010 in support of his claim. In earlier year, amount credited in CBI was out of maturity sum of fixed deposit and

postal MIS. The assessee submitted a summary of CBI transactions from 1/4/2008 to 3/3/2011, as well as summary of accumulation of cash during 1/4/2008 to 3/3/2011. After depositing cash of Rs.11,50,000/- in CBI-Bank, an investment of Rs.9 lakh have been made in postal MIS on 03/02/2011. The Id Counsel therefore contended that since the assessee has explained the source of cash of Rs.11,50,000/-, so deposited in the bank account, hence entire addition may be deleted.

10. On the other hand, Learned Sr.DR for the Revenue reiterated the findings of the lower authorities. The Ld. Sr-DR for the Revenue also argued that Assessing Officer has re-opened the assessment based on the information available in the bank account and after having examined the bank statement of the assessee. Therefore, reasons were recorded by the assessing officer as per provisions of law, hence reopening of assessment should be held as valid.

11. On merits, Ld. Sr-DR for the Revenue submitted that assessee has failed to explain the amount of cash so deposited in the bank account. As per theory of human probability, the assessee has concealed his income to avoid payment of taxes. Therefore, the addition made by the Assessing Officer may be upheld.

12. I have heard both the sides and gone through the relevant material on record. It is seen that the assessment in this case was completed u/s 144 r.w.s.147 of the Act. During the appellate proceedings the assessee has submitted the additional evidences before the Commissioner of Income Tax (Appeals), and these additional evidences were remitted back to the assessing officer for his examination and assessing officer submitted the remand report before the Id CIT(A). Before me, the assessee submitted

following documents and evidences ( which were already submitted by assessee before the Ld CIT(A)), viz: (i) Submission before CIT(A) dated 27.01.2020 (pages 3 to 5 of paper book). (ii) AO's remand report and counter submission dated 13.02.2023 (vide pages 6 to 16 of paper book),(iii) Gunvantrai Ronvelia confirmation with assessee's passport copy (vide pages 17-22 of paper book), (iv) Central Bank of India-Bank statement from 1.04.2008 to 31.10.2010 (vide pages 23-24 of paper book), (v) Copy of bank book and cash book from F.Ys 08-09 to 10-11, (vide Pages 25-30 of paper book), (vi) Copy of postal MIS pass book (vide pages 31 to 36 of paper book). I have gone through the above documents and evidences and I find that in response to remand report, the assessee submitted his reply before Ld. CIT(A), which is placed at page Nos. 7-8 of the paper book. I have gone through the remand report, which is placed at page no. 11 of the paper book. During the remand proceedings, the assessee submitted before Assessing Officer, the written submission, copy of pass book, copy of bank statement, transactions summary, statement of Central Bank of India for the period from 01.04.2008 to 31.03.2011. The assessee also submitted the cash transaction statement from 01.04.2008 to 31.03.2011 and assessee submitted postal MIS before ld CIT(A).

13. From the above factual position, it is vivid that the assessee is residing in USA. The assessee's father, Shri Gunvantlal Ronvelia is residing in Valsad, who is managing and maintaining financial affairs of the assessee. His father has withdrawn cash from assessee's bank account of Central Bank of India, earlier, for the purpose of purchase of immovable property in Valsad, in joint name of Shri Yogesh and his wife Mrs. Alkaben. The deal for purchase of property was not materialized. Therefore, assessee kept cash with him for some time. Finally, when assessee realized that there is no possibility to purchase property, hence,

assessee has re-deposited the sum so withdrawn in bank account of the assessee. To prove these facts, the assessee submitted a copy of bank statement of Central Bank of India for the period 1/4/2008 to 31/3/2010. In earlier year, amount credited in CBI-Bank was out of maturity sum of fixed deposit and postal MIS. To prove this, the assessee submitted a summary of CBI transactions for the period 1/4/2008 to 3/3/2011, as well as summary of accumulation of cash during the period 1/4/2008 to 31/03/2011. After depositing cash of Rs.11,50,000/- in CBI-Bank, an investment of Rs.9 lakh have been made in postal MIS on 03/02/2011. To prove this, the assessee submitted a copy of postal MIS account No.57955 and 57956. This way, the assessee has proved source of the source also. Thus, I note that there is no merit in the stand taken by the assessing officer to make addition of Rs.11,50,000/-. Hence, Rs.9,00,000/- addition so sustained by Id CIT(A) is hereby deleted.

14. As the entire addition has been deleted on merit therefore all other issues on technical ground of reopening assessment u/s 147 of the Act, in the impugned assessment proceedings, are rendered academic and infructuous, and hence I do not adjudicate them.

15. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 12/10/2023.

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

सूरत / Surat दिनांक/ Date: 12/10/2023  
DKP (Sr. PS Outsourcing)

**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

**// True Copy //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat