

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Ms. Suchitra Kamble, Judicial Member

**ITA No. 480/Ahd/2019
Assessment Year 2010-11**

Shri Jignesh Babulal Modi, Variyali Vado, Nagarwada Road, Patan PAN: AOIPM7314P (Appellant)	Vs	The Income Tax Officer, Ward-1, Patan (Respondent)
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Assessee by: Shri M.K. Patel, A.R.
Revenue by: Shri Sanjay Kumar, Sr. D.R.

Date of hearing : 08-08-2024
Date of pronouncement : 19-09-2024

आदेश/ORDER

This is an appeal filed against the order dated 11-01-2019 passed by Id. CIT(A) for assessment year 2010-11.

2. The grounds of appeal are as under:-

(1) That on facts, and in law, the re-opening of assessment u/s 147 of the Act is not justified, and it be held held as invalid and void ab initio.

(2) *That on facts, and in law, the learned CIT (A) has grievously erred in confirming the addition of Rs. 31,81,300/- made in respect of deposits in appellant's bank account by treating it as unexplained deposits.*

(3) *That on facts, in law, and on evidence on record, the entire addition ought to have been deleted, as prayed for.*

(4) *The appellant craves leave to add, alter, amend any ground of appeal.”*

3. The assessee filed return of income declaring total income of Rs. 1,61,027/- for assessment year 2010-11. On the basis of the information, the assessee's case was reopened after taking prior approval. Accordingly, notice u/s. 148 of the Act was issued on 29-03-2016 and was served upon the assessee. The assessee has not complied with the notice u/s. 148 and subsequently notices u/s. 142(1) which was issued earlier not responded by the assessee. Thus, the Assessing Officer proceeded on the basis of the section 144 r.w.s. 147 and made addition of Rs. 31,81,300/- in respect of unexplained cash deposits in the bank account of the assessee.

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. The Id. Authorized Representative submitted that as regards the cash deposits, the revenue has accepted the

similar cash deposits in the earlier assessment year from the same bank account as the cash deposits was in respect of the commission income. In fact, the CIT(A) on page 3, of the order categorically mentioned the assessee's submission that the assessee deposited cash in saving bank account and commission was paid on such cash deposits. The Id. Authorized Representative submitted that the assessee who was salaried employee was also into share business which was manipulated by the owners of the firm in order to deposit their cash in bank account of the assessee. The commission was paid out on such cash deposits earlier, the same was accepted in assessee's case. The assessee has established that the earning of commission income on such deposits was reflected in his income statement. The Id. Authorized Representative further submitted that the assessee had lodged a complaint against the partners of the firm and has stated about the modus operandi of the partners before judicial magistrate, Deesa. In fact, the FIR was also filed before the authorities. The Id. Authorized Representative submitted that once the Revenue accepted the said commission income at 3%, the same cannot be in subsequent year considered as cash deposits in assessee's bank account.

6. The Id. Departmental Representative submitted that whether this was the commission income or not has not been

established by the assessee before the Assessing Officer as well as before the CIT(A). The Id. Departmental Representative relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the assessee has categorically mentioned before the Assessing Officer in assessment year 2009-10 that the assessee is earning commission income to the extent of 3% upon the cash deposit and also the assessee has lodged complaint in respect of partners of the firm to the judicial magistrate court. The undisputed fact is that for assessment year 2009-10, the Department has accepted the commission income of the assessee on these cash deposits and therefore, the Assessing Officer cannot take a different stand in the subsequent year as the assessee has given the details of the cash deposit to the CIT(A). The assessee has categorically mentioned that these cash deposit does not belong to the assessee and belongs to the partners of the firm Amar Enterprises. This has been accepted by the revenue in assessment year 2009-10. Thus, addition made by the Assessing Officer and confirmed by the CIT(A) does not sustain as the assessee has discharged its onus in respect of commission income as well as the cash deposits which does not belong to the assessee but that of partnership firm.

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

Order pronounced in the open court on 19-09-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad : Dated 19/09/2024

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद