

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3393/AHD/2014

नधा रणवष/Asstt. Year: 2011-2012

Smt.Ramilaben B. Patel, B-36, AksharBunglows, Kudasan, Gandhinagar-382421. PAN: AEAPP9594C	Vs.	Income Tax Officer, Ward-3, Gandhinagar.
--	-----	--

(Applicant)		(Respondent)
Assessee by :		Shri P.M. Patel, A.R
Revenue by :		Shri L.P. Jain, Sr.DR

सुनवाई क तारख/Date of Hearing : 28/11/2018

घोषणा क तारख /Date of Pronouncement: 11/12/2018

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals) i Gandhinagar [CIT(A) in short] vide appeal no.CIT(A)/GNR/520/2013-14 dated 20.10.2014 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 28.02.2014 relevant to the Assessment Year (AY) 2011-2012.

2. The only issue raised by the assessee in all the grounds of appeal is that Ld. CIT (A) erred in confirming the order of the AO by sustaining the addition of cash deposit amounting to Rs. 12,81,000/- as income from an unexplained source.

3. Briefly stated facts are that the assessee is an individual and filed her return of income declaring salary income, interest, income from other sources and long-term capital gain. The assessee in her bank account has deposited cash amounting to Rs, 27,71,000/- maintained with the Dena bank bearing account No. 1796. The details of the cash deposit in her bank account stands as under:

<i>Date</i>	<i>Amount (Rs)</i>
05/08/2010	31000
04/09/2010	500000
08/09/2010	750000
13/10/2010	990000
23/10/2010	500000
<i>Total</i>	<i>2771000</i>

3.1 The assessee explained the source of such cash deposit out of the cash withdrawn from the bank. However, the AO disagreed with the submission of the assessee by observing that there was no documentary evidence furnished by the assessee in support of her contention. Therefore, the AO treated the same as undisclosed income of the assessee.

4. Aggrieved assessee preferred an appeal before the Ld. CIT (A). The assessee before the Ld. CIT (A) submitted that she had deposited a sum of Rs. 31,000/- out of the cash withdrawal from the bank.

4.1 A sum of Rs. 5,00,000/- was taken from Shri Vajubhai Patel and sum of Rs. 7,50,000/- was taken from Shri Bhailal Patel. The assessee in support of her contention about the loan taken from the parties above filed the following documents:

- i. Cash flow statement of both the parties
- ii. ID and residence proof of both the parties
- iii. Income tax return of both the parties.
- iv. Details of the agricultural land inherited along with the details of agriculture income.

5. However, the Ld. CIT(A) rejected the contention of the assessee by observing as under:

1. There was a time of one and a half month between the cash withdrawn from the bank and deposited with the bank. Therefore, the benefit of the deposit of such cash of Rs. 31,000.00 cannot be given.
2. In respect of loans from Shri Vajubhai Patel, the details of the agricultural land, agriculture income, and the cash book were not filed by the assessee before the AO during assessment as well as in remand proceedings.
3. The agriculture income of Shri Vajubhai Patel was not shown in the income tax return.
4. Shri Vajubhai Patel is one of the co-owner in the agricultural land whereas the entire sale proceeds claimed to have been received by him. In fact, the receipts from the agriculture income should have been shared among the co-owners.
5. Regarding the claim by the depositor that the amount of Rs. 1.50 lacs was deposited out of the cash withdrawn from the bank; it was noticed that there was a substantial time gap between the cash withdrawal and the cash advance to the assessee.
6. The source of cash in the hands of Bhailal Patel was also not believed by the Ld. CIT(A) for the reasons as discussed above in the case of Shri Vajubhai Patel.

5.1 In view of the above, the Ld. CIT(A) restricted the addition to Rs.12.81 lacs and deleted the balance amount of Rs.14.90 lacs.

6. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us. The Ld. AR before us filed the paper book running from pages 1 to 69 and submitted that the cash of Rs. 31,000.00 was deposited out of the cash withdrawal from the bank. The Ld. AR in support of his claim relied on the cash book placed on page 8 of the paper book.

6.1 Similarly, the Ld. AR for the assessee submitted that there was loan taken from Shri Vajubhai Patel and Bhailal Patel in the year under consideration amounting to Rs. 5 lacs and Rs. 7.5 lacs. The Ld. AR in support of his claim filed the copies of the bank statements, confirmation from the loan parties, income tax return, and cash flow statement of both the parties which are available in the paper book.

6.2 The Ld. AR also placed his reliance on the judgment of Hon'ble High Court of Rajasthan in the case of Aravali Trading Co. (220 CTR 622).

6.3 The Ld. AR for the assessee also claimed that the provisions of section 68 of the Act could not be applied to the instant case on the ground that the money received from the loan parties was not credited in the books of accounts. As per the Ld. AR, the bank account of the assessee, is not part of the books of accounts. The Ld. AR in support of his claim relied on the order of this tribunal in the case of Rameshbhai Somabhai Patel Vs. ITO in ITA No. 1864/AHD/2014 pertaining to the assessment year 2008-09 vide order dated 19th April 2018. The relevant extract of the order is reproduced as under:

‘‘5. When this appeal was called out for hearing, Shri Patel, learned counsel for the assessee invited my attention to Hon'ble Bombay High Court's judgement in the

case of CIT vs. Bhaichand H. Gandhi (1983) 53 CompCas 400 Bom. In particular, my attention was invited to the following observations made by their lordships:-

"2. In the course of the assessment proceedings for the assessment year 1962-63, for which the relevant previous year in the case of the assessee was Samvat year 2017, the ITO included Rs.30,000 in the assessment on account of cash credits found in certain books which, according to the ITO, were the books of the assessee. The explanation offered by the assessee regarding the genuineness of these credits was not accepted by the ITO and he treated the amount as income from undisclosed sources. On an appeal by the assessee, the AAC confirmed the view of the ITO. On a further appeal to the Tribunal by the assessee, an argument was put forward on behalf of the assessee that in respect of one of the deposits included in the said sum of Rs. 30,000, namely, a deposit of Rs. 10,000, this deposit was shown on January 21, 1961, in the bank account of the assessee. It was contended on behalf of the assessee maintained by the assessee for the previous year ending on November 8, 1961 (Samvat year 2017) and that the bank pass book was not a book maintained by the assessee. It was contended on behalf of the assessee that the amount, even if treated as undisclosed income of the assessee, that the amount, even if treated as undisclosed income of the assessee, could only be assessed in the financial year. The Tribunal accepted the contention of the assessee holding that the said bank pass book could not be treated as a book of the assessee, as contended by the Department, and held that it was not a book maintained by the assessee for any previous year as referred to in s. 68 of the said Act. It is from this decision that the aforesaid questions have been referred to us.

3. Section 68 of the said Act says as follows:

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

4. In *Baladin Ram v. CIT* [1969] 71ITR 427, it has been held by the Supreme Court that it is now well settled that the only possible way in which income from an undisclosed source can be assessed or reassessed is to make the assessment on the basis that the previous year for such an income would be the ordinary financial year. Even under the provisions embodied in s. 68 of the said Act, it is only when any amount is found credited in the books of the amount so credited may be charged to tax as the income of that previous year, if the assessee offers no explanation or the explanation offered by him is not satisfactory.

5. As the Tribunal has pointed out, it is fairly well settled that when moneys are/ deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary.

Applying this principle, the pass book supplied by the bank to its constituent is only a copy of the constituent's account in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, not can it be said that the pass book is maintained by the bank under the instructions of the constituent. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified in the conclusions at which it arrived."

6. Learned counsel's short contention is that the impugned addition is made under section 68 by treating the bank account of the assessee as books of account but then this course of action in the light of the above judicial precedent is not sustainable in law.

6.4 The Ld. AR for the assessee also filed the detail evidence to proof the agricultural land and the agriculture products sold by both the parties.

7. On the other hand the Ld. DR submitted that the assessee has failed to discharge the duties to substantiate his claim on the basis of supporting evidence to justify the creditworthiness of the loan parties as discussed above. The Ld. DR vehemently supported the orders of authorities below.

8. We have heard the rival contentions and perused the materials available on record. From the preceding discussion, we note that certain credit entries were reflecting the cash deposit in the bank account of the assessee. But the assessee failed to substantiate his claim for the source of such cash deposit. Therefore, the same was treated as undisclosed income and added to the total income of the assessee. The Ld. CIT(A) subsequently confirmed the view taken by the AO.

8.1 As regards the issue of a cash deposit of Rs.31,000/-, we note that the Ld. CIT(A) rejected the contention of the assessee that the cash was deposited

out of the cash withdrawal from the bank without adducing the cogent reasons. The cash withdrawal has not been doubted by the authorities below, and nothing has been brought on records suggesting that the cash withdrawn from the bank has been incurred either as revenue expenses or capital expenses. In the absence of any documentary evidence, we can safely presume that the cash withdrawn from the bank was available with the assessee which was subsequently deposited with the bank. Therefore, we cannot treat the same as undisclosed income of the assessee.

8.2 As regards the loan from the remaining parties, we note that both of them claimed to have generated agriculture income. But we find that such agriculture income was not declared in the income tax return. It was the duty of the assessee to disclose the agriculture income in return for the purpose of the correct calculation of tax liability under the income tax Act. Section 4 of the Act which is titled as a charge of income-tax provides in sub-section as follows:

"Charge of income-tax.—(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person."

8.3 The aforesaid charging section thus provides that where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with and subject to the provisions of the Act in respect of the total income of the previous year of any person. Section 4(1) thus means that while the total income of a person is to be determined in accordance with the provisions of the Act the rate or rates at which such income-tax will be paid on such incomes for any assessment year will be stipulated in the Central

Act. In accordance with the provisions of section 4 of the Act, the Finance Act (Central Act) has been stipulating rate or rates at which income-tax is to be charged the particular assessment year. For the assessment year 2011-12, the Finance Act, 2011 clearly provides under section 2 of Chapter II that the net agricultural income shall be taken into account in the manner provided therein for the purpose of determining the rates of income-tax applicable to the income of the assessee.

8.4 The relevant extract of section 2 of finance Act 2011 reads as under:

“2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2011, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax shall be increased by a surcharge, for purposes of the Union, calculated in each case in the manner provided therein.

(2) In the cases to which Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income exceeding five thousand rupees, in addition to total income, and the total income exceeds one lakh sixty thousand rupees, then,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first one lakh sixty thousand rupees of the total income but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and”

8.5 In view of the said clear provisions in section 4 of the Act Chapter II and section 2 of the Finance Act, 2011, we have no doubt in our mind that agricultural income of an assessee has to be taken into consideration for the purpose of determining rate of tax that is applicable to his income.

8.6 In the absence of disclosure of agriculture income in the income tax return, we cannot believe that the parties have generated agriculture income.

8.7 With regards to other documents filed by the assessee in support of the cash loan transactions, we note that all these are internal and self-generated documents. Therefore, we are reluctant to place our reliance on the submission of the assessee.

8.8 We also find that the fact of this case is not at par with the facts of the case of Aravali Trading Co. (Supra) decided by Hon'ble High Court of Rajasthan.

8.9 In the above-mentioned case the money was received by the assessee through account payee cheques. Therefore there was no question of doubting the genuineness of the party. While in our case money has been received in cash.

8.10 Further, we also note that this tribunal in the case of RameshbhaiSomabhai Patel vs. ITO (Supra) has held that the bank account of the assessee is not considered as part of the books of accounts. The relevant part of this order of the Tribunal is already reproduced above.

8.11 From the above order, we note that the bank statement is not considered as books of accounts. Therefore, any sum found credited in the bank passbook cannot be treated as an unexplained cash credit. However, we note that the above order was not produced before the authorities below. Therefore, in the interest of justice and fair play we are inclined to restore this matter to the file of AO for fresh adjudication in accordance with the provisions of law and after considering the ratio laid down by the tribunal in the case of Rameshbhai

Somabhai Patel (supra). Thus the ground of appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Court on 11/12/2018 at Ahmedabad.

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 11/12/2018

manish

आदेश क त ल प षत/Copy of the Order forwarded to :

1. अपीलाथ / The Appellant
2. यथ / The Respondent.
3. संबंधित आयकर आयु त / Concerned CIT
4. आयकर आयु त(अपील) / The CIT(A)
5. वभागीय त न ध, आयकर अपील य अ धकरण / DR, ITAT,
6. गाड फाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)