

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

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.588/Ahd/2023
Assessment Year: 2013-14**

Pravinaben Babubhai Patel, Babubhai A. Patel, Near Kaival Society, Khambholaj Road, Sarsa, Gujarat – 388 365. [PAN – BKDPP 6169 H]	Vs.	The Income Tax Officer, Ward-1, Anand.
(Appellant)		(Respondent)
Assessee by	Shri Rahul Patel, CA	
Revenue by	Shri Urjit B. Shah, Sr. DR	
Date of Hearing	21.12.2023	
Date of Pronouncement	17.01.2024	

ORDER

This appeal is filed by the assessee against order dated 01.06.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2013-14.

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

- “1. *Learned Commissioner of Income Tax (Appeals), grievously erred in law as well as facts while upholding the addition on account of cash deposit of Rs.8,01,200/- made by the Id. Assessing Officer. Learned Commissioner of Income Tax (Appeals) ought to have appreciated that the addition of Rs.8,01,200/- was not warranted as the appellant had sufficient explanation and cause in relation thereto. Learned Commissioner of Income Tax (Appeals) grievously erred while overlooking and ignoring the affidavit made by Shri Babubhai Patel.*
2. *Learned Commissioner of Income Tax (Appeals) was not correct in upholding the addition of Rs.8,01,200/- without actually verifying the nature of addition, explanations from the appellant and legal position.*

3. *Learned Commissioner of Income Tax Appeals was not correct in rejecting the submission made by the appellant on inapplicability of Section 68 of the Income Tax Act, 1961. Learned Commissioner of Income Tax (Appeals) ought to have appreciated that the ground dealing with the addition made by learned Assessing Officer must not be disposed off without evaluation of the applicability of Section 68 as the very addition by Id. Assessing Officer was made under Section 68. Learned Commissioner of income tax (Appeals) ought to have appreciated that the very provisions of Section 68 were non-est and hence the addition made thereunder was sun unsustainable in limine.*
4. *Learned Commissioner of Income Tax (Appeals) grievously erred in law as well as facts while upholding the order passed in violation of the provisions of Section 147 read with Section 148 of the Act,”*

3. The assessee has not filed return of income for the Assessment Year 2013-14 under Section 139(1) of the Income Tax Act, 1961. The case was picked up by manual scrutiny for the reason being cash deposited in the Bank during the Financial Year 2012-13 relevant to Assessment Year 2013-14. As per the information, the assessee deposited cash amounting to Rs.10,51,200/- . The Bank statement was obtained by calling information under Section 133(6) of the Act. The case was reopened under Section 147 of the Act after recording the reasons and approval of the Competent Authority. Subsequently, notice under Section 148 of the Act was issued on 09.04.2019 and notice under Section 142(1) of the Act was issued on 29.09.2020. In response to the notices, the assessee submitted that the assessee did not receive the notice under Section 148 of the Act. The assessee is the primary account holder in the Bank in which cash was deposited. Her husband is joint account holder in the same Bank account and he has deposited cash in her said Bank Account. Affidavit of the husband was also filed along with the necessary documents. After taking cognizance of the submissions, the Assessing Officer made addition of Rs.10,51,200/- as unexplained cash credit under Section 68 of the Act.

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

5. The Ld. AR submitted that the assessee is a housewife and has no source of income and, therefore, not filed any return of income. The assessee's husband

deposited cash amount of Rs.10,51,200/- in the bank account which is jointly held by the assessee and her husband. Since the inception the assessee did not operate the said bank account and, therefore, filed affidavit of the husband as well. The Ld. AR further submitted that the assessee being housewife was not maintaining books of account and, therefore, Section 68 of the Act will not be attracted in the present case. The Ld. AR further submitted that the deposit in bank account by the joint bank holder Babubhai Patel, who is the husband of the assessee, was wrongly taxed in the hands of the assessee lady. The order under Section 147 read with Section 144 of the Act for the A.Y. 2013-14 was issued without issuing notice under Section 148 of the Act and hence is invalid. The Ld. AR submitted that the CIT(A) totally ignored the fact that reassessment proceedings itself is bad in law as mandatory procedure of serving notice under Section 148 of the Act was not followed. The Ld. AR further submitted that the Assessing Officer did not produce any evidence on record that the content of the affidavit of the assessee or her husband were untrue or false. The Ld. AR further submitted that the Assessing Officer was under wrong belief that the assessee took loan or deposited from her husband. The Ld. AR relied upon the decision of Hon'ble Bombay High Court in case of CIT vs, Bhaichand H. Gandhi (1983) 53 CompCas 400 (Bombay) as well as the decision of Hon'ble Apex Court in the case of M/s. Mehta Parikh & Co. vs. CIT, date of judgement 10.05.1956, 1956 AIR 554.

6. The Ld. DR submitted that the assessee while filing the affidavit of the husband has not given any supporting documents as relates to the operation of the bank account. The Ld. DR further submitted that source of source was not explained. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has filed the submissions. From the perusal of records, it appears that notice under Section 148 of the Act was rightly issued and hence the said contention of the Id. AR does not hold any merit. As regards to the addition on account of cash deposit of Rs.8,01,200/- sustained by the CIT(A), it can be seen that the Bank account is jointly held by the assessee

and her husband and affidavit of the husband explains the operation of the said account in respect of advance rent of poultry for two years, debtors recovery of poultry business which was closed in 2012-13, received from the daughter who visited India and also that of agricultural income. The said affidavit has not been doubted either by the Assessing Officer or by the CIT(A). The supporting documents was never called upon by the Assessing Officer as well as by the CIT(A) and even if so, the Assessing Officer as well as the CIT(A) has not called for the details of the husband's agricultural income which should have been done at the assessment stage. The joint account holder in a bank account individually and separately should have been assessed and in the present case the department has not stated as to why the husband of the assessee whether assessed or not. Thus, the grounds on merit are allowed as the assessee has established that the cash deposit was from her husband and agricultural income.

8. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on this 17th January, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 17th 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