

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH
(Conducted Through Virtual Court)
Before: Ms. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 1569/Ahd/2019
Assessment Year 2010-11

Vanditbhai Rajendrakumar Patel, Raychan Para, At. Ambaliyasan, Tal & Dist. Mehsana-384435 PAN: AZZPP8002H (Appellant)	Vs	ITO, Ward-3, Mehsana (Respondent)
---	----	--

Assessee by: Shri Parimalsingh B. Parmar, A.R.
Revenue by: Shri S. H. Solanki, Sr. D.R.

Date of hearing : 02-03-2022
Date of pronouncement : 22-04-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Gandhinagar, Ahmedabad in Appeal no. CIT(A)/GNR/85/2017-18 vide order dated 07/08/2019 passed for the assessment year 2010-11.

2. The assessee has raised the following Grounds of Appeal:-

Grounds of	10	Grounds of Appeal	Tax effect relating to each Ground of appeal
	1.	<i>The learned CIT(A) has erred in confirming the additions made by the AO despite the fact that the Assessment Order was passed ex parte in violation of the Principles of Natural Justice.</i>	
	2.	<i>The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO of reopening the assessment u/s 147 of the Act. On the facts and circumstances of the case, learned CIT(A) ought to have held that the action of reopening is without jurisdiction and not permissible either in law or on facts.</i>	
	3.	<i>The learned CIT(A) has erred in law and on facts of the case in confirming addition of Rs. 22,21,1007- as unexplained cash credits u/s. 68 of the Act.</i>	Rs.6,66,330/-
	4.	<i>The learned CIT(A) has erred in law and on facts of the case in holding that alternatively, addition would be made u/s. 56 of the Act as Income from Other Sources without specific notice to the effect which is in violation of the principles of natural justice.</i>	
	5.	<i>The learned CIT(A) has grossly erred in enlarging the scope of the assessment by alternatively making the addition u/s. 56 of the Act when the AO had made no such addition.</i>	
	6.	<i>The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of making an addition of interest income of Rs.2,052/-.</i>	Rs.616/-

	7.	<i>Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time</i>	
		<i>which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.</i>	
	8.	<i>The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A/B/C of the Act.</i>	
	9.	<i>The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(l)(c) of the Act.</i>	
	10.	<i>The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271F of the Act.</i>	
	11.	<i>The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.</i>	
	<i>Total tax effect</i>		<i>Rs.6,66,946/-</i>

3. The brief facts of the case were that as per AIR information, the Ld. Assessing Officer came know that the assessee had received cash deposits of Rs. 25,21,100/-in saving bank account maintained with Corporation Bank. To verify cash deposits, letter dated 10-02-2017 was served on the assessee,

which remained uncompiled with. Accordingly, the Ld. Assessing Officer issued 148 notice to initiate re-assessment proceedings. The Ld. Assessing Officer sent several notices on the assessee (as listed in the assessment order), which all remained uncompiled with. Accordingly, the Ld. Assessing Officer added an amount of Rs. 22, 21, 100/- as unexplained cash credits u/s 68 of the Act. The Ld. Assessing Officer observed as under while passing the assessment order:

“4.2. In view of the above facts, it can be seen that assessee has failed to provide the source of cash deposit of Rs. 25,21,100/- in the saving bank account. It can be inferred that assessee has nothing to say more in the matter and the cash deposited in the bank account is from unexplained sources. On further perusal of the bank statement, it is noticed that assessee has made cash deposits and cash withdrawal during the relevant period. Therefore, for natural justice a peak is drawn as under:-

<i>Date</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Balance (Rs.)</i>
<i>24/09/2009</i>	<i>Deposit</i>	<i>1000</i>	<i>-1000</i>
<i>17/11/2009</i>	<i>Deposit</i>	<i>700000</i>	<i>-701000</i>
<i>01/12/2009</i>	<i>Deposit</i>	<i>750000</i>	<i>-1451000</i>
<i>03/12/2009</i>	<i>Deposit</i>	<i>50000</i>	<i>-1501000</i>
<i>23/12/2009</i>	<i>Deposit</i>	<i>100</i>	<i>-1501100</i>
<i>23/12/2009</i>	<i>Withdrawn</i>	<i>300000</i>	<i>-1201100</i>
<i>23/12/2009</i>	<i>Deposit</i>	<i>300000</i>	<i>-1501100</i>

10/02/2010	Deposit	720000	-2221100
------------	---------	--------	----------

In view of this fact, the peak amount comes to Rs. 22,21,000/-. The amount of Rs. 22,21,100/- is not explained, therefore, the same is added to the total income of the assessee for the relevant assessment year. Since the assessee has concealed the income, penalty proceedings u/s 271(l)(c) of the I.T. Act, 1961 is initiated for concealing the income.

[Addition of Rs. 22,21,100/-]”

3.1 In addition, the Ld. Assessing Officer also made an addition of Rs. 2,052/- on account of unexplained interest income.

4. Before, the Ld. CIT(A), the assessee submitted that the deposits represent gifts received from relatives in order to effectuate higher studies by the assessee. The assessee at the relevant time was a student of 19 years of age and in order to pursue higher education abroad, he has to show that he was having sufficient liquidity in his bank account. It is for this limited purpose that gift was given by the relatives of the assessee. The assessee also filed copies of confirmation of various lenders, being relatives of the assessee. The assessee submitted that the donors are the assessee's relatives and are earning agricultural income. The Ld. CIT(A) sent the file to the Ld. Assessing Officer for his comments and during remand proceedings, the Ld. Assessing Officer called five donors and took their statements on record, who confirmed that they had given gift to the assessee, produced their identity proof, proof of their land-holding details etc. The assessee further submitted details of proof of foreign visit of the assessee before the Ld.

Assessing Officer in respect of pursuit of higher education. Before the Ld. CIT(A), the assessee submitted that all parties are known to the assessee and are genuine, their identities have been established, their confirmations of giving gift to the assessee have been taken on record, copies of bills of agricultural produce on sample basis were produced, evidence of donor's land-holdings were produced, which all prove the genuineness of the transaction and no action u/s 68 of the Act is called for in the instant set of facts. The assessee submitted that since the donors are agriculturists, they are not required to file return of income. In the alternative, the assessee argued that for invoking section 68 of the Act, unexplained credit have to be found in the books of account maintained by the assessee. Now, in the instant case, the assessee being a student of 19 years of age is not required to maintain books of accounts and secondly, bank pass book does not qualify as 'books of account' so as to invoke provisions of s. 68 of the Act. The assessee placed reliance on several judicial precedents in support of his contention.

5. The Ld. CIT(Appeals) however, dismissed the assessee's appeal by observing as under:

“The above-mentioned independent analysis of the facts as appraised together with the evidences in the form of confirmations of the relatives giving the alleged gifts and their own sources of income clearly lead to believe that the appellant had indulged in a sham arrangement of getting the alleged gifts from the relatives who did not have their own bank accounts and if they had the same, they had not been disclosed to the Revenue. Further, they all are claimed to be the farmers and had agricultural income as mentioned above. However, the sale proceeds as reflected in the copies of sale bills for the crops sold to only one trader i.e. Shri Guru Jyot Traders of Visnagar and

the bills did not bear the printed serial number and also the verifiable signature on such bills. If the appellant or these relatives had the copies of sale bills at the time of recording their statements on oath by the A.O., the same could have been produced before the A.O. for his verification. However, the appellant and their relatives failed to discharge their onus to prove that there was a genuine sale of agricultural produces. Suppose the sales as per the copies of sale bills are to be treated as genuine for the time being, the relatives of the appellant could not give the gift out of the entire sale proceeds as mentioned in the table above as the agricultural operations have to be carried out which involves incurring of the expenses at least 30% of the sale proceeds in the form of purchase of seeds, fertilizers, pesticides, irrigation, running of borewell through electricity, labourers engaged for agricultural activities, storage of crops etc. and also for the milk business, maintaining of the pet animals, feeding them on regular basis, providing proper shelter etc. If these factors are considered, there would not be sufficient fund available for providing the alleged gifts. Further, all the relatives had their own family to maintain and there must be expenses on running household and meeting with social and health liabilities of the family members. If these factors are considered, the scope of giving gifts as mentioned in the table would be further lessened. Thus, considering all these factors and the defects pointed out in the sale bills which appear to be fabricated and an afterthought, the money introduced by the appellant under the garb of gifts cannot be allowed as tax free incomes in the form of gifts. If all these gifts were genuinely received by the appellant in the assessment year under consideration (though in none of the confirmation letter, the date on which the gift was given has been mentioned), he would have filed a regular return u/s 139(1) of the Act or at least in response to notice u/s 148 of the Act giving complete account of the amounts of gifts so received. The appellant did not discharge his primary onus to file the return of income. The father of the appellant who is having PAN has also not furnished the details of returns of income, if any filed by him. Thus, none of the persons claiming to have given the gifts has authentic and verifiable record of having the incomes/savings of the past years with the details of agricultural expenses, household expenses and social/medical expenses allowing the surplus of funds enabling them to provide the so-called gifts to the appellant.

XX
XX
XX
5.6 Further, several Tribunals and High Courts of various states have upheld the additions made u/s 68 of the Act on the basis of entries made in the bank statement or bank passbook even where no books of accounts have been maintained by the respective parties. Such latest decision is of the Hon'ble High Court of Delhi in the case of Dinesh Kumar Jain v. Principal Commissioner of Income-tax, New Delhi [2018] 97 taxmann.com 113 (Delhi) which is in connection with re-deposited money in the bank account which has been treated as unexplained cash credits. Further in the case of Renu Agrawal Vs. I.T.O., Ward-3(3), Mathura reported at (2012) 22 Taxmann.com 94(ITAT Agra Bench), it has been held that:-
XX
XX

6. Before us, the Ld. Counsel for the assessee at the outset submitted that re-opening of assessment is bad in law since assessee's case has been reopened solely on the basis of deposit of certain cash in the books of account, which cannot lead to the inference that income chargeable to tax has escaped assessment. He relied on several judicial precedents in support of his contention. He then drew our attention to page 9, para 5 of Ld. CIT(Appeals) order wherein it is evident that the assessee has submitted detailed documentary evidence to establish genuineness and creditworthiness of lenders. The Ld. Counsel for the assessee submitted that details of documentary evidences in respect of parties from whom gift were received were duly produced and hence the burden cast upon the assessee u/s 68 of the Act to prove identity, genuineness and creditworthiness of lenders has been discharged by the assessee. The Ld. Counsel for the assessee submitted that it is an established law that the assessee is not

required to prove 'source of source' of deposits, especially when lenders have confirmed the fact of having advanced the money to the assessee. In response, the Ld. DR relied on the observations of Ld. CIT(Appeals) in the appellate order.

7. We have heard the rival contentions and perused the material on record.

Ground No. 1: Ld. CIT(Appeals) erred in confirming additions

Ground 1 of the assessee's appeal is general in nature and does not require any specific adjudication and would be dealt in separate grounds.

Ground No. 2: Re-opening of case u/s 147 is bad in law:

In this ground, the assessee has challenged the re-opening of case as being without jurisdiction. On going through the 'reasons for re-opening', it is seen that on receipt of information from AIR that assessee had received cash deposits of Rs. 25,21,100/-in saving bank account maintained with Corporation Bank, the Ld. Assessing Officer first called upon the assessee to justify the transaction and only when the assessee failed to comply, the Ld. Assessing Officer re-opened the case u/s 148 of the Act. The assessee had not filed return of income for the captioned year. Not only this, the subsequent conduct of the assessee during the assessment also points to total non-cooperation on his part and in absence of any explanation forthcoming from the assessee, the Ld. Assessing Officer was forced to pass *ex-parte*

assessment order treating the above sum as undisclosed income of the assessee. In our view, since the assessee had not filed return of income for the captioned year and there was a huge cash deposit of Rs. 25,21,100/- in his saving bank account, and further, when the assessee was called upon to provide an explanation in respect of this deposit, he did not comply, this itself leads to an reasonable doubt regarding the source of such deposits especially when return of income has not been filed. In the case of **Pr. CIT v. Gopal Heritage (P.) Ltd [2021] 127 taxmann.com 679 (Gujarat)**, the Gujarat High Court held that where Assessing Officer issued reopening notice against assessee on ground that an information was received from NMS (Non filler monitoring system) that assessee had received cash deposits of certain amount in a bank account but had not disclosed same in its return, since assessee had failed to submit supporting evidences and source of income with regard to said cash deposits, impugned reopening notice issued against assessee was justified. Again in the case of **Smt. Uma Mandal v ITO [2021] 128 taxmann.com 369 (Jaipur - Trib.)**, ITAT held that where Assessing Officer issued a reopening notice against assessee on ground that an information was received that assessee had deposited certain amount in cash in her bank account but did not file return of income, since Assessing Officer reopened assessment after recording due reasons and after following due process and such information available before Assessing Officer was relevant and afforded a nexus to formation of prima facie belief that income chargeable to tax had escaped assessment in hands of assessee, impugned reopening notice was justified. Therefore, in our considered view, looking into the totality of facts in the case, the Ld. Assessing Officer is justified in re-opening the assessment in the instant set of facts. The process

of re-opening was initiated after affording due opportunity to the assessee to give explanation regarding source of deposit. It is only when the assessee failed to comply / co-operate that case was re-opened u/s 148 of the Act, after following due process of law.

8. Ground 2 of the assessee's appeal is dismissed for reason's cited above.

Ground 3: Addition of Rs. 22,21,100/- as cash credit in the hands of the assessee:

9. We note that the assessee has produced documentary evidence regarding the reason for cash deposit in the form of visa and other documents to prove the purpose behind the deposit by relatives of the assessee, the identity of the lenders has been duly established, the lenders have confirmed the factum of depositing this sum in the assessee's bank account, the Aadhar cards of lenders have been placed on record, the lenders are known parties to the assessee and it is not the Revenue's case that there is no rationale for deposit or that it is the assessee's own unaccounted money which has flowed back to his bank account, the assessee is a student who was required to have certain liquidity in order to pursue higher education and it is for this purpose as affirmed by parties that cash was deposited in the assessee's bank account, details of landholding of lenders have been furnished and on sample basis details of agricultural produce in respect of lenders have also been placed on record. The Ld. CIT(Appeals) has not brought on record any cogent material or reasoning to disprove the above contention of the assessee or brought on record any material to disprove the

documentary evidence placed on record by the assessee. In our considered view, the assessee has discharged the initial burden cast upon him u/s 68 of the Act. In the case of **Sridhar Sahoo v. ITO [2017] 88 taxmann.com 881 (Cuttack - Trib.)** the assessee was maintaining a saving bank account in joint name with his wife. In said bank account, certain cash was found deposited to which assessee explained that said amount was deposited by his wife by taking advance from 20 persons. Said 20 persons duly appeared before the Assessing Officer, affirmed the fact of advancing money in question to the wife of the assessee not only by way of affidavits but also in the statements given before the Assessing Officer and they also produced before the Assessing Officer the evidence of owning agricultural lands by them wherefrom agricultural income was earned out of which money in question was advanced. The Assessing Officer could not bring any positive material on record to show that from agricultural land possessed by the creditors, they could not have earned so much of agricultural income out of which amount in question could not be advanced by them. In the case of **Kuldeep Singh v. ITO [2020] 113 taxmann.com 265 (Chandigarh - Trib.)** where assessee explained that amount deposited in bank account was received as gift from his father who had sold agricultural land, since revenue authorities had not doubted veracity of sale deed brought on record by assessee's father, source of cash deposited in bank was duly explained and, thus, impugned addition made under section 68 was to be deleted. In our considered view, the assessee has been able to establish the source of cash deposit. The Revenue has not brought anything on record that the lenders were not in existence (the Aadhar cards of lenders have been placed on record) or that they did not have agricultural land capable of earning

agricultural income and neither the confirmations filed by lenders were challenged as being fallacious. The assessee has thus discharged the initial burden cast upon him u/s 68 of the Act. It is a well settled that under the law the assessee can be asked to prove source of credit but not the source of the source as held by various Courts including the jurisdictional High Court in the case of **Rohini Builders 256 ITR 360 (Guj)**. In view of the above discussion and the facts of the present case, in our view, the Ld. CIT(Appeals) has erred in facts and in law in sustaining addition u/s 68 of the Act in respect of cash deposits in the hands of the assessee.

10. In the result, Ground No. 3 of the assessee's appeal is allowed.

Ground No. 4 and 5: Addition u/s 56 of the Act (Income from Other Sources)

11. Once having held that when source of deposits has been duly explained by the assessee (refer Ground No. 3 above), the additions cannot be taxed as 'Income from Other Sources' in the hands of the assessee.

12. In the result. Ground No. 4 and 5 of the assessee's appeal are allowed.

Ground 6: Addition of Interest income of Rs. 2,052/-

13. The assessee has been maintaining account with Corporation Bank. Once, the source of deposits in the bank has been duly explained and held as not taxable in the hands of the assessee, the interest amount of Rs. 2,052/-,

since it falls below the taxable limit on standalone basis, is not liable for tax in the hands of the assessee.

14. In the result, Ground No. 6 of the assessee's appeal is allowed.

15. Grounds 7 to 11 of the assessee's appeal are general in nature and do not require any specific adjudication.

16. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 22-04-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 22/04/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
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