

आयकर अपीलाय आधकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE S/SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.633/Ahd/2016
Assessment Year :2006-07

Sanjaykumar Gangaram Patel Chokshino Dhhar Nr.Chabutra Unjha, Dist : Mehsana. PAN : AQLPP 7700 M	Vs	ITO, Ward-2 Patan.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
Assessee by :		Shri S.V. Agrawal, AR
Revenue by :		Shri S.S. Shukla, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **04/05/2022**
घोषणा की तारीख /**Date of Pronouncement**: **13 /05/2022**

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This appeal is filed by the assessee against the order dated 31.12.2015 passed by the Commissioner of Income-tax (Appeals), Gandhinagar relating to the Asst.Year 2006-07.

2. Brief facts of the case is that the assessee is an individual and stated to be in public service. For the Asst.Year 2006-07, the assessee has not filed his return of income. Annual Information Return details available with the Income-tax Department revealed that the assessee has made cash deposits of Rs.13,25,490/- in bank account with HDFC Bank, Unjha. As the assessee has not filed return of income, the assessment was reopened based on the information received in AIR and after verification, notice under

section 148 of the Income Tax Act, 1961 (for short “the Act”) dated 28.3.2013 was served upon the assessee on 29.3.2013. In response to the notice, no return was filed by the assessee, therefore notices under section 143(2) and 142(1) dated 2.7.2013 alongwith questionnaire, calling certain details, were issued by the AO to the assessee. Again on 2.12.2013, a show cause notice was issued which was also served personally on the assessee on 6.12.2013. The assessee has not responded to this show cause notice also. The AO also found that in two saving bank accounts in HDFC Bank, a sum of Rs.13,25,490/- was deposited and another amount of Rs.58,61,400/- was also deposited in the assessee accounts. As the assessee has not responded to various notices, and not even filed return of income pursuant to 148 notice, the AO added a sum of Rs.71,86,890/- on account of unexplained cash deposits and completed assessment by passing an *ex parte* assessment order.

3. Aggrieved against the *ex parte* assessment order, the assessee filed appeal before the ld.CIT(A). The assessee has raised before the ld.CIT(A) that the reopening of the assessment is bad in law; that the AO erred in making *ex parte* assessment without due inquiry and verification. Both the saving bank account of HDFC Bank referred in the assessment order did not belong to the assessee, and consequent levy of interest under section 234/A/B/C and initiation of penalty under section 271(1)(c) were also challenged before the ld.CIT(A).

4. As against the first ground of validity of re-assessment order under section 147 of the Act, the assessee has not filed any specific submission, therefore, the same was dismissed by the ld.CIT(A). As against cash deposits of Rs.71,86,890/- after a detailed discussion the same was confirmed by the ld.CIT(A) as follows:

“The facts of the case are considered and explanation of appellant is not found tenable in view of following observations:

(i) During the course of assessment proceedings, AO has issued various notices to appellant and even notice u/s 148 of the Act was issued at the address of Chokcino Dhar, Nr Chabutaro, Unjha being address as mentioned in HDFC Bank accounts .and same were duly served to appellant and appellant has never objected that address mentioned in above notice do not belong to appellant or notices are issued in incorrect name. Appellant has never appeared before the AO during reassessment proceedings and created the afterthought story that two bank accounts do not belong to him in appellate proceedings. .

ii) Appellant has claimed that he was doing service upto 2009 and he had no source of making cash deposit. This contention cannot be accepted as it is not correct to draw conclusion that assessee doing service has no source of making cash deposit. Appellant might have earned cash from other sources and utilized it for making deposit in bank account.

iii) Appellant has referred to KYC documents regarding bank account with HDFC and claimed that signature do not tally with Appeal Memo Form No 35 filed by the appellant, hence, signature is a wrong signature. However, this contention cannot be accepted as signature reflected in Form 35 even does not matched with PAN Card and Driving License as submitted by the Appellant during appellate proceedings. Appellant may have made different signatures for different purpose and such fact cannot establish that two bank accounts do not belong to appellant.

(iv) Appellant has stated that he holds only one account in HDFC Bank vide bank account no 01792100054372 jointly with his wife. The AO in remand report has observed that in the KYC form received from the bank photo was not visible hence AO issued summons to the branch manager HDFC Bank to submit KYC details in respect of two accounts which the appellant has denied and details of the account which was jointly held by appellant with his wife. In response to summons, bank manager furnished the visible photo of the account holder

which was taken in Polaroid format which means the photo was instantly taken open the account which prime facie establish that the account holder was present at the time of opening bank account and it is crystal clear that appellant is the same person who is holding two bank account and account jointly held by him with wife. This contention and observations made by AO is not rebutted by appellant and same clearly establishes the fact that both the accounts actually belonged to appellant.

v) It is also observed that appellant has not submitted any copy of FIR regarding alleged fraud as claimed by appellant nor submitted a copy of complaint filed before any authorities and same prove that the appellant has created afterthought story regarding disowning the two bank accounts opened by him.

vi) During the course of appellate proceedings, information u/s 131 was issued from HDFC Bank account regarding DEMAT client id 18094423 as charges pertaining to above account was debited in bank account whose cash deposits were considered as unexplained cash deposit by Assessing Officer. The date of birth as mentioned in KYC form clearly matches with the date of birth of appellant. The photograph attached with- KYC form, along with signature clearly reflect the photograph of appellant.

Driving license attached along with KYC form bear the photograph of appellant. Said license attached with KYC form was book license as issued by RTO and bear DL No 16331 which matches with new computerized license . obtained by appellant and submitted during assessment proceedings. The above facts clearly establishes that even DEMAT account opened in HDFC Bank belong to appellant and demat charges pertaining to this account was debited in two bank accounts. As shares transactions showed loss of Rs.2,51,841/-, same was not considered while adjudicating the present issue.

vii) It can be seen from the copy of order sheet as reproduced hereinabove, the authorized representative of appellant on 16th December 2015 has accepted account wherein cash was deposited is nothing but belong to appellant only. The authorized representative has also accepted the KYC details of Demat account to be correct.

He had only argued to decide appeal considering all the submission filed during appellant proceedings. The facts along with KYC details as obtained from HDFC bank regarding DEMAT statement clearly state that two bank account considered by Assessing Officer as well as DEMAT statement in fact belong to appellant and as appellant has failed to explain the source of cash deposit, the same are required to be considered as unexplained cash credit in the hands of appellant.

Considering the facts discussed hereinabove, addition made by the AO of Rs.71,86,980/- is hereby confirmed and related grounds of appeal raised by the appellant are dismissed.”

5. Further, the Id.CIT(A) on getting remand report from the AO and rejoinder from the assessee enhanced the assessment as follows:

“ The observations made by AO in remand report and submission of appellant is considered.-Two HDFC bank account in which appellant has made cash deposits were already held as account belonging to appellant by undersigned vide para 5 herein above. In the very same bank account, appellant has received cheques of Rs.71,00,000/- during period 18/08/2005 to 26/08/2005 and prime onus is on appellant to prove, genuineness of the transactions. Appellant has not submitted copy of return of income filed by depositors, his confirmation regarding advance given to appellant, reason of loan to appellant, source of such deposits as required as per provisions of section 68 of the Act and such fact clearly that appellant has failed to establish identity, creditworthiness of depositors and genuineness of transactions hence Rs.71,00,000/- through cheque and deposited in two bank accounts of appellant is required to be taxed as unexplained credit in the hands of appellant. Appellant has not provided the details of repayment of above amount till date hence such credits are required to be taxed as unexplained cash credits u/s 68 of the Act. Appellant has failed to provide details called by undersigned vide order sheet entry dated 16/12-2015 and primary onus as required u/s 68 is not discharged by appellant. In Order sheet entry dated 31/12/2015, it was stated that income of appellant is enhanced by Rs.71,00,000/- and authorised representative has not object to such show cause. Considering the fact discussed hereinabove, income of appellant is enhanced by Rs.71,00,000/- and penalty proceedings u/s.271(1)(c) of the Act is separately initiated.”

6. Aggrieved against the same, the assessee filed appeal before the Tribunal raising the following grounds:

“(1) The learned CIT(A) has erred in confirming the addition made by A.O. of Rs. 71,86,890/- as unexplained cash deposited in saving bank account with HDFC Bank Ltd., Unjha branch In as much as,

(i) The A.O. had not proved cash deposited in bank a/c with corroborative evidence that it belonged to assessee. The cash deposited simplisiter can not be income of assessee.

(ii) The A.O. had not carried out proper verification investigation in source of cash deposited.

iii) The AIR information can not be relied on.

(2) The learned CIT(A) has erred in making additional addition (enhancement) of Rs.71,00,000/- to the assessed income, being cheques credited in HDFC Bank, Unjha branch A/c No. 01791000026578, In as much,

i) The source of Cheques deposited in bank a/c was fully explained to CIT(A) . The contra bank A/c; name & address of A/c holder were given to CIT(A) & he was requested to inquire u/s. 131 of Act.

ii) Amount of Rs. 71,00,000/- deposited in HDFC Bank A/c is not fund of assessee.

(3) The learned CIT (A) has erred in confirming the interest charged by A.O. u/s. 234A, 234B & 234C of I. T. Act, 1961 & further erred n initiating penalty u/s. 271(1)(c).

7. During the course of hearing of the above appeal, the assessee has also raised the following additional grounds of appeal:

“1. The reopen of assessment by AO is bad in law and requires to be quashed in asmuch as :

i) The notice u/s.148 is not served to the assessee;

ii) Reasons recorded are incomplete.

2. The assessment framed by AO u/s.144 r.w.s. 147 is against the natural justice since, opportunity of hearing have not

been granted to the assessee. Notices issued by AO are not served to the assessee.”

8. The assessee has also filed additional evidence invoking Rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963. Thus, the additional grounds and additional evidences filed by the assessee are taken up for consideration. On the issue of 148-notice, the ld.AR claimed that 148-notice was not served to the assessee, whereas it has been received by his wife Veenaben S. Patel. She put her signature on the duplicate copy of the notice with address Chokcino Dhar, Nr.Chabutaro, Unjha and also mentioned mobile no.99785 76767. The assessee claimed that address given in the notice is not correct address and notice served to his wife was not valid service of notice. In support of the same, the assessee filed before us account opening form, driving licence issued by RTO, gas connection certificate (which was in Gujarati), ration card copy, (which is also in Gujarati), and claimed that service of notice is bad in law. In this connection, the ld.AR relied upon the judgment of Hon'ble High Court Chhattisgarh in the case of Arden Steel Ltd. Vs.ACIT, 405 ITR 422 (Chattisgarh) wherein the assessee was served with notice under section 148 through Chartered Accountant, and was never served to the assessee. Therefore, Hon'ble Court held that service was not proper and quashed the entire assessment order. The ld.AR also submits that the reasons recorded by the AO for reopening of the assessment is bad in law, and therefore, entire reassessment is liable to be quashed.

9. Per contra, the ld.DR appearing for the Revenue submits that 148-notice issued was received by the wife of the assessee by affixing her signature as well her cell-phone number. The assessee's wife is an adult member of his family and whenever notice is being issued in the absence of the assessee, notices served to the adult family

members, which is deemed to be proper service of notice. However, the fact is that the assessee has not filed return of income pursuant to the notice under section 148 of the Act issued by the AO, and also not participated in the hearing in pursuance of the statutory notices issued under section 143(2) and 142(1) of the Act calling for various information from the assessee. Further the Id.DR has also stated that the assessee, both in form no.35 and 36 in his appeals before the CIT(A) and the before this Tribunal showed the same address was given as Chokcino Dhar, Nr.Chabutaro, Unjha. This claim of the assessee that the notice served on the wrong address is not valid in law.

10. The Id.DR brought to our attention page no.5 of the CIT(A)'s order wherein written submissions of the assessee dated 22.8.2014 has been reproduced as follows:

"2) Why assessment proceedings were not attended before Income Tax Officer:

*For F.Y. 2005-06 relevant to A.Y. 2006-07 assessee had received **Notice from the Income Tax Officer Ward - 2, Patan** u/s. 148 of the Act. Assessee stays at Unjha where there is no Income Tax Office, and therefore he showed this Notice to his friend who is 'Civil Advocate. Friend replied that this Notice is prior to 6 years (F.Y. 2005-06 to F.Y. 2012-13 - 14,8"received on 29/03/2013) and it is time barred Notice and therefore, Income Tax Officer has no Jurisdiction to do any proceedings against assessee. Therefore, bonafidely believing that it is time haired case assessee kept quiet and did not reply the said Notice. Thereafter, he received other Notices u/s. 142(1) and 143(2) from Income Tax Officer Ward - 2, Patan. Likewise, he did not reply the said Notices. Further, his wife received Notice u/s. 148 and on 2nd copy of Notice she had written mobile number of the assessee. But he did not receive any telephone from the Income Tax Officer about any inquiry in his-case. The copy of the said notice is enclosed herewith on page no.____.*

This shows my mobile number on receipted copy. Therefore, assessee has reasons to believe that the inquiry of A.O. was without jurisdiction. Thereafter, assessee received the assessment order u/s. 144 r.w.s. 143(3) from the Income Tax Officer, Ward - 2, Patan who assessed his income at Rs.71,86,890/- by adding same amount as

unaccounted income being cash deposited .in two Bank A/c's. with HDFC Bank, Unjha Station Road Branch.”

11. From the reading of the above written submissions, it is clear that with *mala fide* intention the assessee has neither filed return of income nor filed any details before AO which forced the Id.AO to pass an *ex parte* assessment against the assessee. Regarding reasons recorded, the AO has observed that the assessee has not filed return of income for the Asst.Year 2006-07, and the assessee has made cash deposits of Rs.13,25,490/-in saving bank account, thus, the assessee is having a taxable income, but not filed return of income, therefore, he has reason to believe that to the extent of transaction of Rs.13,25,490/- income of the assessee has escaped assessment in terms of section 148 of the Act, and therefore the issuance of notice under section 148 is valid in law. The Id.DR further submitted that the case law relied upon by the assessee viz. Hon'ble High Court of Chhattisgarh is not clearly applicable to the facts of the present case. Since 148-notice has been served on the assessee, which was received by the assessee's wife by subscribing her signature as well as cell-phone number in the notice. It is thereafter 143(2) and 142(1) notices were also duly served upon the assessee. So this judgment relied by the Id.AR is not applicable to the facts of the present case. Therefore, reopening of the assessment is valid in law.

12. We have given our thoughtful consideration and perused material available on record. It is undisputed fact that the assessee has not filed return of income under section 139(1) of the Act. However, based on the AIR, the AO has found cash deposits of Rs.13,25,490/- in the bank account by the assessee, and non-filing of return by the assessee made the AO to invoke section 147 of the Act by issuance of notice under section 148 of the Act. As rightly

stated by the ld.DR, we do not find any infirmity in the reason recorded by the AO in the issuance of notice under section 148 of the Act.

13. The next aspect is about service of 148 notice. The assessee in its written submissions dated 22.8.20014 has clearly admitted that “assessee had received notice from Income Tax Officer, Ward-2, Patan”. Further, copy of the notice produced in the additional documents clearly showed that this notice has been received by the assessee’s wife by subscribing her signature as well as cell-phone number. Further, 148-notice was issued on the same address as shown in the Form no.35 and 36 filed by the assessee. Therefore, the assessee’s claim that notice remained unserved on him is without any basis, and the same is rejected and the additional ground raised by the assessee, in this regard, are hereby dismissed.

14. On merits of the case the ld.AR pleaded that the AO has not proved cash deposits in the bank account with corroborative evidence that it belonged to the assessee. Mere cash deposits cannot be said to be the income of the assessee, and further address given in the bank account does not belong to the assessee. Therefore, entire addition of Rs.71,86,890/- is to be deleted. In this connection, the ld.AR relied upon Co-ordinate Bench’s judgment in the case of Adventure Designs P.Ltd. Vs. ITO, in ITA No.1617/Del/2010 wherein the AO made addition of Rs.2.63 crores under section 68 of the Act on account of unexplained amount deposited in the bank account maintained with Standard Chartered Bank, which was not belonged to assessee-company.

15. Per contra, the ld.DR appearing for the Revenue brought to our attention remand report dated 26.10.2015 and 18.11.2015 by the AO. However, the contention of the assessee that two saving bank

accounts in HDFC bank did not belong to the assessee is not acceptable. Two accounts found to be jointly held by the assessee and his wife. In response to the summons, the Bank Manager furnished visible photo of the account holder, which *prima facie* establish that account holder was present at the time of opening of the bank account, and it is crystal clear that the assessee is the same person, who is holding two bank accounts jointly with his wife. Furthermore, even assuming for a moment that SB account does not belong to the assessee, the assessee has not filed any FIR against the so-called forged bank account. Further, in the order-sheet dated 16.12.2015, the assessee's representative has accepted that the bank accounts wherein cash deposited, which are nothing but belongs to the assessee only. Therefore, the contention of the assessee that the bank account are not belongs to him is not proved with proper evidence. Therefore, this ground is also required to be rejected.

16. The ld.DR also invited finding of the Co-ordinate Bench of the ITAT, Delhi Bench wherein the assessee-company stated that the bank account was opened by it, but on inquiry the bank has not replied to the AO. Therefore, Tribunal held that no adverse inference can be made and the matter was remitted to the file of the AO to consider the issue afresh. But in the present case of the assessee, Bank Manager of HDFC Bank produced KYC forms as well as clear copy of photo affixed in the account opening form which confirms that the assessee is the person who opened bank account. Thus, the case law relied upon by the assessee is not applicable to the facts of the present case.

17. We have heard rival contentions. We do not find any merit in the arguments of the ld.AR both on validity and reopening of the

assessment as well as on merits of the case on account of following reasons:

- i) The assessee had never filed return of income and but claimed that the bank deposits cannot be the income of the assessee relating the Asst.Year 2006-07;
- ii) The assessee is bound to file its return of income on his own motion under section 139(1) of the Act or at least in response to the notice issued under section 148 of the Act. However, the assessee has not filed the return of income declaring his nature of income to the Department;
- iii) Furthermore, the assessee has not responded to the notices issued under section 143(2) and 142(1) as well as specific show cause notice issued to the assessee calling for explanation from the assessee;
- iv) Assessee's contention that two bank accounts did not belong to him is also not established with clear evidence before any of the authorities. However, from KYC forms provided Bank Manager made it clear that the account was opened with the assessee's wife, hence this argument also does not stand.
- v) The case laws relied upon by the assessee are clearly distinguishable and not applicable to the facts of the present case.

For the above reasons, we hold that grounds raised by the assessee are hereby rejected, and the appeal of the assessee is hereby dismissed.

18. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 13th May, 2022 at Ahmedabad.

**Sd/-
(PRAMOD M. JAGTAP)
VICE-PRESIDENT**

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

Ahmedabad, dated 13/05/2022