

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member  
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 712/Ahd/2023  
Assessment Year 2011-12**

Tejas C. Joshi 9A, Santosa Park Society, Nr. Aadiraj Bunglow, Iskon Ambli Road, Thaltej, Ahmedabad-380058 Gujarat <b>PAN: AANPJ4735G (Appellant)</b>	Vs	Income Tax Officer Ward-5(3)(3), Ahmedabad  <b>(Respondent)</b>
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**Assessee Represented: Shri Hardik Vora, Advocate  
Revenue Represented: Shri Ramesh Kumar, Sr.D.R.**

Date of hearing : 01-10-2024  
Date of pronouncement : 20-12-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the appellate order dated 14.07.2023 passed by the Commissioner of Income Tax (Appeals)-12, Ahmedabad arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2011-12.

2. The Registry has noted that there is a delay of 6 days in filing the above appeal. The assessee filed a Notarized Affidavit stating that he was away from India between 09-09-2023 to 14-09-2023, whereas the appeal ought to have been filed on 14-09-2023. However the same was filed on 18-09-2023 wherein six days delay and requested to condone the same. We are satisfied with the reasons stated in the Affidavit thereby the delay of six days in filing the appeal is hereby condoned.

3. Brief fact is that the assessee is an individual having income from house property, business income and other sources. For the Asst. Year 2011-12, assessee filed its original Return of Income on 07-07-2012 declaring total income of Rs.17,54,560/-. As per information available with the Department, the assessee has received credit entry amounting to Rs.4,05,553/- of his minor child and not clubbed the same income in his Return of Income thus escaped assessment. Hence the assessment was reopened by issuing a notice u/s. 148 of the Act on 30-03-2018.

4. In response, the assessee filed a return on 16-07-2018 declaring total income of Rs.17,54,538/-. During the reassessment proceedings, the assessee explained the credit entries to the tune of Rs.4,05,553/- is from rental income of the assessee from SBI Life Insurance Co. and Savings shown his Return of Income. However the same was not accepted by the Assessing Officer and made addition in the hands of the assessee u/s. 64 of the Act. Similarly, the Assessing Officer also made addition of Rs.7,50,000/- as undisclosed income which is claimed by the assessee as received

from sale of scrap but the Assessing Officer held as unexplained income demanded tax on the assessed income of Rs.29,10,113/-.

5. On appeal against the reassessment order, the Ld. CIT(A) deleted the addition of Rs.4,05,553/- by observing as follows:

*"8.3 The first objection of the appellant is that his son Vivan Joshi does not have any bank account in SBI and has requested the AO to furnish the copy of the said account deposits in which of Rs.4,05,553/- were required to be explained. He has also mentioned that the SBI A/c No.30330071518 was opened in the name of Vivan but later his name was entered as an account holder, The AO has not rebutted this objection by the appellant the assessment order and appears to have accepted the said claim. From the copy of the computation of income filed by the appellant it is evident that he is showing rental income from two concerns namely viz. SBI Life Insurance and Aditya Retail. Further, from the perusal of the bank account copy of which was submitted the deposits are largely mentioned as rent or main receipts from SBI Life etc. This means that the appellant has duly disclosed the transactions reflected in the said bank account in his return of income. The appellant has also furnished a ledger account to explain the said deposits. The AO has not brought out any reason that why the explanation of the appellant was not acceptable. There is no mention of 'CEMTEX DEPOSIT in the bank account. This narration, as per internet, is used for bulk deposits by banks. In view of the above Lam not convinced that the AO had sufficient evidence before him to make the addition of Rs. 4,05,553/- as unexplained credit deposits in the bank account. Therefore, I direct him to delete the aforesaid addition. Ground of appeal 3.1 and 3.2 are allowed."*

5.1. However the Ld. CIT(A) deleted the unexplained income as Rs.6,50,000/- and partly allowed the assessee appeal.

6. Aggrieved against the same, assessee is in appeal before us raising the following Grounds of Appeal:

- 1. That the Ld. CIT(A) has erred in confirming addition made by assessing officer for source of cash deposited in bank account to the tune of Rs.6,50,000/-.*
- 2. That the various reasons advanced by ld. CIT(A) in passing the order are contrary to the facts of the case and evidence on record.*
- 3. That Ld. Assessing Officer has erred in holding that opening balance of cash as appearing in books of the appellant cannot be accepted and considering the same as afterthought,*
- 4. The appellant respectfully submits that looking to the opening balance of cash of Rs.11,20,056/- and cash withdrawal made on 01.07.2010 for*

*Rs.2,70,000/-, cash deposited in bank on 14.07.2010 and 26.07.2010 for Rs.7,50,000/- in aggregate should have been considered as explained.*

*5. The appellant craves leave to add, alter or amend any of the grounds of appeal before final hearing of appeal.*

6.1. Ld. Counsel Shri Hardik Vora appearing for the assessee raised the following Additional Ground of Appeal:

6. On the facts and circumstances of the case as well on the subject, the learned CIT(A) has erred in not considering that if no addition confirmed on the basis of reasons recorded, re-assessment proceedings cannot be continued on other grounds.

As the ground could not be taken in Form 36 inadvertently, we request your honour to accept additional Ground of Appeal.

7. In support of the additional ground, Ld. Counsel relied upon Calcutta High Court Judgment in the case of CIT(Exemption) vs. B.P. Poddar Foundation For Education reported in [2023] 148 taxman. com 125 (Calcutta), Co-ordinate Bench decision in the case of Joginder Singh Vs. ITO reported in (2016) 65 taxmann.com 323 (Amritsar Trib.) and Clarion Power Corporation Ltd. Vs. ACIT in ITA No. 1336/HYD/2018 dated 06-05-2021.

8. Per contra, Ld. Sr. D.R. Shri Ramesh Kumar appearing for the Revenue supported the order passed by the Lower Authorities and requested to confirm the same.

9. We have given our thoughtful consideration and perused the materials available on record. As it can be seen from the assessment order, the reasons for reopening of assessment namely credit entries amounting to Rs.4,05,553/- of assessee's minor child was not clubbed the same in assessee's Return of Income. Ld. CIT(A) after considering the SBI Account No. 3033007158 which

was opened in the name of Shri Vivian Joshi but later assessee's name was added as an joint account holder. The rental income from SBI Life Insurance Co. and Aditya Retail were offered for taxation by the assessee through this Bank account. Thus the assessee disclosed the transaction reflected in the bank account. Therefore Ld. CIT(A) deleted the addition of Rs.4,05,553/- as unexplained credit deposit in the bank account which was the prime facie basis for reopening of assessment. When the basic reasons recorded for reassessment itself is deleted, there cannot be any further addition in the reopened assessment, and such additions cannot sustainable in law. Since the foundation of reassessment proceedings is a valid notice, if this notice is held to be invalid, the entire edifice sought to be raised on such foundation has to collapse and therefore the entire reassessment proceedings liable to be quashed.

10. The Hon'ble Calcutta High Court in the case of B.P. Poddar Foundation For Education (cited supra) wherein it was held as follows:

“Denial of exemption (Reassessment) Assessment year 2009-10 During year, assessee trust declared its income as NIL Subsequently, Assessing Officer issued a reopening notice for reason that assessee had deposited money with a company which was found to be specified person of assessee, thus, assessee was hit by section 13(1)(c)(ii) and section 13(1)(d) and money was to be taxed separately at maximum marginal rate in terms of proviso to section 164(2) Assessing Officer proceeded to pass a reassessment order making additions on account of said amount to income of assessee by invoking section 13(1)(b) read with section 11(5)- Assessing Officer also held that assessee was not carrying out its activities as per objects of trust, accordingly, amount said to have received as donation was added back to Income of assessee under section 69A Assessee contended that issue regarding addition under section 69A was not raised by Assessing Officer in reopening notice- Whether since

additions on account of amount deposited by assessee with specified person in contravention to section 13(1)(c)(ii) and 13(1)(d) was deleted by Commissioner (Appeals), further addition made by Assessing Officer under section 69A was also to be Deleted-Held, yes”

10.1. Similarly the Co-ordinate Bench of the Amritsar Tribunal in the case of Joginder Singh (cited supra) wherein it was held follows:

“When addition made by Assessing Officer to assessee's income on basis of reasons recorded for reopening of assessment that assessee who had taken over business of old firm in which he was partner, had made payments to outgoing partners and made payment of bank term loan and interest which was more than income declared by assessee, was deleted by Commissioner (Appeals) on ground that such payments were directly made by buyers of assets of firm, Commissioner (Appeals) ought to have also quashed reassessment proceedings”

11. Respectfully following the above judicial precedents, we have no hesitation in holding that the reassessment itself is bad in law since Ld. CIT(A) deleted the impugned addition of Rs.4,05,553/- being unexplained deposit in the bank account which was clearly disclosed by the assessee in his Return of Income. Thus the very basic reasons recorded for reopening of assessment itself fails consequently reopening of assessment is liable to be quashed.

12. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 20-12-2024

**Sd/-**  
**(NARENDRA PRASAD SINHA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 20/12/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / 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