IN THE INCOME TAX APPELLATE TRIBUNAL
AT AHMEDABAD "B" BENCH

Before: Shri A. K. Garodia, Accountant Member and
Shri Kul Bharat, Judicial Member

I.T.A. No 1238/Ahd/2010
A.Y.:- 2004-05

M/s Patel Vishnubhai Kantilal & Co. 5/149, Tankiwali Street, Golwala, Chakla, Haripura, Surat (Appellant) PAN NO. AACFPQ443J	Vs.	Income Tax Officer, Central Ward-1(1), Ahmedabad (Respondent)

Revenue by : Sri A. Tirkey, Sr. D.R.
Assessee by : Sri P.M Mehta A.R.

Date of hearing : 01 -10-2012
Date of pronouncement : 09-11-2012

आदेश/ORDER

PER : KUL BHARAT, JUDICIAL MEMBER:-

This appeal of the assessee is directed against the order Ld. Commissioner of Income Tax (Appeals)-III Ahmedabad dated 08-02-2010 The assessee has raised following grounds of appeal:-

"1. On the facts and in the circumstances of the case, the Departmental authorities have erred in adding Rs.20 lacs for allegedly unexplained

credits into the bank account of the assessee firm which were introduced as fresh capital by the working partner of the firm viz. Shri Kantilal R. Patel.

2. Without prejudice, on the facts and in the circumstances of the case, the CIT(A) erred in not reversing the conclusion of the Assessing Officer that "Rs.20 lacs introduced by the partner through his bank account was only a strategy to route the unaccounted income of the assesses firm" as noticed at the top of page 4 of the impugned appellate order.

3. Without prejudice, on the facts and in the circumstances of the case, the C1T(A) should have held that even if the Assessing Officer disbelieved the partners' explanation of availability of Rs.20 lacs with him there was no justification for taxing that sum as undisclosed income of the firm.

4. On the facts and in the circumstances of the case, the Departmental authorities erred in disbelieving the assessee's contention that the partner concerned Shri Kantilal R. Patel had conclusively explained the availability of that sum of Rs.20 lacs with him and had reasonably proved the availability of the said sum with persons concerned from whom he had received the respective sums.

5. On the facts and in the circumstances of the case, the Departmental authorities erred in holding that it was a fit case for disallowance of some part of interest expenditure and further erred in quantifying such disallowance in a sum of Rs.4,96,231."

2. Briefly stated facts in this case the scrutiny assessment was finalized u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act). While drawing assessment order the Assessing Officer made addition of Rs. 20,00,000/- u/s 68 of the Act and interest expenses of Rs. 4,96,231/- into the declared income of the assessee. The assessing against these additions filed an appeal before the Ld. CIT(A) who after considering the submissions of the assessee dismissed the appeal. In this factual backdrop, the assessee is before this Tribunal by a way of present appeal.

3. The ground No. 1 to 4 are effectively against the confirmation of addition of Rs. 20,00,000/- made u/s 68 of the Act. Therefore, all have been

heard together and being disposed off together. Learned counsel for the assessee ,at the outset, submitted that the issue in these grounds is squarely covered by the decision of Hon'ble High Court of Gujrat rendered in the case of CIT vs. Pankaj Dystuff Industries in I.T. Reference No. 241/1993 and followed by the Hon'ble Co-ordinate Bench in ITA No. 29/Ahd/2010. He submitted that the assessee is a partnership firm and one of the partners of the firm Sri Kantilal Patel introduced fresh capital of Rs. 20,00,000/- into the assessee-firm. He also placed reliance on the statement of fact and synopsis enclosed along with the grounds of appeal. On the contrary, Ld. Sr. D.R. relied on the orders of the authorities below. He submitted that the assessee-firm failed to justify the loan and gifts taken by the partner from various persons for introduction of capital in question. He submitted that ,therefore, the AO was justified in making additions and Ld. CIT(A) rightly confirmed the same.

4. We have heard the rival submissions perused the material available on records and judgments cited. The issue for determination in this ground is whether the fresh capital of Rs. 20,00,000/- introduced by one of the partners of the assessee firm is liable to be taxed in the hand of the assessee-firm despite the fact that the partner who introduced the capital has confirmed and owned the same. The assessee has made submissions in the form of statement of fact-synopsis enclosed with grounds of appeal. The relevant contents of the submission are reproduced herein below for the sake of clarity:-

> *"The assessee firm is a very reputed Angadia (domestic couriers) of the area. The impugned assessment order itself notices existence of 24 branch offices at different stations including Rajkot, Mumbai and Delhi -*

vide Annexure-A of the assessment order prepared for justifying and quantifying disallowance out of interest expenses. That very Annexure-A actually tabulates cash balances as per the books of those 24 branches as on the last day of each of the 12 months of the previous year relevant to this appeal viz. FY. 2003-04. As per that Annexure-A cash balance has varied from Rs.8,35,767 as on 31.12.2003 to Rs.55,13,776 as on 31.3.2004. Obviously, the assessee firm had fairly extensive business as Couriers.

2. Into the bank accounts of the assesses firm Rs.20 lacs in all were credited for the fresh capital brought in by the working partner Shri Kantilal R. Patel. The Departmental authorities have held that Shri Kantilal R. Patel has not been able to explain the corresponding transactions of receipt by him and also availability of the said sum of Rs.20 lacs with him. His explanation that he received gifts totaling Rs.12 lacs from four different persons 8 lacs from his son Shri Narendra R. Patel has been disbelieved by the Departmental authorities in spite of the fact that apart from anything else all those transactions also were through bank accounts.

3. It is submitted that the Departmental authorities have failed to appreciate that capital contribution of partners cannot be considered as unexplained u/s. 68 in the case of partnership firm more so when such partner is assessed to income-tax. Further, the Departmental authorities have failed to appreciate the fact that once it is established that amount has been invested by a particular person who is partner, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of that firm for the purposes of income-tax. Even the confirmations of partners were also submitted hence no addition u/s 68 is called for. On this aspect assessee's written submissions dated 20.3.2009 which were furnished before the C1T(A) cited many reported decisions they may be described somewhat as follows:

*"(1) Metachem Industires 245 ITR 160 (Madhva Pradesh)
HEADNOTE :*

cash credits-addition under s. 68-Credits in capital accounts of partners of the firm-once it is established that the amount was invested by a particular person, whether a partner or anybody else, the responsibility of assessee-firm is over and its burden is discharged concurrent finding of both, the CIT(A) as well as of the Tribunal that the firm has satisfactorily explained the entries- credit entry cannot be treated as income of the firm.

(2) Jaiswal Motor Finance 141 ITR 706 (Allahabad)
HEADNOTE :

cash credit - burden of proof - deposits in partner's _account- finding of tribunal that deposits had been made by the partners as capital contribution onus placed on assesses firm under s. 68, Therefore, stood discharged.

(3) C1T Vs Ramrshwar Das Suresh Das Suresh Pal CTR 459 (P &H)

"Once a partner of the firm has accepted, having advanced amount to the firm no addition could be made in the hands of firm u/s 68 of the Act,

(4) CIT Vs Metal & Metels_of_India 208 CTR 457 2007.)(P & H)

In the present case, the firm has given explanation about the source namely Suresh Bhandari, partner, who himself is an assessee. The said partner has admitted having made deposit with the firm. Thus, as far as the firm is concerned, even if the gift claimed to have been received by Suresh Bhandari is to be rejected, the said Suresh Bhandari may be liable to be taxed by treating the said amount as undisclosed income, but the firm cannot be subjected to tax on that ground.

(5) Narayan.Kedarnath22 ITR 13 (Bom)
"….. There may be a genuine case where a partner or a stranger may bring in moneys to the credit of the firm and the partner or the stranger may have come into those moneys by thoroughly dishonest means, but it is not for the firm which is being assessed to satisfy, the Department that the moneys which it received from the partner or the stranger were moneys which the partner or the stranger obtained by honest means. In my opinion that would be throwing too heavy a burden upon the assessee. We do not wish to lay down any general law which should apply to all cases. In most cases it would depend upon the facts actually found. On the facts actually found and strictly confining our decision to the facts of this case we are of opinion that there were no materials on which the Department could have come to the conclusion that these credits represented undisclosed profits of the firm.

(6). Where identity of partner is not in doubt and he has impugned cash credit, the addition for the same in the assessee firm's hand was not justified. (ITO V. Chohtan Construction Co (2004) 84 TTJ 693 (Jod Tribunal)

It is, therefore, submitted that the Departmental authorities are not justified in holding that the assessee firm had not discharged its onus of proving *the genuineness of deposits received by it from the aforesaid Shri Kantilal R. Patel,*

4. Without prejudice to the aforesaid pleas it is submitted that the matter may be viewed from a slightly different angle also. The point is that the assessee firm as a separate taxpayer has the onus only of proving the genuineness of the deposits received from Shri Kantilal R. Patel. In other words, vis-a-vis the assessee firm Shri Kantilal R. Patel is the depositor and the usual three tests for proving the genuineness of deposits (i) identity; (ii) capacity and (iii) genuineness of transaction are to be applied vis-a-vis the said Shri Kantilal R. Patel. The position is as follows :

(i) Identity of Shri Kantilal R. Patel is not even doubted by the Department. On the other hand, he has emphatically claimed that he has deposited these sums.
(ii) Capacity-even as per the books of the assessee firm there is an opening credit balance of Rs.21,64,769 in the ledger account of Shri Kantilal R. Patel. He is an Income-tax assessee. Further as working partner of the assessee firm he commands authority on substantial resources, as referred to in para 1 above. So, the capacity of Shri Kantilal R. Patel to deposit Rs.20 lacs with the firm is more than established.

(iii) Genuineness of the transaction is also not doubted and cannot be doubted because all the transactions are through bank accounts.

It is, therefore, submitted that the assessee firm as a separate tax payer has discharged its onus of proving the genuineness of the deposits received from Shri Kantilal R. Patel by proving inter alia :

(i) his identity;
(ii) his capacity and
genuineness of the transaction of receipt from him through banking channels.

5. Actually, all that the Departmental authorities have held is that Shri Kantilal R. Patel is unable to explain the availability of money with him which he claims to have deposited with the firm. It is submitted that whether the aforesaid view taken by the Departmental authorities is right or wrong, there is absolutely no justification for the Departmental authorities to jump to the conclusion that the aforesaid sum of Rs.20 lacs introduced by Shri Kantilal R. Patel through his bank accounts was only a strategy to route the unaccounted income of the assesses firm - there is absolutely no basis for holding that it was the unaccounted income of the firm itself.

6. Without prejudice, it is submitted that Shri Kantilal R. Patel has explained the availability of that money with him by showing and proving that he has received wholly through banking channels Rs.12 lacs as gifts from five different persons and Rs.8 lacs as loan from his son Shri Narendra R. Patel. Relevant facts and figures may be tabulated as follows:

Sr. No.	Name	Nature	Amount Rs.
(a)	(b)	(c)	(d)
1.	Sashikant H Valani	Gift	5, 00.000
2.	Jyotsna N. Patel	"	2,50,OO0
3.	GomatiV, Patel	"	1,50,000
4.	Bechar N Patel	"	1,50,000
5.	Narendra Patel	"	8,00,000
	Total		20,00,000/-

7. It is submitted that the Statement of Facts (SOF) furnished before CIT(A) along with the appeal papers describes in great detail in paras 1.1 to 1.11 on pages 2 to 9 thereof the factual and legal aspects support of Shri Kantilal R. Patel's claim of receipt of the aforesaid sum Rs.20 lacs by him. In the interest of brevity those averments are not produced herein.

8. Actually assessee relies on the observations and findings contained the case of Rohini Builders in the Tribunal's order (which is reported 76 TTJ 532 and in the Hon'ble Gujarat High Court decision which is Reported in 256 ITR 360) that SOF cites in support also the ITAT Ahmedabad decision in Munesh R. Shastri vs. DCIT in ITA No. 594/Ahd/2003 - refer para 1.9 on pages 7 & 8 of the aforesaid SOF.

9. In addition thereto the assessee's reliance also on two other decisions of the Hon'ble Rajasthan High Court which may be described as follows:

(i) Decision of Rajasthan High Court dated 25th January, 2007 in the case or Aravali Trading Company Vs Income-Tax Officer-8 DTR l99:

"Income - Cash credit - Burden of proof - Once the existence of the creditors is proved and such persons own the credits which are found in the books of the assessee, the assessee's onus stands discharged and the latter is not further required to prove the source from which the creditors could have acquired the money deposited with him either in terms of S. 68 or on general principle -- Merely because the depositors' explanation about the sources of money was not acceptable to the A O, it cannot be presumed that the deposit made by the creditors is money belonging to assessee itself - If the creditors' explanation about the source of deposits is not found to be acceptable, the investment owned by such persons may be subjected to proceedings for inclusion of the amounts as their income from undisclosed sources, or if they are found benami, the real owner can be brought to tax - In the absence of anything to establish that the sources of the creditors' deposits flew from the assessee, the cash credits cannot be treated as unexplained income of the assessee."

(ii) Decision of Rajasthan High Court dated 28th April, 2008) in the case of Labhchand Bohra Vs I T O 8 DTR 44:

"Income - Cash Credit - Burden of proof - Identity of creditors D and V has been established and they have confirmed the credits by making statements on oath — This also satisfies the requirement of discharge of burden on the part of the assessee to prove the genuineness of the transactions — Capacity of the lender to advance money to the assessee was not a matter which the assessee could be required to establish as that would amount to calling upon him to establish the source of the source - Therefore, additions in respect of the entries in the names of said creditors cannot be sustained."

10 It is submitted that on the basis of preponderance of probabilities it cannot be reasonably held that the said Shri Kantilal R. Patel has not been able to explain the availability of the aforesaid sum of Rs.20 lacs with him. On this basis also the addition made deserves to be deleted.

11. It may kindly be observed that the assessee had cited many decisions in support of his case but the learned CIT(A) in para 7 on page 5 has summarily held that the ratio of the decisions cited has been rightly distinguished. In para 7 itself the CIT(A) has relied on some decisions for supporting the Department's case for rejecting the assessee's claim. The position in regard to the decisions cited by the CIT(A) is as follows :

1. D.C. Rastogi (HUF) vs. ACIT 57 ITD 295 (TDEL). Actually, that is a very long decision but there are factual aspect of the case which distinguish the cited decision from the present case. Those parts of the decision are as follows :

(a) In para 19 it is recorded inter alia as follows :
"19..... There is no evidence on record to establish the financial status of the donors nor is there satisfactory evidence supporting the genuineness of the gifts. ...."

(b) In para 20, it is recorded as follows :
"20. Considering the facts and circumstances of this case and the evidence on record, we are of the view that the onus that lay on the assessee to establish the creditworthiness of the donors and genuineness of the gifts has not been discharged.

(c) In para 34, it is recorded as follows :

"34. .... It is observed that two of the donors are employees of the father of the assessee. The story of gifts to the employers children from the employees can hardly be swallowed. ....."

(d) In para 42, it is recorded as follows :

"42. The Assessing Officer had made an enquiry from the Syndicate Bank, Rajender Nagar and found that on 21-3-1986 when a cheque for Rs. 50,000 was issued to the assessee, there has been credit balance of Rs. 5271.60 only in the bank account of the donor. On 25-3-1986 a sum of Rs. 50,000 had been credited in that account by telegraphic transfer and the same amount was debited to this account in the name of the appellant. There was no information about the source of Rs. 50,000."

(e) In para 43, it is recorded as follows :

"43. From the evidence referred to above, it is evident that the financial capacity of the donor is not established nor is genuineness of the gift established. The finding in the case of D,C. Rastogi share in application in this case also. Considering the circumstances, of this case are of the view that the Assessing Officer was justified in not accepting the gift as genuine.

(f) In para 49, it is recorded as follows ;

"49. ....The creditworthiness of the donors have not been established. Genuineness of the gifts have a/so not been established. The present whereabout of the donors have also not been made available to the Assessing Officer so that proper enquiry could be made. We are, therefore, not inclined to interfere in the order of the CIT (Appeals). The CIT (Appeals) has set aside the addition of Rs. 10,000 for verification and the revenue is not in

(g) In para 50, it is recorded as follows :

"50. .... As has a/ready been pointed out the donor is claimed to be widow unable to support her family, in these circumstances, the genuineness of the gift cannot be said to have been established as a/so the capacity of the donors to make the gift, ..."

Thus, factual matrix is distinguishable.

(2)Sajan Dass and Sons vs. GIT 264 ITR 435.
Relevant part of the Head Notes are as follows:

"The assessee claimed Rs. 3 lakhs as a gift for the assessment year 1993-94. During the course of assessment proceedings, the Assessing Officer made enquiries which revealed that in the affidavit filed in support of the said gift the date of attestation by the notary and the date of execution of the affidavit by the deponent did not tally ; the notary affirmed that on the date on which the notary notarized the document the deponent was present before him but the passport of the deponent showed that he was not in India on that date ; the signatures of the donor on the gift deed and the passport did not tally. Moreover the donor himself had contradicted the assertions of the assessee and had sent a letter to the Directorate of Enforcement wherein he denied having made any gift to any person at any point of time. ..."

Thus, factual matrix is distinguishable.

DCIT vs. Naresh K, Pahuja 17 SOT 636. Relevant part of the Headnotes is as follows:

> *"......Department surveyed business premises of assesses under section 133A on 14-6-1999 in course of which statement of assessee was recorded - in his statement, assessee, inter alia, stated that he had received a gift of Rs. 13.25 lakhs from one 'K' which he subsequently changed by stating that aforesaid gifts were received from three persons, namely, 'K' and two other persons - Assessing Officer insisted on personal attendance of all donors for examination but assessee failed to do so - He further found that all three donors were not so highly paid employees to make gift of such high amount. ...."*

Obviously factual matrix of thiscase is also distinguishable.

12. In the interest of completeness we may also have a look on the decisions cited by the Assessing Officer. They are as follows :

(1) Jaspal Singh vs. CIT (2006) 205 CTR (P&H) 624 cited by the Assessing Officer on page 15 of assessment order.

Actually in their decisions in para 2 it is noticed that, that tax payer had claimed to have received various non-resident gifts aggregating to Rs.15,69,000 for A.Ys. 1997-98 to 2001-02. Para 3 of that High Court order notices significant factual position in clause H as follows:-

> *3. ....*
>
> *"(H) The perusal of copy of bank draft No. FRA 163292 dt 10th December, 1997 of State Bank of India. Frankfurt/Main Germany Branch relevant that donor had given her name as Sukhwinder Kaur giving her account No.K-5405 and had signed as S. Kaur. However, the affidavit was filed in the name of Surinder Kaur Chawla and the signatures on Jaspal Singh, the assessee, stated that actual name of the donor is Smt. Surinder Kaur. In view of these facts even the identity of the donor is not confirmed either from the name or from the signatures on affidavit and bank draft."*
>
> *(Emphasis supplied)*

Thus, the factual aspects involved in that case is distinguishable, as it was very much against that tax payer.

(2) Shri Shanta Devivs.CIT (1968)171 ITR 532 (P&H)

> *Actually, in that decision main point involved was whether for considering the applicability of section 68 for cash credit, books of account of the firm in which assessee is a partner should be considered to be assessee's own books and the reply given by the High Court was in negative. So that decision does not help the department*

(3) Laxmi Narain Gupta vs.CIT-(1980) 124 ITR 94

In that decision also the point involved is the same as noticed in decision at Sr. No. (2) above, and it was held that for taxing the undisclosed income the previous year would be financial year. Thus, this decision also does not help the department.

(4) (1) Jagmohan Ram Ram Chandra (2) Girish Narain vs. CIT-(2005) 274 ITR 405

In para marked 6.3.1 on page 17, the assessment order reproduces the conclusion of that decision and the first part of that conclusion may be reproduced herein also as follows :-

" .... wherein it is held that if any entry of cash credit is found in the books of account of a firm, it is for the firm to give an explanation regarding the identity and source of such deposits and if the explanation is believed then it is to be added as in income under section 69 of the Income-tax Act, 1961,in the hands of the firm. ...."

It is submitted that it is that part of the conclusion which is relevant for the case of the firm as an assessee and even as per that conclusion if the firm fails to prove the genuineness of deposits, it may be taxed under section 68 in the hands of the firm. It is submitted that in this particular case, the assessee has proved the genuineness of the deposits made by partner Shri Kantilal R. Patel as detailed in paras 3 to 5 above.

13. Thus, none of the decisions cited either by the CIT(A) or by the Assessing Officer supports the inference of taxing Rs.20 lacs in the hands of the the assessee firm. On the other hand, vide para 8 above, the assessee has cited decisions (including that of Hon. Gujarat High Court) which support the assessee's case. Therefore, addition of Rs.20 lacs in assessee's hands deserves to be deleted."

5. We find merit into the submission of the assessee as the Revenue has not disputed fact is that one of the partners introduced fresh capital of Rs. 20,00,000/- into the assessee-firm. Ld. D.R. could not demonstrate as to how the ratio laid in the judgment of Hon'ble jurisdictional High Court rendered in the case of CIT vs. Pankaj Dystuff Industries (supra) is not

applicable on the facts of the present case. The Hon'ble High Court in the said case after examining the principles laid in the judgment of the Allahabad High Court in the case of Commissioner of Income Tax vs. Jaiswal Motor Finance (1993) 140 ITR 706 answered the question referred to it in affirmative i.e. in favour of the assessee and against the Revenue. In this view of the matter, respectfully following the judgment of Hon'ble High Court of Gujrat rendered in the case of CIT vs. Pankahj Dystuff (supra) the addition of Rs. 20,00,000/- is hereby directed to be deleted. These grounds from 1 to 4 of the assessee's appeal are, therefore, allowed.

6. Next ground is against the confirmation of disallowance of Rs. 4,96,231/- made by the Assessing Officer in respect of the interest expenses. Learned counsel for the assessee submitted that the AO has disallowed the expenses on the basis that the assessee has not proved by the documentary evidence that the partnership capital and borrowed funds to the extent of Rs. 72,29,310/- are utilized for the purpose of business. He submitted that the assessee is in the business of angadia. He has to keep huge cash. He submitted that basically it is not for the Assessing Officer to decide how much cash balance the assessee should keep with him. He submitted that even the basis adopted by the Assessing Officer is not correct. He submitted that huge cash has been kept in according to the contingencies of the business and the width of the range of cash balance show that such contingencies themselves had a very wide range. He further submitted that the Assessing Officer quantified disallowance by impliedly by presuming that no cash was at all needed for the purpose of business in so far as disallowance is computed by taking the whole of the maximum sums of Rs. 55,13,776/-. Obviously these presumptions are wholly wrong because some

cash is always needed. He submitted that quantification of disallowances done as if that maximum cash balance of Rs. 55,13,776/- has exited on of 365 days of the year while actually as per the Annexure A itself there is balance as low as Rs. 8,35,667/-. He submitted that para 7 on page 18 of the assessment order purport to give interest bearing fund available and corresponding sums of interest. It noticed therein in fact more than 95 percent of total interest paid is to the partners. Disallowance has been computed on total interest paid including interest paid to the partner. It is submitted that interest paid is separately taxed in the hands of the partners. In general law firm is but only a compendious name of partners, even otherwise tax burden of the firm ultimately borne by partners. Thus, 95 percent of the disallowance of interest made in the assessment order has suffered double taxation in the hands of the partners individually also in the firm collectively. He placed reliance on the decision of the Hon'ble Co-ordinate Bench rendered in the case of ACIT vs. M/s Patel Mathavlal Magnilal and Others in ITA No. 69 to 74/Ahd/2009. On the contrary, Ld. Sr. D.R. placed reliance on the decisions of the authorities below.

7. We have heard the rival submissions perused the material available on record and the judgments cited. We find that the Assessing Officer has observed that the assessee has debited interest of Rs. 28,1,88/- on borrowings and Rs. 6,24,728/- on partners total 6,52,932/-. On perusal of the balance of the assessee it is noticed that the partners capital are of Rs. 69,39,072/- and borrowings are of 2,90,238/- (repayment in the year). Both these amounts totaling of Rs. 71,29,310/- are interest bearing amounts. Against these source of funds, the assessee has fixed assets at Rs. 10,56,479/-, other deposits including loan and advances of Rs. 3,38,540 and

cash on hand of Rs. 5,53,7,76/-. During the course of assessment proceedings, the assessee was asked to furnish monthly cash balances. The details filed by the assessee also show that the assessee maintained huge cash balance throughout the year. It is further observed by the Assessing Officer that since the business of the assessee is angadia wherein the requirement of cash is very nominal for day to day expenses. Therefore, the assessee vide letter dated 09-11-2006 was required to explain the business use of partner's capital as well as borrowed funds and also to justify claim of interest u/s 36(1)(iii) of the Act. In response thereto, the assessee filed a reply dated 14-11-2006. It was submitted therein that the business of the assessee company being currier agent requires transfer of cash and valuables from one branch to another located at various places and cash is also required to meet the various expenses of routine nature. It submitted by the assessee that the goods/cash are delayed or loss in transit and hence the assessee is required to make payments to those persons. This reply of the assessee was not acceptable to the Assessing Officer for the following reasons:-

> *"1. The assessee has huge receipts and receives the same in cash every day and hence the day to day receipts are sufficient to meet the day to day expenses of the assessee. The chart of monthly cash balances shows that huge cash is maintained at each and every branch through out the year without its business use.*
>
> *2. The assessee has not furnished details of any such instances when cash/goods lost of the clients in transit and that the assessee was required to compensate out of the cash available with it.*
>
> *3. The argument of the assessee regarding the transfer of cash from one branch to another is also not tenable because the assessee has not proved by any evidence whatsoever the exigencies of transfer of cash and its utilization. It is a matter on record that the assessee is maintaining huge cash only to pre-empt any action by the Enforcement Agencies*

against the assessee clients whose cash is being transported from one place to another. Whenever the earner of cash/goods is caught by the Enforcement Agencies like FEMA or Income tax Department, the assesses protects its clients by claiming the cash/goods belonging to it. In the way, the assesses is assisting the tax evaders and hence the expenditure, if any, incurred in this regard is in relation to the activity prohibited by Law and hence is not allowable in view of Explanation below Section 37 of the Income tax Act."

8. Therefore, the Assessing Officer held that the partners capital as well as borrowed funds to the extent of 72,29,310/- are not utilized wholly and exclusively for the purpose of business and he disallowed the proportionate interest at the rate of 76 percent of Rs. 4,96,231/-. We find on this issue the order of Ld. CIT(A) is cryptic. He has decided this issue in para 9 of his order as under:-

"*9. Similarly, in respect of the disallowance of interest of Rs.4,96,231/- it is seen that the AO had given cogent reasons and refuted the arguments of the assessee. No infirmity is seen in her action in making the proportionate disallowance. It is therefore confirmed and the related ground of appeal is rejected."*

9. The assessee-firm has placed reliance on the order of the Hon'ble Co-ordinate Bench in the case of ACIT vs. M/s Patel Mathavlal Magnilal and Others (supra) in ITA No. 69 to 74/Ahd/2009 has held as under:-

"7.3. In all these cases, in the Like manner, the AO had found that there was huge cash balances. On one hand, the allegation was that those assessees have maintained idle cash balances, however, at the same time borrowed money and paid interest thereon. Therefore, in the same manner, it was alleged by the Revenue Department that the borrowed money was kept as cash in hand and borrowed money was not in fact utilized for the purpose of the business. The Tribunal has taken a view that it could be a possibility that the assessee might be imprudent in holding large amount of cash but when this act of the assesses is to be visualized vis-a-vis the business activity, then the

> *allegation of the Revenue Department appears to be a conjuncture. Otherwise also, the outstanding cash is nothing but a business asset of the assessee. There is nothing illegal to maintain cash at various branches. An another aspect has also been examined by the Respected Co-ordinate Benches that as far as the actual payment of interest to various parties was concerned and overall interest expenditure was claimed, it was not objected by the AO that claim of expenditure was not genuine. The question of reasonableness of expenditure is a subjective matter which is to be determined by the assessee who is running a business and it is not expected from the AO to step into the issues of a business-man. A business man is required to judge about the requirement of the cash in his line of business. The business need and the business purpose depends upon the circumstances of each case. As far as the decisions cited by Id.DR are concerned, both are not akin to the facts and circumstances of the present appeals. In the case of Inarnulhaq S.Traki vs. Addl.ClT (supra), there was a finding that the assessee had mixed funds and could not establish any commercial expediency. Some of the funds were given for interest-free advances, hence the disallowance was confirmed. Likewise, DR has plated reliance on Punjab Stainless Steel Industries vs, CIT(supra), but the tact were that the interest-free advances were extended out of borrowed funds. Those interest-free advances were not made out of credit balance available with the assessee, therefore, a proportionate disallowance of interest was upheld. We therefore hold that these case-laws do not apply on the present set off facts and circumstances of the case. Rather, the case-laws as discussed hereinabove relied upon by the respondent-assessee do apply directly on the facts of the assessee. Hence, we find no fallacy in the view taken by the Id.CIT(A) that merely because the assessee had maintained cash balances at its several branches being in angadia business should not be a cause of disallowance of interest on borrowed funds. The deletion of addition is thus hereby confirmed. Ground raised by the Revenue is dismissed in all the appeals."*

10. The above order of the Hon'ble Co-ordinate Bench was not available at the time when the impugned order was passed by Ld. CIT(A). Moreover, he has not passed a speaking order, therefore, in the interest of justice, this

ground of the assessee's appeal is remitted back to the file of Ld CIT(A) to decide this issue afresh after giving opportunity of hearing to the concerned parties. This ground of the assessee's appeal is allowed for statistical purpose.

11. In the result, the appeal of the assessee is allowed as indicated above.

Order pronounced in open court on the date mentioned hereinabove at caption page

Sd/-	**Sd/-**
(A.K. GARODIA)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad : Dated 09 /11/2012
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<u>आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-</u>

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

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद