

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.821/Ahd/2019
Assessment Year : 2015-16

Anandiben Jayantilal Shah (Through Legal Heir) Shri Shailesh Jayantilal Shah 55-Girish Society, 'D' Cabin Sabarmati, Ahemdabad 380019. PAN : EYBPS 0556 L	Vs	ITO, Ward-2 Gandhinagar.
--	----	-----------------------------

(Applicant)	(Responent)
Assessee by :	Shri Vivek Chavda, AR
Revenue by :	Shri R.R. Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 19/04/2022
घोषणा की तारीख /Date of Pronouncement: 13/07/2022

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)- 10, Ahmedabad (in short referred to as CIT(A)), u/s 250(6) of the Income Tax Act,1961,(hereinafter referred to as "Act") dated 20.3.2019 pertaining to Assessment Year 2015-16.

2. Solitary issue in the present appeal relates to addition made in the hands of the assessee on account of amounts found deposited in her bank accounts through NEFT amounting to Rs.20,50,422/- under section 68 of the Act. The ground raised in this regard reads as under:

“1.0 The learned CIT(A) grossly erred in law and on facts in confirming addition of Rs.20,50,422/- made to returned income u/s 68 of the Act. It is submitted that in the facts and circumstances of the case, such addition should not have been made. It is submitted that it may please be so held now.

2.0 The learned CIT(A) grossly erred in law and on facts in confirming the addition on wrong perception that the amounts deposited in the bank account were cash deposits, whereas actually the amounts were transferred by NEFT or through the banking channels by the payers whose full particulars were provided by the appellant during the course of assessment proceedings and thus the onus that lay on the appellant u/s 68 was fully discharged by her. The learned CIT(A) failed to appreciate that in spite of complete details relating to the payers having been with the learned AO and the entire payment having been received through the banking channels, there was no action taken by the learned AO to verify the above facts and the addition u/s 68 was made. It is submitted that it be so held now and the addition made u/s 68 be deleted.

2.1 The learned CIT(A) failed to appreciate that even otherwise also the amounts deposited in appellant's bank accounts could not have been assessed in her hands following decision of Hon'ble Supreme Court in the case of P.K. Noorjahan 237ITR 570.

3.0 The learned AO erred in making addition of Rs.20,50,422/- u/s 68 of the Act on the basis of the entries in the bank passbook of the appellant, which is never her books of account. The learned CIT(A) erred in confirming the same.

4.0 Without prejudice to any of the foregoing, even if the addition u/s 68 is upheld, the learned AO should have granted set off of loss of the similar amount incurred by the appellant for which the above payment was received from the payers and were utilized for making payment to the share broker for the loss sustained in the security business. The learned CIT(A) failed to adjudicate this specific ground taken before him. It is submitted that it be so held now.”

3. Briefly put, the contentions of the ld.counsel before us against the addition so made was that it was explained to both the authorities below that the assessee being a very old woman of 78 years of age, who had subsequently expired also, and the assessment was proceeded against her through her son being legal heir, was a woman of paltry means, had returned income of only Rs.99,740/- during the year; that entire transaction in the bank had been conducted by other persons, who had without her knowledge

operated her account; that it had been pointed out that transactions reflected in the bank accounts related to share transaction of one Shri Ashit P. Shah along with his aide Shri Prakashkumar Parmar who had conducted all these transactions in the bank account of the assessee; that they had opened trading accounts in her name with one M/s.Canon Capital & Finance Company Ltd.("CCFC" for short) and also depository account in her name and since losses were incurred in the transaction, money was required to be paid to the broker, the amounts were transferred from bank account of Shri Prakashkumar Parmar to the assessee's account. The ld.counsel for the assessee contended that it was repeatedly stated that all the transactions in the bank account related to these persons only who had fraudulently carried out the transaction through her bank account without her knowledge by dealing and trading in shares. The ld.counsel for the assessee pointed out that evidences had been placed before the authorities below to the effect ;

- i) substantiating the explanation by way of affidavit of the assessee-herself stating on oath all the above facts and giving all the details of the persons who had operated the bank account, including their names, address, PAN and their bank details also,as also manner and mode of the transfers;
- ii) pointing out that even narration in the bank account substantiated the explanation of the assessee as stating the money coming from one Prakashkumar Parmar through NEFT and immediately thereafter being paid to "CCFC" on account of loss incurred in shares;
- iii) that the statement from "CCFC" had also been filed reflecting cheques received from the bank account of the assessee and corroborating assessee's explanation that the

amounts deposited through NEFT by Shri Prakashkumar Parmar were paid to broker firm. In this regard, our attention was drawn to the following documents placed in the Paper Book filed before us; viz

- i) Affidavit of the assessee, Anandiben Jayantilal Shah dated 30.11.2015 placed at page no.30 to 32 stating on oath the fact that her bank account was being operated by Shri Ashit P. Shah and Prakashkumar Parmar, and the fact that she was an old uneducated lady and had no knowledge about the share market.
- ii) Copy of the ledger account of "CCFC" (NSE and BSE) page no.26 to 29 pointing out cheque credited therein being identical to one issued from the bank account of the assessee, which in turn was placed before us at page no.9 to 21 i.e. "CCFC" bank pass-book.

4. The ld.counsel for the assessee stated that the addition under section 68 in the above facts and circumstances, where the assessee had given an explanation, discharged her onus of proving the identity and genuineness of the transaction, could not have been made in the hands of the assessee. In this regard, he argued as under:

- i) The assessee having stated that all the entries related to the said share trading transactions carried out by Shri Ashit P. Shah and Prakashkumar Parmar through her bank accounts, having provided all their details including bank accounts and having also shown from the

narrations in the bank statement that the amounts had come through NEFT from one Prakashkumar Parmar, the onus to prove the source and genuineness of the transactions have been discharged, and it was open to the Department to make further inquiries in the light of evidences and details filed and if found otherwise, only then addition could have been made;

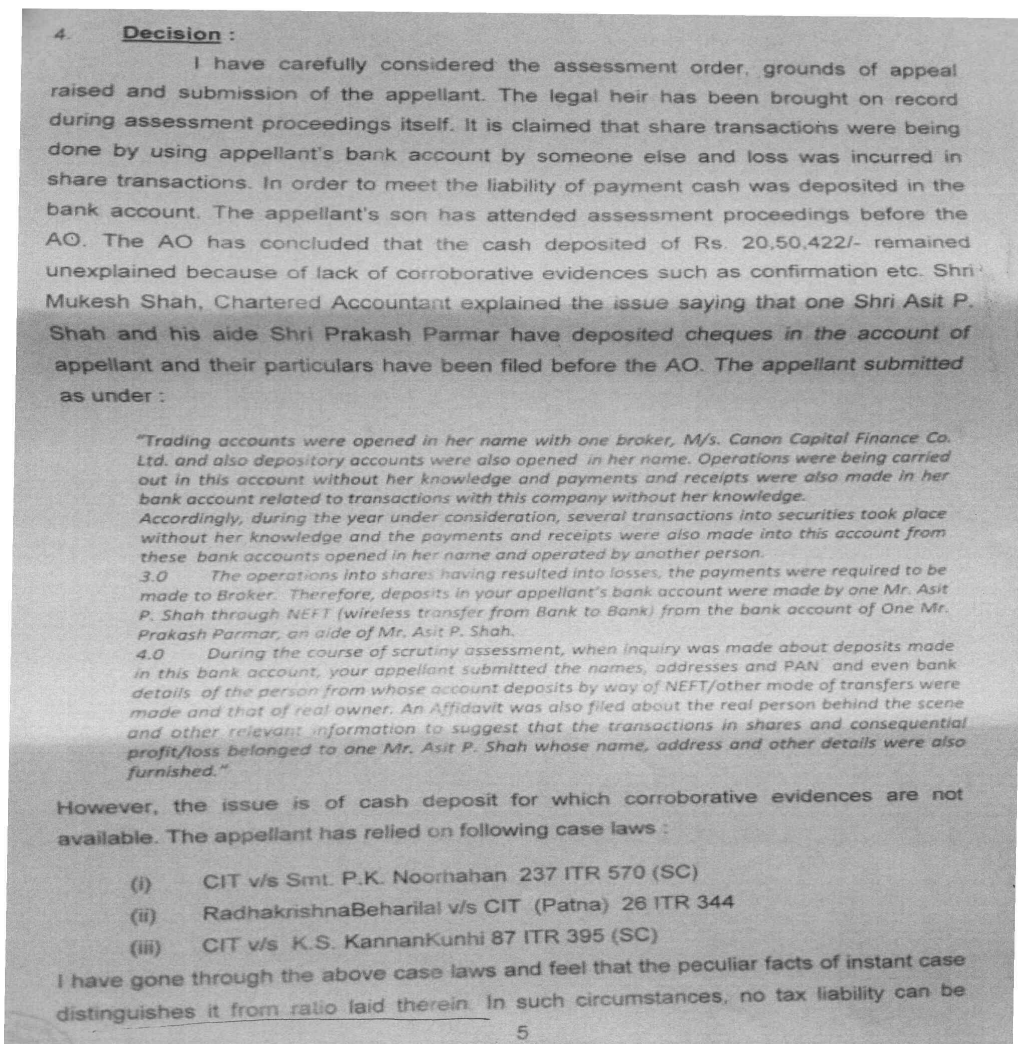
- ii) Alternatively, in any case the amount received in the bank accounts of the assessee were through banking channel, i.e. NEFT, and not in cash, therefore, there was no reason to doubt the same and inquiries, if any or addition if any were required to be made in the hands of the persons who had advanced the amount i.e. Shri Prakashkumar Parmar;
- iii) Even based on the human probabilities, affidavit filed by the assessee put in right perspective the facts which led to deposit in her account, it was explained that she was uneducated lady and had no knowledge of trading in shares and had very meager source of income, and bank account as well as statement of the account of the broker, "CCFC", proving that transactions related to the shares, explanation with regard to the deposits can be stated to be explained satisfactorily, and therefore, the impugned deposits could not be characterized as income of the assessee.

5. The ld.counsel for the assessee contended that the Revenue authorities had given a go-bye to all the explanations and evidences submitted by the assessee and upheld the addition in the hands of the assessee, which was highly unjustified. In this regard, the

ld.counsel for the assessee drew our attention to the findings the ld.CIT(A) at page no.4 of the impugned order.

“4. During the course of scrutiny assessment, when inquiry was made about deposits made in this bank account, your appellant submitted the names, addresses and PAN and even bank details of the person from whose account deposits by way of NEFT/other mode of transfers were made and that of real owner. An affidavit was also filed about the real person behind the scene and other relevant information to suggest that the transactions in shares and consequential profit/loss belonged to one Mr.Asit P. Shah whose name, address and other details were also furnished.”

6. The ld.DR on the other hand, relied on the orders of the authorities below.



fasten legally on either Shri Asit P. Shah or Prakash Parmar as the link of cash deposit in appellant's bank account would never be established. The undersigned is very conscious of the fact that such illegal arrangements, if happened as claimed, need to be discouraged as the judicial apparatus is getting clogged with numerous avoidable litigations in recent past. This is a case of A.Y. 2015-16 wherein strict KYC norms were applicable, therefore it is the appellant who has to explain the cash credit in her account. In the circumstances, I agree with the AO and confirm the addition of Rs. 20,55,422/- u/s 68 of the Act. The ground of appeal is dismissed.

7. We have heard the contentions of both the parties and considering all the facts and circumstances of the case, the explanation furnished by the assessee, and the evidences filed, we are of the view that the assessee's explanation of the credits/deposits in her bank account of Rs.20,50,422/- as being amounts deposited by Sh Prakash Parmar in the course of carrying out share trading transactions in her name through her account, is reasonably established.

8. We have perused the contents of the Bank account of the assessee, placed at P.B 9-21, and have noted that the transactions reflected therein relate majorly to NEFT deposits narrated to be from Prakash Kumar Parmar and withdrawals by way of cheques issued in the name of Canon Capital and Finance, stated to be a Share Broking Firm. Statement of the assessee in Canon Capital and Finance, placed before us at P.B22-29 as evidence, corroborates the fact of cheques issued from her bank account to the firm. These facts have not been controverted by the Revenue. Therefore the contention of the assessee that her bank account reflected transactions on account of share trading only stands established.

Now coming to the aspect of deposits in her bank account totaling Rs.20,55422/- all these deposits ,as stated above are narrated in the bank statement as NEFT Prakash Kumar Parmar. Clearly all these deposits have come from transfers made by Mr.Parmar. Thus the facts on record demonstrate the transactions in the bank account as relating to share trading conducted through broker Canon Capital and money for the said purpose when falling short being transferred by one Mr.Prakash Parmar. Coupled with the fact that the assessee was a lady advanced in age ,being 78 years old, with meager means, having returned income of only Rs.99,740/-and stated to have no knowledge of shares, which considering her age and background is highly probable, the assessee's explanation rings true that her bank account was being operated by others for conducting share trading transactions. The assessee we find had stated so on oath also.

9. We completely agree with the Ld.Counsel for the assessee that the assessee had discharged her onus of explaining the source of deposits in her account. The Revenue, we hold, wrongly rejected the explanation as not tenable and made addition of the deposits in the hands of the assessee when rightfully the onus had shifted to the Revenue to inquire further into the matter ,having been given all relevant details of the persons allegedly operating the assessee's bank account, including their names, addresses,PAN details.

10. Both the lower authorities having failed to do this exercise, the addition on account of credits in the bank account of the assessee, for which reasonably satisfactory explanation had been given by the assessee duly corroborated with evidences and her own affidavit, could not have been made.

11. In view of the above, we hold, the addition made under section 68 of the Act of Rs.20,50,422/- on account credits in her bank account is not sustainable and the same is directed to be deleted. The grounds of the appeal of the assessee are allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 13TH July, 2022 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER
Ahmedabad, dated 13/07/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER