

**IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH,
MUMBAI**

**BEFORE BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 6878/MUM/2024
(निर्धारण वर्ष / Assessment Year :2011-12)**

Sudesh Ramchandra Kasar Room No. 04, M H Chawl, Hanuman Tekadi Kajupada, Borivali (E), Mumbai-400066	v/s. बनाम	ITO – 42(1)(5) Room No. 734, 7 th Floor, Kautilya Bhavan, G Block, Bandra Kurla Complex, Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AIGPK2873B		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Jay Bhansali
राजस्व की ओर से /Revenue by:	Ms. Kavitha Kaushik

सुनवाई की तारीख / Date of Hearing	13.05.2025
घोषणा की तारीख/Date of Pronouncement	15.05.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 03.07.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2011-12.

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

“1. The Commissioner of Income-tax (Appeals) (hereinafter referred to as "the CIT(A)) erred in upholding the action of the Assessing Officer in making an addition of Rs. 93,48,500/- under section 68 of the Income-tax Act, 1961 [hereinafter referred to as "the Act"]. The reasons given are wrong, contrary to facts of the case and against the provision of law;

2. The CIT(A) failed to appreciate that

(a) The cash was deposited by my employer Mr. Mukesh K. Desai (Prop. Pathik Computer) from time to time in my account and immediately the same was transferred to the account of Pathik Computer on same day;

(b) Mr. Mukesh K. Desai has submitted a notarized Affidavit admitting that he had deposited cash in my bank account and transferred the same to Pathik Computer account and that he was solely responsible for any tax liability arising on the same.

3. The CIT(A) erred in dismissing the appeal as infructuous merely because the grounds were not drafted correctly although the issues were raised correctly by way of submissions;

4. The above grounds/sub grounds of appeal are without prejudice to each other;”

3. At the outset, it is noticed that the appeal is delayed by 117 days. The assessee has filed an affidavit explaining the circumstances leading to the delay. It has been submitted that the assessee, being a driver, is earning an income of Rs. 1,13,500/- and was not required to file his return of income. However, his employer, Shri Mukesh K. Desai, proprietor of Pathik Computers, deposited the impugned cash in the assessee's bank account without his knowledge, which was immediately transferred to the account of his proprietary concern. The assessee having met with an accident, his salary was being deposited in his bank account by the employer, who misused the same for depositing his unaccounted cash also. An affidavit to this effect was given by Shri Mukesh K. Desai admitting that he had deposited the impugned cash in the bank account of the assessee and was solely responsible for any tax liability arising on the same. However, before Ld. CIT(A), the grounds of appeal were not properly filed by the



chartered accountant allegedly in connivance with Shri Mukesh K. Desai. Accordingly, the appeal of the assessee was also dismissed on the ground that the addition of impugned cash was not challenged in the grounds of appeal. The assessee therefore engaged a new consultant, who advised him to first file a police complaint against his employer for the fraudulent use of his bank account on account of which the filing of the appeal was delayed. Considering the reasonable cause explained by the assessee, the delay in filing the appeal is hereby condoned.

4. Brief facts of the case are that the assessee did not file his return of income as he was earning a salary as a driver of one Shri Mukesh K. Desai, proprietor Pathik Computers, during the year under consideration, which was below the taxable limit. However, as per the Annual Information Return (AIR) information, Ld. AO noticed that the assessee had deposited total cash amounting to Rs. 93,48,500/- in his bank account with the Bharat Cooperative Bank (Mumbai) Ltd. from time to time. Accordingly, a notice u/s 148 was issued on 29.03.2018, in response to which, the assessee filed his return on 15.10.2018. An affidavit has also been filed by his employer, Shri Mukesh K. Desai, Proprietor Pathik Computers, wherein it has been admitted by him that the cash deposited in the assessee's bank account belonged to him and the same was transferred to the bank account of his proprietor concern to M/s. Pathik Computer, and that he was solely responsible for the same. However, Ld. AO



ignored the submissions of the assessee and proceeded to make the addition of Rs. 93,48,500/- u/s 68 of the Act, holding that the cash was deposited in the assessee's bank account and therefore taxable in his hands.

5. Aggrieved with the order of Ld. AO, the assessee preferred an appeal before Ld. CIT(A). However, the grounds of appeal were not properly drafted, and the issue of addition made by the AO u/s 68 was not raised in the grounds of appeal. Accordingly, the appeal was dismissed by Ld. CIT(A) vide order dated 03.07.2024.

6. Thereafter, the assessee has preferred an appeal before the Tribunal. Ld. AR has explained before us that the assessee's case was not properly handled as the chartered accountant was working on the advice of his employer, Shri Mukesh K Desai, who had actually deposited the impugned cash in the assessee's bank account, and thereafter, transferred the same to the account of his proprietary concern, M/s. Pathik Computers. It has been argued that by Ld. AR that in view of the affidavit of Shri Mukesh K. Desai as well as the details of the bank statements, evidencing transfer of unaccounted cash to the account of M/s. Pathik Computer, the addition should not have been made in the assessee's hands by Ld. AO.

7. Ld. DR, on the other hand, has relied on the orders of lower authorities and submitted that since the cash was deposited in the assessee's bank account, the addition has rightly been made in the hands of the assessee.



8. We have heard the rival submissions and perused the material placed before us. Admittedly, the account of the assessee has been misused by his employer for depositing his unaccounted cash and transferring the same to his proprietary concern's bank account immediately after the deposit. In view of the above facts submitted by the assessee, After considering the entire facts and circumstances, we are of the view that no addition is called for in the hands of the assessee. Ld. AO should have made further enquiry on the basis of the affidavit of Shri Mukesh K. Desai, which was filed by the assessee vide reply dated 23.10.2018. There was no justification for making the addition in the hands of the assessee. The addition of Rs. 93,48,500/- u/s 68 made by the Ld. AO is, accordingly, deleted. However, the department is free to take requisite action in the hands of Shri Mukesh K. Desai, prop. M/s. Pathik Computers as per law.

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

Order pronounced in the open court on 15.05.2025.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 15.05.2025

अनिकेत सिंह राजपूत/ स्टेनो

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



1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

