

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1791/Ahd/2011

निर्धारण वर्ष/ Assessment Year : 2009-10

Smt. Rukhsana Riyazuddin Saiyed, Prop. Of Badra Petroleum Products, 4/201, Kadri Manzil, Mothwad Street, Navsari-396445 PAN : ABNPS 6806 N	Vs	Income-Tax Officer, Ward-4, Navsari
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Rajesh Upadhyay, AR
Revenue by :	Shri Prasoon Kabra, Sr DR

सुनवाई की तारीख/Date of Hearing : 05/10/2016

घोषणा की तारीख /Date of Pronouncement: 11/11/2016

आदेश/O R D E R

PER MAHAVIR PRASAD, JUDICIAL MEMBER:-

This appeal by the assessee is directed against the order of the Commissioner of Income-Tax (Appeals), Valsad dated 16.05.2016 for AY 2007-08.

2. The assessee has taken following grounds of appeal:-

1. *Ld. CIT(A), Valsad has erred in law and on facts to upheld AO's acton of reopening the assessment u/s 147 of the Act and issue of notice u/s 148 of the Act.*
2. *The AO has erred in law and on facts to pass speaking order on appellant's objection for reopening of assessment. Ld. CIT(A), Valsad has erred in upholding AO's action and held that reopening and reassessment proceedings are valid in law.*
3. *Ld. CIT(A), Valsad has erred in law and on facts to upheld addition of Rs.47,70,431/- made by the AO overlooking admission of Smt. Bilkishbanu M. Saiyed who is assessed to tax, filing ROI and holder of PAN.*

3. The facts of the case are that the return of income for the year under consideration was filed on 31.10.2007 declaring total income of Rs.3,68,756/- and the said return was processed u/s 143(1) of the Act, accepting the income returned. Thereafter, the case was selected manually for scrutiny on the basis of AIR information. Accordingly, notice u/s 148 was issued on 12.03.2014 which was duly served upon the assessee on 15.03.2014. Subsequently, notice u/s 142(1) of the Act alongwith questionnaire was issued on 01.05.2014 and duly served upon the assessee on 06.05.2014. All the notices were duly attended by the assessee from time to time.

3.1 In this case, the assessee runs a proprietary concern in the name and style of M/s. Badra Petroleum, a dealer of SKO of Indian Oil Corporation Ltd. and is engaged in the business of transportation. During the course of assessment proceedings, it was noticed that the assessee was having savings bank account no. 020601503038 with ICICI Bank, which was not reflected in her regular books of account maintained for the year under consideration. Letters u/s. 133(6) were issued to the Bank and the Bank has furnished detailed bank statement for the period under consideration. It was also noticed that the assessee has deposited cash aggregating to Rs.47,70,431/- in the said bank account. On being asked vide letter dated 04.03.2015, the assessee vide his letter dated 26.03.2015 explained as under:-

*"I, the undersigned, Mrs. Rukhsana Riyazuddin Saiyad, have to object reopening my assessment for A.Y.2007-08 for the ground stated by you in your letter dated 04.03.2015 the "You have deposited cash amounting to Rs.47,70431/- in ICICI Bank." The reason given by you is incorrect in light of following facts:*

*You have not provided date wise details of cash deposited in ICICI Bank account. Further, even branch of the bank and account number are also not mentioned in your reopening statement.*

*It may possible that your concern is with S.B. account number 020601503038 with ICICI Bank, Rockies Appt., Sayaji Road, Navsari-396445. The said account is operated by Mrs. Bilkisbanu M. Saiyed for his LPG Gas trading business under the name and style 'Falcon Agencies'. She*

*has deposited cash generated out of her trading business in the said account, which stands in my name. Her PAN is ADJPS0013P and she is assessed to tax at ITO, Ward-1, Navsari. I am enclosing herewith copy of ROI and audited accounts for A.Y.2007-08, in support, she has shown transaction in her return, appearing in the said ICICI Bank account. Thereby the bank account as well as all transactions are disclosed before the I. T. Authorities through her ROI.*

*Under the above circumstances, there is no case of escapement of income within the meaning of sec. 147 of the Act, as such notice u/s. 148 of the Act needs to be withdrawn, Your goodself is also requested to kindly drop further proceedings under the Act."*

3.2 The written explanation of the assessee was considered. It was noted by the Assessing Officer that the cash were deposited in the savings bank account no. 020601503038 held with ICICI Bank, which is not shown in the assessee's books of account. The assessee has herself stated that the alleged bank account stands in her individual name, i.e. in the name of Mrs. Rukhsana R. Saiyed, which was used by Smt. Bilkisbanu M. Saiyed, running proprietary concern namely "Falcon Agency". Smt. Bilkisbanu M. Saiyed has also confirmed that the said account was reflected in her books of account and also in audit report, whereas on going through the copy of audit report submitted on 26.03.2015 of M/s. Falcon Agencies, Navsari, the Assessing Officer observed that that there was only one account of ICICI Bank, Valsad Branch bearing No. 05347, proving that assessee and Smt. Bilkisbanu M. Saiyed have given false statement that the aforesaid cash deposits transactions were disclosed before the I.T. authorities. The Assessing Officer further observed that the transactions of alleged account of ICICI Bank has not accounted for in books of account either of the assessee or Smt. Bilkisbanu M. Saiyed. Therefore, a show cause notice dated 26.03.2015 was issued asking the assessee to show-cause as to why the cash deposited amounting to Rs.47,70,431/- should not be disallowed and added to her returned income in absence of details called for. The assessee did not respond to the notice; therefore, after considering the facts and

circumstances of the case and the aforesaid written explanation of the assessee, the Assessing Officer made the addition of Rs.47,70,431/- being unexplained cash deposit in the bank account.

4. Aggrieved by the aforesaid order of the Assessing Officer, assessee preferred first statutory appeal before the CIT(A) who, after considering the submissions of the assessee, dismissed the appeal of the assessee by observing as under:-

*"I have given my careful thoughts to the rival submissions. The undisputed facts are that the SB account with ICICI Bank under reference stands in the name of the appellant alone. In the audited report filed with the return of income the sister of the appellant Mrs. Bilkisbanu M. Saiyed has no such account as claimed by the appellant. Here the appellant relies on the ledger accounts of M/s Falcon Gas Agencies maintained in respect of the SB account under reference as well as the ledger account of purchases made from HPCL Ltd. Interestingly, if it is claimed that the transactions of the business of the appellant's sister has been routed through the SB account of the appellant then what prevented her to show in the balance sheet and in the audited report filed by her along with the return of income. After considering these facts I am of the considered opinion that the explanation given by the appellant is an afterthought without any evidence and there is a total failure on the part of the appellant to explain the source of unexplained cash deposit made by her in her SB account maintained with ICICI Bank where unexplained cash deposit to the extent of Rs.47,70,431/- has been made. So in the facts and circumstances of the case, the addition made by the Assessing Officer of Rs.47,70,431/- by treating the cash deposit as unexplained is upheld and both the grounds of appeal of the appellant are dismissed."*

4. Aggrieved by the aforesaid order of the ld. CIT(A), the assessee is now in appeal before us.

5. Before us, the appellant has filed a detailed paper-book which has been considered under Rule 18(6) of the Income-Tax (Appellate Tribunal) Rules and Mrs. Bilkishbanu M. Saiyed, proprietor of Falcon Agencies has confirmed the facts stated by Mrs. Rukshan M. Saiyed and it was further stated that the said ICICI Bank account was operated and used by Mrs.

Bilkishbanu M. Saiyed for LPG Gas business styled as Falcon Agencies and the said account was reflected in her books of account and also in the audit report for AY 2007-08. The copy of the same was also filed before the Assessing Officer.

6. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below.

6.1 So far as the first ground is concerned, the same has not been pressed by the appellant; hence dismissed as not pressed.

6.2 With regard to other grounds, it is undisputed fact that the Assessing Officer stated that the bank account with ICICI bank is in the name of Mrs. Rukhsana R. Saiyed. It was used by her sister Bilkishbanu Saiyed who is the proprietor of M/s. Falcon Gas Agencies. The said fact is accepted by both the ladies and both the authorities below have given the finding that the said bank account was not appearing in the return of income of Mrs. Bilkishbanu M. Saiyed and in her return, there was only one bank account appearing, i.e., ICICI Bank, Valsad Branch bearing No. 05347. If any of the relation is helping the other relation for managing the business is not a crime. So far as the bank account of Mrs. Rukhsana R. Saiyed is concerned, she has admitted that she is maintaining a bank account of her sister and certain payments/DDs were issued from her account to HPCL Ltd/Govt. owned petroleum companies and in support of her claim, the assessee has filed voluminous bank statements. Therefore, considering the facts and circumstances of the case, we set aside the order of the CIT(A) and remit this issue back to the file of Assessing Officer for deciding the same afresh. The Assessing Officer will check the details of the bank account and return of income of assessee's sister and whether any nexus between the bank account and income returned in the case of assessee's sister for doing her

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business in the name and style of Falcon Agencies and if the same are reflecting in the return of income and audited balance-sheet, then the addition will be deleted. The Assessing Officer will give a proper notice to the assessee and will decide the matter as per law.

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

**Order pronounced in the Court on 11<sup>th</sup> November, 2016 at Ahmedabad.**

Sd/-

Sd/-

**N.K. BILLAIYA  
(ACCOUNTANT MEMBER)**

Ahmedabad; Dated 11/11/2016

**MAHAVIR PRASAD  
(JUDICIAL MEMBER)**

**आदेश की प्रतिलिपि ब्यवहित/Copy of the Order forwarded to :**

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

TRUE COPY

आदेशानुसार/ BY ORDER,

उप/सहायक संजीकार (Dy./ Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad