

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA Nos.548 & 549/Ahd/2023  
Assessment Years: 2010-11 & 2012-13**

Bhaviniben Shah, 18, Amin Nagar, Ramakaka Road, Chhani, Vadodara, Gaujarat – 391 740. <b>[PAN – BZTPS 5910 C]</b>	Vs.	The Income Tax Officer, Ward – 1(2)(1), (Previously Ward – 1(2)(2)) Vadodara.
(Appellant)		(Respondent)
Assessee by	Shri Parimalsinh B. Parmar, AR	
Revenue by	Shri Santosh Kumar, Sr. DR	
Date of Hearing	31.10.2023	
Date of Pronouncement	05.01.2024	

**ORDER**

These appeals are filed by the assessee against two different orders, both dated 09.05.2023, passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Years 2010-11 & 2012-13.

2. The assessee has raised the following grounds of appeal :-

**ITA No.548/Ahd/2023 for A.Y. 2010-11**

- “1. The learned AO has erred in law and on facts of the case in reopening the assessment u/s.147 of the Act. Under the facts and circumstances of the case, the action of reopening is without jurisdiction and is not permissible either in law or on facts.*
- 2. The Ld. CIT(A) has erred in law and on facts in confirming addition of Rs.22,50,000/- made by Ld. AO u/s. 69A of the Act on account of cash deposits in bank account despite source of such cash deposits being duly explained by the appellant. .*
- 3. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered*

*before passing the impugned Oder. The action for the lower authorities is in clear breach of law and principles of Natural Justice and therefore deserves to be quashed.*

4. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s.234A/B/C/D of the Act.*
5. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO in levying penalty u/s.271(1)(c) of the Act.*
6. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO in levying penalty u/s. 271F of the Act.*
7. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*

**ITA No.549/Ahd/2023 for A.Y. 2012-13**

- “1. *The learned AO has erred in law and on facts of the case in reopening the assessment u/s.147 of the Act. Under the facts and circumstances of the case, the action of reopening is without jurisdiction and is not permissible either in law or on facts.*
2. *The Ld. CIT(A) has erred in law and on facts in confirming addition of Rs.26,00,000/- made by Ld. AO u/s. 69A of the Act on account of cash deposits in bank account despite source of such cash deposits being duly explained by the appellant. .*
3. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned Oder. The action ofr the lower authorities is in clear breach of law and principles of Natural Justice and therefore deserves to be quashed.*
4. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s.234A/B/C/D of the Act.*
5. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO in levying penalty u/s.271(1)(c) of the Act.*
6. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO in levying penalty u/s. 271F of the Act.*

7. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*

3. Firstly we are taking up ITA No.548/Ahd/2023 for assessment Year 2010-11. The assessee did not file any return of income for A.Y. 2010-11. The assessment was reopened by issuing notice under Section 148 of the Income Tax Act, 1961 dated 20.03.2017 which was duly served upon the assessee. In response to the notice under Section 148 of the Act, the assessee filed return of income on 11.04.2017 declaring total income of Rs.8,250/-. The reason for reopening was provided to the assessee and the assessee raised objection against the reopening as well as issue of notice under Section 148 of the Act. The said objections were disposed of by order dated 06.06.2017 holding that notice under Section 148 of the Act is validly issued and objections of the assessee have not been provided for dropping the proceedings under Section 147 of the Act. The assessee is an individual and earns income from other sources i.e. interest income. During the year under consideration, the assessee derived income under the head “income from other sources”. In response to the notice issued, the assessee filed the details. After verification of the same, the Assessing officer observed that during the Financial Year 2009-10 relevant to A.Y. 2010-11, the assessee had deposited cash aggregating to Rs.22,50,000/- in her SB account held with Bank of Baroda, Vadodara. The assessee failed to submit any proper reply with supporting evidence as per the observation of the Assessing Officer in the assessment order and the explanation offered by the Ld. AR of the assessee was found not tenable by the Assessing Officer. Thus, the Assessing Officer made addition of Rs.22,50,000/- under Section 69A of the Act and treated the same as unexplained money.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. As regards to ground no.1, the Ld. AR submitted that the reasons for reopening was not justifiable as mere deposits in Bank Account cannot lead to the

conclusion or even inference that income chargeable to tax has escaped assessment. The Ld. AR relied upon the following decisions:

- a) *Mariyam IIsmail Rajwani - ITA 676/Ahd/2016*
- b) *Bir Bahadur Singh Sijwali vs. ITO - 68 SOT 197 URO (Delhi)*

6. The Ld. AR submitted that as per the Hon'ble Gujarat High Court in the case of P.V. Doshi vs. CIT (1978) 113 ITR 22 (Gij.), it clarified that the issue of "reopening" is with respect to "jurisdiction" and the same can be raised at any stage. The very initiation of reassessment is not tenable in the eyes of law and the same deserves to be quashed.

7. As regards to Ground no.2, the Ld. AR submitted that the case was reopened on the ground that the assessee has deposited cash aggregating to Rs.22,50,000/- in SB Account held with Bank of Baroda. The Assessing Officer vide show cause notice dated 19.09.2017 called upon the assessee to show cause as to why addition of Rs.22,50,000/- should not be made under Section 69A of the Act in respect of cash deposits in bank account. The Ld. AR submitted that the cash deposits aggregating to Rs.22,50,000/- was made by the assessee out of cash withdrawn from bank account in earlier period. The assessee was exploring to buy an agricultural land and in order to make payment for the same, cash was withdrawn from bank account. Since nature of land sought to be purchased was agricultural land, the assessee had no other option but to make the payment in cash. Under such facts and circumstances, the cash was withdrawn by the assessee from the bank account. With respect to purchase of agricultural land, could not be finalised till the end of the financial year and hence cash available with the assessee was deposited back in the bank account. The Ld. AR submitted that there was no violation of Section 69A of the Act since the deposits in bank account were sufficiently explained alongwith the documentary evidences i.e. cash withdrawals from bank accounts itself. The Assessing Officer was requested not to make any addition but has not taken cognisance of the cash withdrawals from the same bank. The assessee has produced her bank pass book as well as cash flow statement same was also not considered. The Ld. AR submitted that questioning the need of cash balance does not fall within the

domain of the Revenue Authorities. Unless the Revenue Authorities come out with any concrete evidence to the effect that cash withdrawn earlier was not available with the assessee for deposit the same in bank subsequently owing to such cash being invested/spent elsewhere, such earlier cash withdrawals will continue to remain the source of later cash deposits. The Ld. AR relied upon the following decisions :-

- a) *Vijaykumar Vithaldas Prajapati vs. ITO - ITA No.1536/Ahd/2019 (Ahmedabad)*
- b) *Sudhirbhai Pravinkant Thaker vs. ITO – (2017) 88 Taxmann.com 382 (Ahmedabad)*
- c) *Ajit Bapu Satam vs. DCIT – (2023) 147 Taxmann.com 222 (Mumbai)*
- d) *CCIT vs. Shailesh Rasiklal Mehta – (2009) 176 Taxman 270 (Gujarat)*

8. Thus, the Ld. AR submitted that the CIT(A) was not justified in confirming the impugned addition and the same may be deleted.

9. As regards to ground nos.3 to 7, the Ld. AR submitted that the same are general in nature.

10. The Ld. DR submitted that the reopening was validly done as the cash deposits need to be explained by the assessee and the reason recorded for the reopening was validly disposed of by the Assessing Officer.

11. As regards to Rs.20,00,000/- cash withdrawal from bank, the assessee tried to give explanation but still the amount of Rs.2,50,000/- the assessee has not given any explanation to that extent. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

12. Heard both the parties and perused all the relevant material available on record. As regards Ground No.1, the reopening is valid as the reasons for reopening was bank deposits and hence Ground No.1 is dismissed. From the perusal of the records as well as cash through submission of bank statement of cash withdrawal from the bank and cash deposits in the bank account alongwith

the documentary evidences, it appears that the amount of Rs.20,00,000/- which was withdrawn from the same bank has been deposited by the assessee subsequently. The explanation offered by the assessee appears to be genuine and, therefore, to the extent of Rs.20,00,000/- cash deposit, Section 69A will not be applicable as the assessee has given explanation about the cash deposits. As regards to cash deposit of Rs.2,50,000/-, there was no explanation available with the assessee and in fact, the assessee could not be able to point out from the records that this cash was withdrawn from assessee's bank account or there was any other source of this cash. Thus, the cash deposit of Rs.2.50,000/- has to be confirmed. Ground No.2 is partly allowed. As regards Ground Nos.3 to 7, the same are general in nature, hence dismissed. Thus, appeal being ITA No.548/Ahd/2023 for Assessment Year 2010-11 is partly allowed.

13. As regards to ITA No.549/Ahd/2023 for Assessment Year 2012-13, ground no.1 is related to reopening which is identical to ground no.1 for Assessment Year 2010-11 and the same finding will be applicable in the present Assessment Year as well. Thus, ground no.1 is dismissed.

14. As regards to ground no.2, the case has been reopened on the ground that the assessee has deposited cash aggregating to Rs.26,00,000/- in SB account held with BOB for which the assessee has given the bank pass book and cash flow statement which explains that the assessee has withdrawn amount of Rs.28,00,000/- in total and deposited cash of Rs.20,00,000/-. The explanation and the records offered by the assessee correlates with the withdrawal from the bank as well as the cash deposits in the bank and, therefore, ground no.2 is allowed.

15. As regards to ground nos.3 to 7, the same are general in nature and hence dismissed. Thus, ITA No.549/Ahd/2023 for Assessment Year 2012-13 is partly allowed.

16. In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced in the open Court on this 5<sup>th</sup> January, 2024.

Sd/-  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 5<sup>th</sup> January, 2024**

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Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*