

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

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. Nos.161 to 163/Ahd/2023
(Assessment Years: 2010-11 to 2012-13)

Prakash Govindbhai Patel, “Kamal Shanti”, Nr. Sardar Patel Under Bridge, Sardar Patel Colony Ahmedabad-380014	Vs.	Income Tax Officer, Ward-6(1)(1), Ahmedabad
[PAN No.ATQPP6754P]		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by:	Shri R.N. Dsouza, CIT D.R. & Shri Rignesh K Das, Sr. D.R.

Date of Hearing	12.09.2024
Date of Pronouncement	23.09.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These are appeals filed by the Assessee are against the orders passed by the Ld. Commissioner of Income Tax, (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide orders dated 06.01.2023 for Assessment Years 2010-11 to 2012-13. Since common facts and issues for consideration are involved for all the years under consideration, all the appeals filed by the assessee are being taken up together.

We shall first take up the assessee’s appeal for Assessment Year 2010-11, and our observations for this year shall apply to the other years as well.

2. The assessee has taken the following grounds of appeal:

“1. The order passed by the Ld. CIT(A) is against law, equity and justice.

2. *The Ld. CIT(A) has erred in law and facts in upholding addition of Rs.3,13,34,845/- as unexplained cash credit in Bank U/S 69A of the IT Act, 1961.*
3. *Appellant craves leave to add to, amend, alter, delete and/or modify the above grounds of appeal on or before the final date of hearing.”*

3. The assessee, Shri Prakash Govindbhai Patel, filed his original Return of Income electronically on March 30, 2012, declaring a total income of Rs. 3,02,200/-. This return was processed under Section 143(1) of the Income Tax Act on June 16, 2012, with no alterations to the declared income. The assessee reported a total turnover of Rs. 1,83,59,020/- and his accounts were audited in September 2010 for his proprietary businesses, namely Prince Creation and Sonal Creation. However, on March 17, 2017, information was received from the Deputy Director of Income Tax (Investigation) regarding significant cash deposits in various bank accounts linked to the assessee and his proprietary concerns. The Assessing Officer observed that the assessee had filed return of income for assessment years 2010-11 to 2014-15 declaring meagre income (as tabulated below), which was not commensurate with the huge cash deposits made by the assessee in his own name and in the name of his proprietorship concerns. Further, when inspector visited the premises of the concerns, none of the addresses could be traced. The investigation highlighted that high-value cash deposits were observed, which were primarily interlinked transfers among the various business accounts, making it difficult to ascertain the nature and purpose of these transactions. The data indicated that in the Fiscal Year 2009-10 relevant to the assessment year 2010-11, the assessee made cash deposits totaling Rs. 3,13,34,845, yet his reported income and turnover appeared disproportionately low. Consequently, a Notice under Section 148 of the Income Tax Act was issued on March 31, 2017, for reopening the assessment, after obtaining the requisite approval. Despite multiple reminders sent to the assessee via various notices and letters throughout 2017, there was no

compliance. The assessee's address records indicated two locations, but attempts to serve notices by the Assessing Officer went unanswered, including inquiries made with his mother, Smt. Madhuben Govindbhai Patel, who also claimed to have lost contact with the assessee vide letter dated 06-11-2017. Given the continuous non-compliance, a notice under Section 144 was issued on September 8, 2017, proposing to finalize the assessment ex parte. The Assessing Officer proceeded to finalize the assessment based on available records, as the assessee had still not responded or provided any explanations regarding the unexplained cash deposits. The Assessing Officer added the unexplained cash deposits of Rs. 3,13,34,845/- to the total income.

4. In appeal, Ld. CIT(Appeals) issued various notices dated February 15, 2021, September 14, 2022, September 23, 2022, and October 7, 2022, however, the assessee failed to respond to any of these notices. Ld. CIT(Appeals) observed that in Form No. 35, the assessee presented several grounds, arguing that the Assessing Officer erred in invoking section 69A of the Act by adding credit entries from bank statements without considering corresponding debit entries. The appellant contended that they were compiling evidence to counter the AO's claims and requested a stay on the demand based on judicial precedents. Ld. CIT(Appeals) observed that during the appellate process, the assessee submitted additional evidence that largely comprised of bank account copies already available with the AO at the assessment stage. The CIT(A) forwarded these documents to the Assessing Officer for his remarks, who stated that the assessee continued non-compliant during the entire remand proceedings as well. Accordingly, Ld. CIT(Appeals) decided the appeal based on the material available on record. The Ld. CIT(Appeals) observed that the grounds presented by the assessee were considered general in

nature and did not address the specifics of the assessment order, during which the assessee remained completely non-compliant. Ld. CIT(Appeals) observed that the key issue was whether the AO was justified in making the addition under section 69A due to the unexplained cash credited in the appellant's bank accounts. The burden lay with the appellant to prove the genuineness of these credits. Ld. CIT(Appeals) placed reliance on various judicial precedents which have held the necessity for the assessee to demonstrate the identity of creditors, their creditworthiness, and the genuineness of transactions. As per these rulings, when no satisfactory explanation is provided by the assessee to demonstrate the identity of creditors, their creditworthiness, and the genuineness of transactions, the AO is entitled to assess and add unexplained amounts as income of the assessee. Accordingly, Ld. CIT(Appeals) held that that the assessee had not provided any explanation throughout the assessment or appellate process, despite being given ample opportunity. Consequently, Ld. CIT(Appeals) upheld the addition of Rs. 3,13,34,845 in the hands of the assessee and the appeal of the assessee was dismissed, reaffirming the AO's decision. While passing the order, Ld. CIT(Appeals) made the following observations:

“6.12 That a bare perusal of the aforesaid deeming section therein reveals that an addition under the said statutory provision can be made where the assessee is found to be the owner of a bank account in which the credits were recorded outside the regular books of account maintained for any previous year. Thus, the very sine qua non for making of an addition under Section 69A pre supposes a credit of the aforesaid amount in the 'bank account' held for the previous year. This is the settled position of law that a statutory provision has to be strictly construed and interpreted as per its plain literal interpretation and no word howsoever meaningful it may so appear can be allowed to be read into a statutory provision in the garb of giving effect to the underlying intent of the legislature.

6.13 Having considered entire facts of the case, and the case laws cited above, it is apparent that the appellant has completely failed to offer any explanation either before the AO during assessment proceedings or before me during appellate proceedings, despite affording sufficient number of opportunities and hence, I find no

*infirmity in the order of AO. Accordingly, the addition made of Rs. 3,13,34,845/- is confirmed. As a result, **appeal is dismissed**. Order passed u/s 250 r.w.s 251 of the I.T. Act, 1961.”*

5. Before us, the assessee has been seeking adjournment for numerous occasions and has no demonstrated no inclination to cause appearance and present his case on merits. The assessee has been provided “last opportunity” of hearing the matter, but to no avail. Even today, when the matter was called out for hearing, none appeared on behalf of the assessee and no adjournment application was filed as well. Accordingly, we are left with no option but to decide the case on merits. From the facts placed on record, it is observed that the assessee has made huge cash deposits in his bank account, but the meagre income declared in return of income filed by the assessee is not at all commensurate with the large deposits made by the assessee. The assessee has all throughout remained non-compliant and has given no explanation regarding the source of cash deposited in the bank account. The Supreme Court of India in the case of **Sadiq Sheikh v. Commissioner of Income Tax, Bangalore [2021] 124 taxmann.com 202 (SC)** dismissed SLP against High Court ruling that where Tribunal deleted addition under section 68 made to assessee's income on account of cash receipts in its bank account by accepting assessee's explanation that said amount was transferred in his bank account from out of bank accounts of his brother-in-law and a close friend, **since Tribunal ignored vital fact emanating from record that said creditors had not produced evidence to establish their capacity to raise such a huge amount, its order was to be set aside**. The facts of the case were that the Assessing Officer made certain addition owing to unaccounted cash receipts on ground that assessee failed to establish identity and creditworthiness of creditors from whom he had received a huge amount of Rs. 8.49 crores. On appeal, Tribunal accepted assessee's explanation that said amount was transferred into its bank account

from out of bank accounts of his brother-in-law and a close friend and, further, **that said creditors confirmed to have made payment to assessee. On basis of above, Tribunal held that identity of source was thus established and requirement of section 68 was proved beyond any doubt by assessee and, therefore, addition made by Assessing Officer was not sustainable.** High Court held that since Tribunal ignored vital facts emanating from record that **said creditors had not produced evidence to establish their capacity to raise such a huge amount** and also that they were not clear about their precise role in transaction involving said amount, its order was to be set aside. **High Court further held that creditors admitting that they had made payments to assessee was not sufficient to discharge burden placed on assessee by section 68. The Hon'ble Supreme Court dismissed the SLP filed against the order of High Court.**

6. Again, the Supreme Court in the case of **Sunil Thomas vs. ITO [2021] 127 taxmann.com 275 (SC)** dismissed SLP against High Court ruling that where donor (creditor) who was assessee's brother, apart from furnishing his employment particulars and confirming gift, couldn't explain genuineness of transactions or his creditworthiness by proving his monetary ability to make such gifts of substantial amount, gift amount was to be treated as undisclosed income. The facts of this case were that assessee claimed to have received gift from his NRI brother. The Assessing Officer treated it as assessee's undisclosed income on ground that same was not real and genuine. **The Assessee's brother, apart from furnishing his employment particulars, confirmed that he had made the gift. However, assessee's brother did not make any endeavour to explain genuineness of transactions or his**

creditworthiness by producing necessary documents proving his monetary ability to make such gift of substantial amount.

7. The Hon'ble Supreme Court in the case of **Pr. CIT vs. NRA Iron & Steel (P.) Ltd [2019] 103 taxmann.com 48 (SC)** held that that where assessee received share capital/premium, **however there was failure of assessee to establish creditworthiness of investor companies**, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital / premium received by assessee company.

8. In the case of **Krishan Kumar v ITO 107 taxmann.com 464 (SC)**, the Assessee filed return showing gross receipts of Rs. 9 lakhs. During the relevant year, assessee made cash deposits of more than 37 lakhs in saving bank account. The Assessee's explained source of cash deposits by taking a stand that actual sales were of Rs. 29 lakhs which were wrongly mentioned as Rs.9 lakhs in its return. However, details of purchases and copy of VAT return were withheld by assessee on excuse that same were not available. The Assessing Officer obtained copy of VAT return from Sale Tax Office in which sales were mentioned amounting to Rs. 9.65 lakhs only. He thus made addition of differential amount to assessee's income under section 69A of the Act. The Tribunal as well as High Court confirmed addition made by Assessing Officer. The Hon'ble Supreme Court held that the SLP filed against decision of High Court was to be dismissed.

9. In the case of **Shashi Garg v. Principal CIT 113 taxmann.com 93 (SC)**, during the course of assessment, Assessing Officer found that assessee had withdrawn huge amount of cash from his bank account on different dates in order to purchase an immovable property. The Assessing Officer held that

since the assessee failed to explain source of those cash deposits, Assessing Officer added same to assessee's taxable income of the assessee. The Tribunal as well as High Court confirmed addition made by Assessing Officer. The Hon'ble Supreme Court held that the SLP filed against order of High Court was to be dismissed.

10. The High Court of Andhra Pradesh in the case of **Gayathri Associates [2014] 41 taxmann.com 526 (Andhra Pradesh)** has held that Identity, creditworthiness and genuineness of transaction is not established merely by filing bank account details.

11. The High Court of Allahabad in the case of **Sagitraious Builders & Colonisers [2012] 17 taxmann.com 198 (Allahabad)/[2012]** held that not only the identity of parties, but their creditworthiness also needs to be established by the assessee.

12. The Pune ITAT in the case of **Sanjay Waman & Co. [2002] 81 ITD 1 (Pune) (TM)** held that it is part of the duty of the assessee to furnish evidence regarding the creditworthiness of the creditors.

13. Accordingly, looking into the instant facts where the assessee has made huge cash deposits in his bank account which are not commensurate with the income declared by the assessee in his return of income, taking into consideration the non-compliant and unresponsive attitude of the assessee at all stages of proceedings, including before us, looking into the fact that the assessee has furnished no explanation or supporting documents to substantiate the source of cash deposited by the assessee in his bank account and taking into the consideration the judicial precedents on the subject as highlighted

above, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in upholding the additions made by the Assessing Officer. However, it also needs to be noted that it has been held in a number of decisions that unless the Assessing Officer brings any material on record to show that the cash withdrawn was utilized / used for other purpose, it could not be said that such cash withdrawals might not have been re-deposited in the bank account. This proposition was upheld in the case of **ITO v. M/s. Murlidhar Ice-cream & Sweet Parlour I.T.A. No.531/Ahd/2012** wherein it was held that the disallowance of interest should be proportionately reduced taking into account the amount not utilized for business. Again, in the case of **ITO v. Shri Vishan Lal ITA No.634/LKW/2014**, the Lucknow ITAT held that where the cash deposit and withdrawal in the bank account was made regularly by the assessee during the year, it is very reasonable to say that the same was business turnover outside books and therefore, only gross profit addition is justified in the facts of the present case. This proposition was also upheld in the case of **Shri B. Jenson Thanaraj v. ACIT [2017] 83 taxmann.com 243 (Chennai - Trib.)** where it was held that where cash deposited in bank account of assessee was treated as unexplained cash credit by Assessing Officer but Commissioner (Appeals) having found that money withdrawn by assessee from bank account might be available for subsequent deposit, directed Assessing Officer to take only peak credit, there was no infirmity in order of Commissioner (Appeals). In the case of **C. Vamsi Mohan v. ITO ITA.No.469/Hyd/2014** the ITAT held that said withdrawal having been made by the assessee just before a week, the same can reasonably be treated as available with the assessee for cash deposit especially when there is nothing to show that the said amount was utilized by the assessee for some other purpose. In the case of **ITO v. Deepali Sehgal I.T.A .No.-5660/Del/2012**

it was held that merely because there was a time gap between withdrawal of cash and its further deposit to the bank account, the amount cannot be treated as income from undisclosed sources u/s 69 of the Act in the hands of the assessee. In the case of **ITO v. Shri Rajeev Kumar Gupta ITA No. 273/Agra/2013**, the ITAT held that held that the entire amount of deposit made in the bank account cannot be said to be unexplained because after deposit of the cash amounts, there are withdrawals. In the case of **Smt. Satya Bhama Bindal v. ITO ITA No.713/Chd/2012**, ITAT held that that the concept of peak theory needs to be applied both in respect of the opening introduction of cash in hand and various transactions of cash deposits and withdrawals during the year under consideration. The above proposition was also laid down in the case of **ITO. Ward-51(4), Kol vs. Deb Kumar Jana ITA No. 263/Kol/2012** and also in the case of **Jagdish N. Thakkar v. ITO ITA No.1475/Mum/2009**.

14. The assessee has taken a specific ground that due credit may be given to withdrawals made by the assessee from the aforesaid bank accounts as well. Accordingly, the Assessing Officer is directed to give also take into consideration the withdrawals made the assessee from the aforesaid bank accounts, while finalising the income of the assessee.

15. In the result, the assessee appeal of the assessee is partly allowed for statistical purposes.

16. Since similar facts and issues for consideration are involved for all the years under consideration before us, the appeals of the assessee are directed to be disposed in light of our observations for assessment year 2010-11, for assessment years 2011-12 and 2012-13 as well.

17. In the result, the appeal filed by the assessee in ITA No. 161/Ahd/2023 for A.Y. 2010-11, in ITA Nos. 162 & 163/Ahd/2023 for A.Ys. 2011-12 & 2012-13 are partly allowed for statistical purposes.

This Order pronounced in Open Court on 23/09/2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 23/09/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad