

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 310/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2012-13)

Rakeshkumar P. Patel A-16, Manglam Society, At. Kansha, Ta. Visnagar 384315	बनाम/ Vs.	DCIT (International Taxation)-1, Room No. 205, Second Floor, Navjeevan Trust Building, Off. Ashram Road, Ahmedabad - 380014
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : APAPP1357G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Hardik Vora, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Mudit Nagpal, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	12/12/2018
घोषणा की तारीख /Date of Pronouncement	21/12/2018

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the CIT(A)-13, Ahmedabad ('CIT(A)' in short), dated 22.12.2015 arising in the assessment order dated 26.02.2015 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. As per its grounds of appeal, the assessee is aggrieved by the action of the Revenue in making additions of Rs.10,18,300/- as unexplained cash deposits which amount represents aggregate cash deposit in the bank account.

3. Briefly stated, the assessee filed its return of income declaring total income of Rs.55,09,110/- which predominately included from salaries of Rs.52,37,231/- earned in UK which is not taxable in India as the status of the assessee is a non-resident Indian (NRI). The return filed by the assessee was subjected to scrutiny assessment. In the course of scrutiny assessment, the AO *inter alia* observed certain cash deposits in the bank account of the assessee in HDFC aggregating to Rs.10,18,300/- on various dates tabulated as under:

Date	Amount	Mode of deposit	
13.04.11	40000	cash	Rs.2,57,500/-
16.04.11	27500	cash	
17.05.11	45000	cash	
18.05.11	45000	cash	
20.05.11	35000	cash	
19.08.11	40000	cash	
20.08.11	25000	cash	
26.11.11	49000	cash	Rs.7,60,800/-
28.11.11	340000	cash	
15.12.11	49000	cash	
20.12.11	49000	cash	
31.12.11	49000	cash	
03.01.12	35800	cash	
03.01.12	49000	cash	
14.02.12	46000	cash	
14.02.12	45000	cash	
18.02.12	49000	cash	
Total	1018300		

4. As a corollary, the AO initiated enquiry towards the source of such deposits. In response, the assessee submitted before the

AO that cash of Rs.2,57,500/- in aggregate pertaining to entries from 13.04.2011 to 20.08.2011 was deposited out of past savings right from 14.08.2001. As regards balance of Rs.7,60,800/-, it was claimed that assessee has withdrawn Rs.19 Lakh on 25.11.2011 for purchase of new residential house property which did not materialize. The AO however disbelieved the pattern of deposits of small amounts on various dates to be out of past savings and thus rejected the explanation for cash deposits of Rs.2,57,500/-. The AO also rejected the explanation with respect to source of remaining amount of Rs.7,60,800/- on the ground that bank account filed by the assessee clearly stipulates that withdrawal is in the form of 'cheque paid' and not cash withdrawal as claimed. The AO accordingly found inherent inconsistencies in the reply of the assessee and found the explanation for the source of cash deposits to be unsatisfactory. Accordingly, addition of Rs.10,18,300/- was made in the hands of the assessee towards such unexplained cash deposits.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) re-visited the facts before it and was also of the same view that the explanation offered by the assessee in support of cash deposits were not satisfactory. Consequently, appeal of the assessee was dismissed.

6. Further aggrieved, the assessee preferred the appeal before the Tribunal.

7. Learned AR for the assessee submitted at the outset that the entire cash deposits of Rs.10,18,300/- requires to be divided in

two parts i.e. Rs.2,57,500/- and Rs.7,60,800/- as tabulated. As regards cash deposits of Rs.2,57,500/-, the learned AR for the assessee reiterated that the aforesaid deposits were out of cash accumulated from salary income of the earlier period and therefore the source of such deposits stood explained. As regards the remaining deposits of Rs.7,60,800/- in cash, it was contended that the assessee had withdrawn Rs.19 Lakhs in three tranches on 25.11.2011 which was incorrectly mentioned as 'chq. paid' in the bank statement issued by the HDFC bank. The source of subsequent deposits is therefore out of the aforesaid cash withdrawal of Rs.19 Lakhs. The learned AR thus submitted that the source of entire cash deposits is explained. The learned AR thereafter adverted our attention to the paper book and referred to a confirmation letter dated 17.12.2015 received from the HDFC bank which endorses the aforesaid amount of Rs.19 Lakhs to be cash withdrawal as against erroneous mention 'chq. paid' committed on behalf of bank. On being questioned by the bench for omitting to follow the due procedure for admission of additional evidences as contemplated in Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, the learned AR drew blank but however submitted that the mistake committed in not following the statutory procedure should not operate against the assessee *per se* in the interest of justice. The learned AR accordingly pleaded that the addition towards cash deposit stands corroborated in the light of the explanation and the additional evidence adduced and consequently, the additions made towards cash deposits be deleted. The learned AR thereafter relied upon certain decisions to augment its case.

8. The learned DR, on the other hand, relied upon the order of the AO and submitted that the bank statement showing cash deposit on various dates shows a peculiar and uniform pattern of cash deposits below Rs.50,000/- on all occasions except at one instance. It was thus argued that such pattern shows that the assessee has deliberately used the peculiar way to avoid inquiry while depositing his unaccounted cash money. The learned DR further submitted that the claim of Rs.19 Lakhs in three tranches on 25.11.2011 as cash withdrawal is also without any supporting evidence before the AO or the CIT(A). It was thus submitted that the Revenue authorities have proceeded to make additions based on material placed before them with which no interference is called for. The learned DR also pleaded that the additional evidence filed by way of the confirmation letter from the HDFC bank now being submitted before the Tribunal is contrary to the assertions made in the bank statement issued by the HDFC bank itself where it is stated to be 'chq. paid'. It was thereafter contended that the additional evidence in the form of confirmation from the bank remains unverified and therefore cannot be admitted at this stage to recognize the source of cash at behest of the assessee. The learned DR accordingly submitted that the additional evidence requires to be rejected and order of the lower authorities requires to be sustained.

9. We have carefully considered rival submissions. The source of cash deposit amounting to Rs.10,18,300/- is in controversy. It is the case of the assessee that cash deposit aggregating to Rs.2,57,500/- (tabulated supra) is out of the cash in hand of the earlier years whereas the balance amount of Rs.7,60,800/- is out

of cash withdrawals of Rs.19Lakhs from HDFC bank. Except for the narrative made out towards deposit of Rs.2,57,500/- out of old savings from 2001 to 2009, there is no cogent material to support the plea. The assessee has also not explained the reasons for holding such large cash in hand particularly when the assessee has already gone abroad (UK) for job purpose on 21.11.2009. Thus, we hardly find any semblance of bonafide in the plea of the assessee on the source of such cash deposits. The typical pattern of deposits below Rs.50,000/- in multiple tranches only accentuates the lack of bonafides. Nevertheless, possibility of holding some cash at any point of time cannot be entirely ruled out. In the absence of any evidence, we resort to estimations for probable holding of cash by a person of ordinary prudence and assign the same to be Rs.1 Lakh. Therefore, we deem cash deposit to the extent of Rs.1 Lakh out of Rs.2,57,500/- as explained. Accordingly, remaining addition to the extent of Rs.1,57,500/- is sustained.

10. Continuing further, as regards other deposit of Rs.7,60,800/- out of cash withdrawals of Rs.19 Lakhs claimed to have been withdrawn on 25.11.2011, the explanation from the assessee does not provide any satisfactory basis. The claim of the assessee that cash was withdrawn for proposed purchase of residential house property (which eventually did not take place) does not inspire confidence. A taxpayer would be expected to explain why such large amount of cash was needed for proposed purchase of residential house property. The entries in the bank statement also demonstrate that these sum were marked 'chq. paid' which is unlike cash withdrawals. A bare and unverified confirmation

from the HDFC bank (without any reference number) introduced before the Tribunal without following the procedure laid down in Rule 29 of the Income Tax (Appellate Tribunal) Rules is also curious. The circumstances for mentioning the 'chq. paid' where the cash was stated to be withdrawn is not explained in the impugned additional evidence. Simultaneously, it is also difficult to put blinkers on uncharacteristic pattern of re-deposits of small amounts allegedly having withdrawn such large amount of Rs.19 Lakhs for the purpose which remained unserved. Therefore, we do not see any justifiable reasons to admit the additional evidence on record at this juncture attempted to be introduced without following the prescribed procedure. The deposits of Rs.7,60,800/- thus remains unexplained. While holding so, we take notice of the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Sarvankumar Sharma (2014) 49 taxmann.com 101 (Guj) where the additions on account of cash deposits were sustained where the explanation was found to be unsubstantiated. It is ostensible that the determination of issue in question is dependent entirely on facts. No abstract law is plausible in such cases. We now take note of the decision of Hon'ble Gujarat High Court in the case of CIT vs. Manoj Indravadan Chokshi (2014) 50 taxmann.com 419 (Guj) cited on behalf of the assessee but however find it of no avail to the assessee in view of altogether different facts. The Hon'ble Gujarat High Court, in essence, observed that once the source of cash deposit in the bank account is explained, the subsequent withdrawal is not required to be explained. In the instant case, the essential question is source of cash deposit which is factual in nature and remains uncorroborated. Likewise, the decision of the co-ordinate bench of Tribunal in Navinchandra

Ramjibhai Chavda vs. ITO ITA No. 2335/Ahd/2012 order dated 12.04.2013 and Sudhirbhai Pravinkant Thaker vs. ITO (2017) 88 taxmann.com 382 (Ahmedabad-Trib.) are also found to be rendered in the facts of respective cases, which are quite distinguishable. The assessee in the instant case has only made out a narrative which remains unexplained. In the light of above discussion, the additional evidence filed without following due procedure and without showing the bonafides cause for its belated admissions deserves to be rejected and the action of the Revenue requires to be upheld except to the extent of an estimated sum of Rs.1 Lakh.

11. In the result, appeal of the Assessee is partly allowed.

This Order pronounced in Open Court on 21/12/2018
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Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 21/12/2018

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।