

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.300/Ahd/2023
Assessment Year : 2017-18

Niranjanaben Jayesh Patel Legal Heir of Late Shri Jayeshbhai Chandubhai Patel 19-I, Nita Nagar Society Kanjari Road, Halol-389 350, Gujarat PAN : AKZPP 6950 P.	Vs.	ITO, Ward-3(1)(2) Vadodara.
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ITA No.48/Ahd/2023
Assessment Year : 2017-18

Yogendrabhai Bhogilal Patel Shri Yogendrabhai Bhogilalbai Patel 82, Sri Nath Vihar Society Behind Vallabhcharya Hospital Baroda 390025 PAN : BJXPP 0850 J.	Vs.	ITO, Ward-3(1)(2) Vadodara.
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Assessee by	:	Shri Sakar Sharma, AR
Revenue by	:	Shri H. Phani Raju, CIT-DR

मुनवाई की तारीख /Date of Hearing : 20/03/2024
घोषणा की तारीख /Date of Pronouncement: 14/06/2024

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

These appeals are by two assesseees against separate orders of the Id.CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 29.11.2022 and 16.3.2023 passed under section 250 of the Income Tax Act, 1961 (“the Act” for short) for the assessment year 2017-18.

2. The grounds raised by the assesses in their respective appeals are as under:

ITA No.48/Ahd/2023

1. *The Ld. NFAC erred on facts and in law in upholding action of the Assessing Officer invoking provisions of section 69A of the Act which has no application in the case of the appellant.*
2. *The Ld. NFAC erred on facts and in law in upholding the action of the Assessing Officer in making substantive addition ignoring the past history as well as position of law settled by the Tribunals and the Courts.*
3. *The Ld. NFAC erred on facts and in law in not appreciating and admitting the additional evidences furnished under Rule 46A in the interest of justice and to determine the real and true income of the appellant.*
4. *The Ld. NFAC erred on facts and in law in upholding addition of Rs.16,44,12,820/- u/s 69A r.w.s. 115BBE made by the Assessing Officer by considering only the credit entries and ignoring the debit entries in relation to the same transaction and ignoring the explanations and submissions of appellant before the Assessing Officer as well as before the appellate authority.*
5. *The Ld. NFAC erred on facts and in law in not adjudicating substantive ground with regard to applicability of provisions of section 115BBE of the Act and qua assessment year under reference when deeming provisions invoked by the Assessing Officer have no application in the case of the appellant.*

ITA No.300/Ahd/2023

1. *The Ld. NFAC erred on facts and in law in holding the appeal of the appellant to be infructuous on account of order u/s 263 passed by the Ld. PCIT*
2. *The Ld. NFAC erred on facts and in law in not adjudicating any of the grounds of appeal on merits despite exhaustive and elaborate submissions made by the appellant in the course of appellate proceedings.*
3. *The Ld. NFAC erred on facts and in law in not adjudicating the ground relating addition u/s 69A r.w.s. 115BBE of Rs.1,16,13,90,797/-made by Assessing Officer on account of deposit of cash in the bank accounts without appreciating the nature of business carried on by the appellant The Ld. NFAC erred on facts and in law in not adjudicating substantive ground with regard to applicability of provisions of section 115BBE of the Act qua nature of income of appellant and qua assessment year under reference when deeming provisions invoked by the Assessing Officer have no application in the case of the appellant.*

4. *The Ld. NFAC erred on facts and in law in not adjudicating substantive ground with regard to applicability of provisions of section 115BBE of the Act qua nature of income of appellant and qua assessment year under reference when deeming provisions invoked by the Assessing Officer have no application in the case of the appellant.*
5. *The Ld. NFAC erred on facts and in law in not taking cognisance of the past history of appellant as well as position of law settled by the Hon'ble Tribunals and the Courts."*

3. Since largely common facts and issues raised for consideration are involved in both the appeals, the same are being taken up together.

We shall first take up the appeal in the case of Shri Yogendrabhai B. Patel in ITA No.48/Ahd/2023, and our observation would apply to the other appeal as well in the case of Shri Niranjnanaben Joyeshkumar Patel, L/H of late Shri Jayeshbhai Chandubhai Patel.

4. Brief facts of the case are that the assessee filed return of income declaring total income at Rs.2,52,880/-. The case of the assessee was selected for scrutiny for the reason of examining large cash deposits and cash withdrawals made by the assessee during the impugned year under consideration. During the course of assessment proceedings, the AO observed that huge cash amounting to Rs.16,44,12,280/- was deposited in the bank account of the assessee during the impugned year under consideration. The assessee was asked to furnish the nature of source of cash deposits with supporting evidence. The assessee was asked to submit ledger copy of the person who deposited cash in his bank account and persons to whom the assessee had paid the cash after withdrawals. The submissions of the assessee was that, he is engaged in the business of earning commission and the amounts so deposited/withdrawn by the assessee did not belong to the assessee, and the assessee has only

earned commission income on such amount. The assessee was asked to submit the nature and source of cash deposits with evidences. The AO asked the assessee to submit ledger copies of the parties, who had deposited cash in his bank accounts, and the persons to whom, he paid cash after withdrawals. The AO issued notice under section 133(6) of the Act, and summons under section 131 to those persons whose addresses seemed to be complete. Notices under section 133(6) of the Act were issued in eleven cases, out of which eight notices returned with postal remark "insufficient address". Only three parties complied with the notices in the pattern in which the details were called for.

5. On perusal of the replies, the AO noticed that none of the parties had admitted that they had deposited cash in the bank account of the assessee. The parties only stated that the cash was deposited by the traders all over India. Hence, as per the AO even the identity of the parties who deposited cash in the bank accounts of the assessee could not be established by the assessee. Further, summons under section 131 of the Act were issued to twelve persons from the ledger given by the assessee, out of which nine summons were returned with postal remarks "insufficient address", and also none of the remaining parties (three in numbers) appeared before the AO. Hence, as per the AO, identity of the parties, genuineness of the transaction and credit-worthiness of the parties could not be verified. The AO held that the assessee did not submit ledger copy of the actual depositors. Since the assessee failed to justify his claim that the cash was deposited by other parties, and paid after withdrawing the same from the bank account, the AO called for further details from the assessee. The AO observed that some confirmations of the parties to whom notices under section 133(6) of the Act and summons under section 131 were issued were received. However, as per the AO, the so-called

confirmations filed by these parties were addressed to the AO, but was submitted from the assessee's income-tax e-portal. The AO was of the view that it was beyond logical understanding, how could a third-party know the details called for vide the notices and summons, which were unserved on them and the reply could be submitted through the assessee's income-tax e-portal. The AO observed that all the parties had only stated that they had not deposited cash in the bank account of the assessee. Also the concerned parties did not submit any details with regard to the cash depositors who purchased the goods from them. The AO held that confirmation/clarification of the local parties which were not depositors, is an after-thought, and prepared by the assessee himself which were submitted by the assessee himself, through his own income-tax e-proceeding portal. Accordingly, the AO held that contention of the assessee that some of the persons deposited cash in the bank account, and he only earned commission income was not acceptable. Accordingly, the AO added a sum of Rs.16,44,12,820/- to the income of the assessee under section 69A of the Act. Aggrieved by the same, the assessee filed appeal before the Id.CIT(A).

6. During the course of appellate proceedings, the assessee submitted that the AO had wrongly invoked the provisions of section 69A of the Act in the instant case. The assessee stated that the amount found deposited in the bank account were actually withdrawn immediately and delivered to the beneficiaries after retaining the requisite amount of commission. The commission so retained has been offered for taxation and there exists no dispute with regard to the same. The assessee submitted that in line of *Angadia* business, commission is at the rate of 0.10%. The assessee submitted that he has maintained books of accounts, and has also recorded all the transactions in the books of accounts in respect of which addition

has been made by the AO. Secondly, the assessee submitted that he was not the owner of the cash which came to be deposited in his bank account by the beneficiaries who paid commission to the assessee. Since the assessee was not the owner of the cash deposited in his bank account, the same cannot be assessed in the hands of the assessee under section 69A of the Act. The assessee submitted before the Id.CIT(A) that the AO ought to have appreciated that the assessee is earning commission income on account of money transferred by various parties located pan India to the parties located at Halol (i.e. business place of the assessee) by using the bank account of the assessee for which the assessee charged commission and paid the residual amount to the concerned beneficiaries/parties after retaining the commission amount which the assessee in turn offered as business income and which has been assessed in the hands of the assessee, without any dispute by the tax authorities with regard to the nature of such income being commission income and nor was there any dispute with regards to the quantum of such commission earned by the assessee and offered to tax by him. However, the Id.CIT(A) dismissed the appeal of the assessee on the ground that the assessee, in the instant fact has failed to prove that the cash deposited in his bank account did not bear the character of income of the assessee, and accordingly confirmed the addition made by the AO. While passing the order, the Id.CIT(A) made the following observations:

3.6 Now, on merit, it is vital to discuss that the appellant cannot evade the onus cast on the appellant by the provisions of section 69A of the IT Act. The three limbs of section 69 are as under:-

- *During the year, the appellant is found to be the owner of the money deposited in assessee's bank accounts*
- *Such money is not recorded in books of account maintained for any source.*
- *Assessee offers no explanation regarding the nature and source of cash deposited in assessee's bank accounts*

All the conditions are found to be applicable in the instant case. The appellant is found to be the owner of the cash deposited in his bank account, the same are not recorded in the books of account as observed by the AO and the appellant has not offered any plausible explanation regarding the nature and source of cash deposited in the appellant's bank accounts.

3.7 The appellant claims that the said cash deposits did not belong to him but other parties, however, the appellant has utterly failed in doing so. The appellant has failed to file any confirmation of the said parties, neither the identity of the depositors, creditworthiness of the parties has not been established and genuineness of the so called business receipts too remains unestablished. The logic of the appellant is that the said depositors used his bank account to avoid the risk of handling cash. However, the same is not genuine reason for the fact why the depositors

did not use their bank accounts to avoid risk of cash handling. Why would a prudent person use the bank account of the appellant for no reason? Moreover, majority of the summons and notices issued by the AO u/s 133(6) and 31 of the Act have returned undelivered and those parties where summons u/s 131 were delivered did not appear before the AO for confirmation. So far as the Income-tax Act is concerned, the position with regard to burden of proof viz., the claim for deduction and/or exemption by an assessee and/or the claim as to whether a particular receipt is revenue receipt or capital receipt, the law is settled by the Hon'ble Supreme Court of India. The burden of proof or initial onus is on the Department/Revenue to prove that a particular receipt is liable to be taxed as revenue receipt under the Act, but the extent of the burden ~~always depends upon the nature of the income and the circumstances in~~ which it was made. Once the assessee gives an explanation which in the opinion of the Department/Revenue is not true and which could not reasonably be true, the burden was on assessee to prove that what they stated was true and whatever burden was on the Department/Revenue stood shifted thereafter. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the Department/Revenue to prove that it is within the taxing provision. Where however a receipt is of the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee. A Constitutional Bench of the Hon'ble Supreme Court in **Commissioner of Customs (Import), v. Dilip Kumar & Co.**, has pronounced that - (1) Exemption notification should be interpreted strictly; *the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification*; and (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue

3.8 Further, in my humble opinion there are few glaring observations, which have not been explained till date by the appellant:-

1. *The appellant has failed to file any confirmation/acceptance*

by the deposits that the cash belonged to them and not to the appellant.

2. Even in those cases where replies have been received during the assessment proceedings, no party has confirmed to have deposited the money in the appellant's bank account.
3. Why would any party, which is dealing through banking channels use the appellant's bank account to avoid the risk of cash handling when it could itself use the banking channels. The appellant is silent on this aspect.
4. The appellant has failed to prove this fact that the cash deposited during the year are normal business receipts or other receipts which is not in the nature of the income

Clearly, the appellant has failed to prove its viewpoint with substantial evidences. I draw strength from the following case laws:-

3.9 The Calcutta High Court in the case of *CIT v. Precision Finance (P.) Ltd. [1994] 121 CTR (Cal.) 20* held that it is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. Mere furnishing of the particulars is not enough. Where the enquiry of the ITO revealed that either the creditor was not traceable or there was no such file, the first ingredient as to the identity of the creditor could not be said to have been established. If the identity of the creditors has not been established, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors does not and could not arise. Mere payment by account payee cheque is not sacrosanct or can it make a non-genuine transaction genuine.

3.10 The Hon'ble Apex Court in *Roshan Di Hatti vs CIT reported in 1977 107 ITR 938* held that the onus of proving the source of money found to have been received by an assessee is on him. When the nature and source of money or otherwise cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee.

3.11 Reliance can be placed on the recent decision of **Hon'ble ITAT, Delhi Bench 'F' reported in (2021) 132 taxmann.com 142(Delhi-Trib.)** wherein it was held as under:-

INCOME TAX : Where there were huge cash deposits in accounts of assessee, and, though assessee claimed that cash deposits were on account of commission business, however, failed to establish source of cash deposits in its bank accounts, additions made against assessee were justified

3.12 Hon'ble Apex Court in the case of **Sanjay Kapur vs ACIT, reported in (2022) 138 taxmann.com 207(SC)** wherein it was held as under:-

INCOME TAX : High Court upheld reassessment in case where assessee had made a deposit of cash in bank during demonetization period, which was reflected in his return of income, but no supporting evidences were available to prove source of such deposit leading to 'reason to believe' that income otherwise chargeable to tax had escaped assessment; SLP filed against High Court's judgment dismissed as withdrawn

3.13 Reliance is also placed on the decision of Hon'ble Apex Court in the case of **Krishan Kumar vs ITO, Patiala reported in (2019) 107 taxmann.com 464 (SC)**, wherein it was held as under:-

INCOME TAX: Where High Court upheld Tribunal's order confirming addition made by AO under section 69A on ground that during relevant year, assessee made cash deposits of more than 37 lakhs in saving bank account whereas its entire sales as per VAT return was only Rs. 9.65 lakhs, SLP filed against High Court's order was to be dismissed

Thus, in my humble opinion, the appellant has failed to prove that the cash deposits in his bank accounts did not bear the character of income of the appellant and accordingly, the grounds raised by the appellant are dismissed. The case laws cited by the appellant are distinguishable on facts and hence, are not applicable in the instant case.

7. The assessee is in appeal before us against the aforesaid order passed by the Id.CIT(A) confirming addition in the hands of the assessee.

8. Before us, the Id.counsel for the assessee took various arguments. Firstly, he submitted that the assessee has maintained

regular books of accounts, and all bank accounts are duly recorded in the books of accounts of the assessee, and therefore, the provisions of section 69A of the Act have no application. Secondly, the assessee is only a commission agent, and therefore, the cash deposited by the customers and delivered back to the customers cannot be held to be belonging to the assessee, and only commission earned by the assessee on such transaction can be taxed as the income of the assessee. Thirdly, the customers of the assessee deposited cash/RTGS/NEFT from different locations across the country in the bank account and the assessee which were subsequently withdrawn and delivered to the respective persons as per the instructions of the customers. It was submitted before us that Halol is an industrial hub, and therefore, customers across India made purchases from the units located in Halol and adjoining areas. The assessee carried out three specific activities as part of his business viz. (i) deposits were made in the bank account of the assessee through RTGS/NEFT/Cheque by the customers and payment by withdrawing cash from the bank accounts, (ii) cash deposits were made in the bank account of the assessee by customers of the assessee, and payments were made by the assessee by remitting the fund through RTGS/NEFT as per the customer's instructions, and (iii) cash was deposited in the bank account of the assessee by the customers and payment was made by the assessee by withdrawing cash from the bank account. In all three circumstances, the assessee had charged commission to provide aforesaid services and commission income had been offered to tax by the assessee. The ld.counsel for the assessee submitted that even units located at Halol used services of the assessee by depositing cash in his account and directing him to make payment online to Gas Authority of India ltd. towards supply of gas to their units. The ld.counsel for the assessee submitted that various details like copies

of ledger account of the parties, cash book, affidavit explaining the nature of activities, confirmations of some of the persons, etc. were submitted before the tax authorities, were submitted during the course of assessment proceedings. However, such evidence was not appreciated by the AO.

Additionally, the information disclosed by the assessee under Rule 46A of the Income Tax Rules was also not admitted by the Id.CIT(A), which should have been admitted looking into the substantial quantum of addition made in the hands of the assessee. Therefore, the order passed by the Id.CIT(A) was against the principle of natural justice. The Id.counsel for the assessee submitted that tax authorities have erred in taxing the entire amount of deposits in the hands of the assessee, without giving any credit for the withdrawal made from the bank accounts in the hands of the assessee, which is erroneous, since the assessee is only engaged in the business of earning commission income.

9. In response, the Id.DR pointed out that despite several opportunities, the assessee has miserably failed to prove the source of cash deposits in the bank account of the assessee, and neither the assessee has been able to prove that he was actually engaged in the business of earning commission income, and no evidence has been furnished by the assessee to demonstrate that the cash deposits made in the bank account held by the assessee are not unaccounted income of the assessee. Notably, the books of accounts of the assessee are not audited. Further, the Id.DR submitted that the assessee did not furnish ledger account during the course of proceedings before the tax authorities, and the assessee only produced cash book/bank statement during the course of proceedings. The Id.DR submitted that in the entire proceedings, no books of accounts were produced

by the assessee except the cash book. Accordingly, the Id.DR submitted that the books of accounts have not been maintained/audited. The identity and credit-worthiness of the parties, who had deposited cash has not been established. The assessee has failed to furnish any corroborative evidence to show that the assessee is engaged in the business of earning commission income and, therefore, there is no infirmity in the order of the Id.CIT(A) wherein such additions have been rightly confirmed in the hands of the assessee.

10. We have heard rival contention and perused the material available on record.

On going through the facts of the present case, we agree with the Department that the assessee has failed to prove identity of the depositors, as also failed to furnish any concrete evidence with regard to the fact that the assessee is engaged in the business of earning only commission income and that the aforesaid amount did not belong to the assessee. Notably, the assessee has submitted very few details during the course of assessment proceedings, which would establish the identity and credit-worthiness of the parties, who had deposited money in the bank account of the assessee, and further from the details placed on record, the assessee has also not able to establish that he was engaged in the business of only earning the commission income. However, we equally note that during the course of assessment proceedings, a substantial sum of Rs.16,44,12,820/-was added as unexplained income in the hands of the assessee, and all deposits in the bank account of the assessee were added as unexplained income of the assessee, without giving credit of withdrawals made by the assessee from his bank account.

Accordingly, looking into the instant facts, in the interest of justice, we hereby set aside the matter to file of the AO for *de novo* consideration, and the assessee is hereby allowed an opportunity of producing additional details with regard to the source of cash deposits in his bank account, and also to furnish identity of the depositors, which the assessee could not do during the course of original assessment. Further, the AO is also directed to give due credit of withdrawals made from the bank account of the assessee; and only peak credit may be added in the hands of the assessee, after detailed analysis of the facts of the case, in the light of the additional evidence, which may be furnished by the assessee.

We observe that similar issues are involved in the case of other assessee before us i.e Niranjanaben Jayeshkumar Patel. In this case, it was submitted before us that original assessment order was passed with certain additions by the Id.Assessing Officer. Thereafter 263-proceedings were initiated in which time, original assessment was set aside by the Id.Pr.CIT. In appeal, the Id.CIT(A) dismissed the appeal of the assessee. Meanwhile, the 263-order was also quashed by Hon'ble ITAT. It was submitted that the Id.CIT(A) did not decide the appeal on merits. Accordingly, the matter may be restored to the file of the Id.CIT(A) for *de novo* consideration, after giving due opportunity of hearing to the assessee to present its case on merits. Accordingly, in the interest of justice, the said appeal is also restored to the file of the AO for *de novo* consideration after giving due opportunity of hearing to the assessee to present its case on merit, and file any additional evidence in support of its case.

11. In the combined result, both the appeals of the assesseees are allowed for statistical purpose.

Order pronounced in the Court on 14th June, 2024 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad,dated 14/06/2024