

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri TR Senthil Kumar, Judicial Member**

**ITA No. 374/Rjt/2017
Assessment Year 2012-13**

The DCIT, Central Circle-1, Rajkot (Appellant)	Vs	M/s. Sidhanath Enterprise 8-A, Chokhawal Chamber, Bardan Gali Danapith, Rajkot PAN: AAKFS6892E (Respondent)
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**Appellant by : Shri Sushil Madhuk, CIT/DR
Respondent by : Shri Vimal Desai, A.R.**

Date of hearing : 21-06-2022
Date of pronouncement : 29-06-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Revenue against the order passed by the Commissioner of Income Tax (Appeals)-4, Ahmedabad, (in short referred to as CIT(A)), dated 23-08-2017, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2012-13.

2. The ground raised by the revenue reads as under:

1. *On the facts and in the circumstances of the case and In law, the Ld, CIT(A) has erred in law and/or on facts In deleting the addition made on account of unexplained cash deposits of Rs.224,53,23,993/-.*
2. *On the facts and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the A.O.*
3. *It is, therefore, prayed that the order of the CIT (A) be set aside and that of the A.O, be restored to the above extent.*

2.1. As is evident from the above, the solitary issue in the present appeal relates to addition made to the income of the assessee on account of unexplained cash deposits of Rs. 224.53,23,993/-.

3. At the outset itself, Ld. Counsel for the assessee pointed out that this issue of huge cash deposits in the bank account of the assessee came up for consideration and was examined in various other assessment years in the case of the assessee and the addition made on account of the same was deleted all along. He pointed out that for A.Y. 2008-09 the assessee's case was reopened u/s. 148 for identical reason and the assessee had approached the Hon'ble Gujarat High Court with a writ petition against the reopening which was allowed by the Hon'ble Gujarat High Court vide its order dated 28.03.2016 in SCA No. 694 of 2015 quashing the reopening, noting the fact that the assessee was engaged in the business of Shroff and cheque discounting, charging only commission thereon. Ld. Counsel for the assessee pointed out that identical addition made in the A.Y. 2006-07 in the case of the assessee was also deleted though on the technical ground that the reopening was not in accordance with law, after considering the

judgment of the Hon'ble Gujarat High Court for A.Y. 2008-09 as above. He therefore stated that the issue was squarely covered in favour of the assessee.

4. The Id. D.R. however relied on the order of the A.O.

5. Having said so, we shall now proceed to adjudicate the issue.

5.1. The facts relevant to the case are that for the impugned assessment year, the assessee had shown income of Rs. 28,790/-. The assessment order notes that assessee is engaged in Shroff business and derives income from commission. The A.O. had information that there was cash deposit of Rs. 224.53,23,993/- during the year in 16 bank accounts of the assessee. Accordingly the assessee was asked to explain the same, in response to which submissions were filed by the assessee stating that being in the business of Shroff, the money deposited represented that collected from customers or on behalf of customers and the said cash deposit did not belong to the assessee. The A.O. did not find the explanation of the assessee satisfactory stating that no proof was filed by the assessee that it got only commission on cash deposit, nor any details of customers nor their confirmations owning these deposits were filed. Accordingly he added the entire cash deposit of Rs. 224.53,23,993/- to the income of the assessee as unexplained u/s. 68 of the Act.

6. The matter was carried in appeal before the Id. CIT(A) where the assessee pleaded that identical addition sought to be made in assessment year 2008-09 by way of reopening the case of the assessee u/s. 147 of the Act was quashed by the High Court. And further that reopening for the impugned year also, subsequently done by the A.O. with respect to cash deposits in other bank accounts of the assessee, was dropped by the A.O. following the judgment of the Hon'ble Gujarat High Court in the case of the assessee itself. The relevant findings of the Ld. CIT(A) in this regard at Para 8 to 11 of the order is as under:

8. While making assessment u/s.143(3), the A.O. made additions of Rs.224.53 crore for the deposits made by the appellant in 16 bank accounts as mentioned in para 3 of the assessment order. Later on the A.O. reopened the assessment for A.Y. 2008-09, as deposits in the same bank accounts were found pertaining to the period relevant to A.Y. 2008-09 also. The appellant filed writ petition before the Hon'ble High Court of Gujarat, Ahmedabad against the reopening of the proceedings for A.Y. 2008-09. The Hon'ble High Court of Gujarat, Ahmedabad quashed the notice issued u/s. 148 of the Act against the appellant. The operative paras of the aforesaid order is reproduced below.

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9. Against the above order of the Hon'ble High Court of Gujarat, Ahmedabad, SLP has not been approved by the CBDT, New Delhi as informed by the A.O. vide letter dated 03.01.2017. Thus, the order of the Hon'ble High Court becomes final in this case.

9.1 Although the order of the Hon'ble High Court of Gujarat as reproduced above is regarding re-opening of the proceedings in appellant's case for A.Y. 2008-09, but the facts of the case & issue involved in all the assessment years is same. Along with the discussion over reopening of the proceedings, the Hon'ble High Court's order clearly contains findings that the appellant is engaged in the business of shroff and cheque discounting. Other finding is that all the transactions in the bank accounts have been reflected in the regular books of accounts of the appellant. There is no undisclosed bank account or undisclosed transaction in these bank accounts. It has also been mentioned that the appellant charged only commission for the facilities of cheque discounting provided to its

clients. With these findings, the Hon'ble High Court quashed the notice issued u/s.148 of the Act.

10. Thereafter, the appellant's case for A.Y. 2012-13 i.e. year under consideration has been reopened for the reason that more bank accounts were found by the A.O. The A.O. stated that there were total 35 bank accounts [including 16 bank accounts considered while passing order u/s.143(3)] having deposits of Rs.578.15 crore (including 224.53 adjudicated by A.O. in assessment order u/s.143(3).

11. During the re-opened assessment proceedings for A.Y. 2012-13, the appellant submitted details of all beneficiaries, who deposited cheques/cash with the appellant and were given cheques/cash as per their requirement and therefore, the A.O. dropped the re-assessment proceedings. These facts have been confirmed by the A.O. in para 4 of the remand report submitted. From the discussion above, it is clear that the appellant is engaged in the business of shroff and the bank accounts & transactions shown in these bank accounts are reflected in the regular books of accounts of the appellant. The appellant charged only commission on these transactions, which has been shown in the regular -books of accounts. There is nothing which can be said as undisclosed or unexplained. This finding has been given by the Hon'ble High Court of Gujarat while deciding writ petition filed by the appellant for A.Y. 2008-09. On the basis of these findings, the A.O. dropped the proceedings initiated u/s. 147 of the Act. Looking to these facts, the additions made by the A.O. are not found justified, as the A.O. himself has dropped re-assessment proceedings in which the transaction under consideration were part of the total transactions. The A.O. got detail of all the beneficiaries and necessary action will be initiated in those cases as per provisions of the Act. Keeping in view these facts, the additions made in the hands of the appellant are not found justified, hence deleted. The appellant gets relief of Rs.224,53,52,783/-. This ground of appeal is allowed.

7. We have gone through the order of the Id. CIT(A) and find no infirmity in the same. The Id. CIT(A) has deleted the addition on account of cash deposits of Rs. 224.53,23,993/- in the bank account of the assessee, noting that identical issue had come up before the Hon'ble Gujarat High Court in the case of the assessee itself in a writ petition filed by the assessee against reopening of the case for A.Y. 2008-09 and the Hon'ble

High Court had noted the fact that the assessee being in the business of Shroff, the cash deposits related to its business and did not represent any unaccounted income of the assessee. Ld. CIT(A), we find also took note of the fact that reopening resorted to by the A.O. for the impugned year on account of cash deposits in some other bank account ,subsequent to passing of the assessment order in the impugned case, was dropped by him taking note of the decision of the Hon'ble Gujarat High Court.

8. The Ld.DR was unable to controvert the above.

9. Therefore, it is clear that the issue of cash deposits in the bank account of the assessee has been examined exhaustively at various levels and no merit has been found in the contention of the Revenue that it represented any undisclosed income of the assessee, noting the fact that the assessee was into business of Shroff and earned only commission on the monetary transactions carried out by it; the cash deposits representing money belonging to his customers. Even the AO in reassessment proceedings for the impugned year was convinced that the cash deposits in another bank account of the assessee related to the assessee's money lending business. Therefore there is no reason to uphold the original assessment order of the same AO holding them to be unexplained when subsequently he was convinced that the assessee being in money lending business the cash deposits related to the same.

10. In view of the above, we see no reason to interfere in the order of the Ld. CIT(A) deleting the addition made of cash deposits amounting to Rs. 224.53,23,993/-.. The grounds of the appeal raised by the revenue is dismissed.

11. In effect, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 29 -06-2022

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER *True Copy*
Ahmedabad : Dated 29/06/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट