

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.452/Ahd/2019
Asstt.Year : 2010-11

DineshkumarDalsangbhai Chaudhary Kankavati Society Madhupura Road B/h. ITI PalanpurDist: Banaskantha-385210.	Vs	ITO, Ward-4 Palanpur Banaskantha.
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(Applicant)	(Responent)
Assesseeby :	Shri Dinesh Dalsanghbhai Choudhry, AR
Revenue by :	Shri Sanjay Kumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05/04/2023

घोषणा की तारीख /Date of Pronouncement: 14/06/2023

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-4, Ahmedabad (in short referred to as Id.CIT(A)) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 07.01.2019 pertaining to Asst.Year2010-11.

2. Brief facts relating to the case is that, it had come to the notice of the AO through AIR information that the assessee had deposited cash of Rs.11.21 lakhs in the Bank of Baroda, Vadam Branch. Accordingly the assesses case was reopened for assessment and necessary notices issued. None attended the hearing nor filed written submissions. The AO accordingly framed assessment u/s 144 of the Act on the basis of material before

making an addition of Rs.18,91,000/- to the income of the assessee on account of unexplained cash deposits. The assessee challenged the assessment order before the ld.CIT(A), where he filed additional evidences which were considered by the Ld.CIT(A) in accordance with the procedure prescribed in law ,i.e after seeking remand report from the AO. Thereafter the Ld.CIT(A) upheld the action of the AO in reopening of the assessment, but restricted the addition to the extent of Rs.2,38,000/-. Dissatisfied with this order of the ld.CIT(A), the assessee is before me and has raised the following grounds :

1. *In law and in the facts and circumstances of the appellant's case, the impugned Appellate order passed by the ld.CIT(A) is void and bad in law.*
2. *In law and in the facts and circumstances of the appellant's case, the ld.CIT(A) erred in upholding the disallowance made by the AO under section 68 of the Act to the extent of Rs.2,38,000/-*
3. As is evident from the above, there are two issues which have been raised by the assessee before me, viz. (i) validity of the reopening of the assessment framed under section 147, and (ii) restriction of addition by the AO under section 68 of the Act to the extent of Rs.2,38,000/-
4. Dealing with the first issue, as has been pressed for adjudication by the ld.counsel for the assessee regarding assessment framed under section 147 of the Act, before me, the ld.counsel for the assessee contended that the AO has resorted to reopening of the assessment merely on the basis of the information received by the AO from AIR statement that the assessee has deposited cash to the tune of Rs.11,21,000/-. He submitted that merely on the basis of this information alone, the AO formed belief of escapement of income for assumption of jurisdiction to reopen the assessment of the

assessee under section 147 of the Act. The AO has reopened the case of the assessee merely on suspicion that the assessee has deposited the cash from the unexplained sources, however, there is no formation of belief. To this proposition, the ld.AR replied on the decision of the ITAT, Delhi Benches in the case of Bir Bahadur Singh Sijwali v. I.T.O. [2015] 53 taxmann.com366 (ITAT-Delhi). He thus prayed that the assessment order passed by the AO under section 147 and upheld by the ld.CIT(A) is bad in law and liable to be quashed.

6. On the other hand, the ld.DR supported orders of the Revenue authorities.

7. I have heard both the parties; perused the orders of the Revenue authorities below and also the case cited by the ld.AR at bar. I find merit in the contention of the ld.counsel for the assessee that the AO had acted merely on the basis of suspicion based on AIR statement indicating the assessee has deposited cash in the bank to the tune of Rs.11.21 lakhs, but not based on belief that the income chargeable to tax had escaped income. It has been held by the various decisions of the ITAT that when the assessment proceedings u/s 147 are initiated on the fallacious assumption or suspicion that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee, the proceedings is neither countenanced, nor sustainable in law. In the instant case, there is nothing on record to show that on receipt of the information, the AO had carried out any inquiry or investigation so as to demonstrate the source of the impugned cash deposits in the bank, which according to the AO was income escaped from the assessment so as to attract initiation of proceedings under section 147 of the Act. I also find that the

issue on hand is similar to the issue raised in the case of Bir Bahadur Singh Sijwali v. I.T.O. (supra) where the Tribunal has quashed the reassessment order holding that in the absence of material to indicate that income has escaped the assessment, the assessment framed merely on the basis an information of cash deposit, was not tenable in law. The relevant part of the order reads as under:

“8. Let us, in the light of this legal position, revert to the facts of the case before us. All that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs 10,24,100 have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment donot make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee. As we donot have the liberty to examine these reasons on the basis of any other material or fact, other than the facts set out in the reasons so recorded, it is not open to us to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis of holding the view that the income has escaped assessment. The answer, in our humble understanding, is in negative. The Assessing Officer has opined that an income of Rs 10,24,100 has escaped assessment of income because the assessee has Rs 10,24,100 in his bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be resorted to only to examine the facts of a case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that an income has escaped assessment.

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8. In the light of the above, I hold the assumption of jurisdiction by the AO to reopen the case of the assessee merely on the basis in formation of cash deposit in bank was not inaccordance with law, and therefore, the impugned assessment order passed by the Id.CIT(A) is set aside and the assessment order passed under section 147 of the Act quashed.

9. Since, I have quashed the reassessment order, the issue of validity of addition is mere academic, and thus not being dealt with by me.

10. In the result, the appeal of the assessee is allowed in above terms.

Order pronounced in the Court on 14th June, 2023 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 14/6/2023