

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ‘SMC’ अहमदाबाद।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, AHMEDABAD**  
**BEFORE MS.SUCHITRA R. KAMBLE, JUDICIAL MEMBER**  
**AND**  
**SHRI MAKARAND V.MAHADEOKAR, ACCOUNTANT MEMBER**  
**ITA No.1284/Ahd/2024**  
**Asstt.Year : 2007-08**

Mayankkumar Rameschandra Bhatt B/202, Laljikrupa Society B/h. Mothers School Gotri Road, Baroda. PAN : AGYPB 2066 R	Vs.	ITO, Ward-1(2)(1) Vadodara.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	Shri Tushar Hemani, Sr.Advocate
Revenue by :	Shri Umesh Kumar Agrawal, Sr.DR

सुनवाई की तारीख / **Date of Hearing** : 24/07/2025  
घोषणा की तारीख / **Date of Pronouncement**: 29 /07/2025

**आदेश / O R D E R**

**PER MAKARAND V.MAHADEOKAR, AM:**

This appeal by the assessee is directed against the order dated 17.05.2024 passed under section 250 of the Income-tax Act, 1961 [hereinafter referred to as “the Act”] by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “CIT(A)”], for the Assessment Year 2007–08, arising out of the reassessment order dated 27.03.2015 passed under section 144 r.w.s. 147 of the Act by the Income Tax Officer, Ward 4(2)(4), Vadodara [hereinafter referred to as “Assessing Officer or AO”].

**2. Facts of the Case**

2.1 In the present case, the assessee is an individual stated to have no regular source of income during the relevant year. Based on the information

received through AIR/ITS systems, it was noticed by the Assessing Officer (“AO”) that cash deposits amounting to Rs. 15,97,500/- were made in a Savings Bank Account purportedly maintained with Bank of India, Karelibaug Branch, during the financial year relevant to A.Y. 2007–08. The AO issued notice under section 148 of the Act on 19.03.2014, which was duly served upon the assessee on 21.03.2014. In response, the assessee submitted a letter dated 11.04.2014, claiming to have filed the return of income for A.Y. 2007–08 and asking the AO to treat the said return as compliance to the notice. However, no documentary evidence in support of such filing was submitted and accordingly, the AO proceeded to treat the assessee as a non-filer.

2.2 During reassessment proceedings, the AO issued multiple notices under section 142(1) along with questionnaires. As per the order, the assessee either did not comply or furnished inadequate replies, leading to best judgment assessment under section 144 read with section 147. The AO made the following additions in the assessment order dated 27.03.2015:

- Addition of Rs. 15,97,500/- on account of unexplained cash deposits u/s 69A.
- Addition of Rs. 7,60,000/- on account of short-term capital gains from sale of shares, as the assessee did not furnish supporting documents.

The AO also initiated penalty proceedings under section 271(1)(c) and levied interest under sections 234A/B/C/D of the Act.

3. Aggrieved, the assessee filed appeal before the CIT(A)-IV, Baroda on 29.04.2015, which was subsequently transferred to the NFAC, Delhi. The NFAC vide its order dated 17.05.2024 partly allowed the appeal. During the appellate proceedings, the matter was remanded to the AO vide letter dated 09.09.2016. In response, the AO submitted a remand report dated 20.12.2016, enclosing a bank statement in the name of the assessee bearing Account No. 251210110000072, showing cash deposits aggregating to Rs.15,97,500/-. The AO also submitted a copy of specimen signature and KYC details provided by Bank of India under cover of their letter dated

16.12.2016. In the said report the AO also submitted the confirmation that Security Transaction Tax (STT) was paid on the share transactions, which were then accepted as Long Term Capital Gains and thus exempt under section 10(38).

3.1 In rebuttal to the remand report, the assessee submitted an Affidavit stating that the said bank account was fraudulently opened in his name and the transactions therein were not carried out by him. The assessee also stated that there is mismatch of signature between the KYC documents and his genuine signature. The assessee further submitted that the bank, in its initial RTI response dated 09.04.2015 and letter dated 16.12.2016, had been unable to trace the account based on PAN and name, thus indicating the account may have been opened on false credentials. Copies of demat account opening form from a different bank (UTI Bank), and a revised bank statement received on 31.01.2022, showing third-party trading transactions not connected to the assessee was also submitted by the assessee.

3.2 Despite the affidavit and supplementary evidence, the CIT(A) concluded that the account was indeed in the name of the assessee as per bank confirmation and PAN linkage. Accordingly, the addition of Rs.15,97,500/- was upheld. However, the addition of Rs.7,60,000/- on account of share transaction was deleted, accepting the claim of long-term holding and STT-compliant sale. On the issue of initiation of penalty under section 271(1)(c), the CIT(A) dismissed the challenge as premature, holding that penalty proceedings are separate and independent. Despite the affidavit and supplementary evidence, the CIT(A) concluded that the account was indeed in the name of the assessee as per bank confirmation and PAN linkage. Accordingly, the addition of Rs.15,97,500/- was upheld. However, the addition of Rs.7,60,000/- on account of share transaction was deleted, accepting the claim of long-term holding and STT-compliant sale. On the issue of initiation of penalty under section 271(1)(c), the CIT(A)

dismissed the challenge as premature, holding that penalty proceedings are separate and independent.

4. Aggrieved by the order of CIT(A) the assessee has preferred this appeal raising the following grounds:

1. *The Ld. AO has erred in law and on facts of the case reopening the assessment u/s. 147 of the Act. Under the facts and circumstances of the case, the action of reopening is without jurisdiction and is not permissible either in law or on facts.*
2. *The Ld. CIT(A) has erred in law and on facts of the case in confirming the addition of cash deposits in bank account of Rs. 15,97,500/-.*
3. *The Ld. CIT(A) has failed to appreciate that the bank account in which cash deposits of Rs. 15,97,500/- are made was opened fraudulently in the name of the appellant without his knowledge and the appellant is unaware about the transactions made in such bank account.*
4. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed*
5. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234A/B/C/D of the Act.*
6. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty proceedings u/s. 271(1)(c) of the Act.*
7. *The Appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

5. During the course of hearing before us the learned Authorised Representative (AR) for the assessee submitted that the assessee is not the account holder of the bank account in which the impugned cash deposits were allegedly made, and that the proceedings are based entirely on AIR information, without proper inquiry or verification. The AR invited attention to the fact that the bank account bearing no. 251210110000072 with Bank of India, Karelibaug Branch, does not pertain to the assessee, and the assessee had no knowledge of the existence or operation of such an account. It was submitted that this aspect was consistently maintained by the assessee right from the inception of the reassessment proceedings. In support of the contention, the AR referred to the Bank's own letter dated

16.12.2016, placed at Pages 9–10 of the Paper Book, which contained the specimen signature of the account holder. A comparison of the said signature with the admitted signature of the assessee on record clearly established that the two do not match. It was submitted that the AO failed to consider this crucial discrepancy in the remand proceedings. The AR further submitted that the said bank account was fraudulently opened in the name of the assessee on the basis of false documents. The signature mismatch was not limited to the bank account but also extended to the KYC documents of the demat account with UTI Bank (Axis Bank), Race Course Branch, which was independently held by the assessee and did not correspond with the documents pertaining to the Bank of India account. Relevant documents in this regard were placed at Pages 12–31 of the Paper Book.

5.1 It was also highlighted that the majority of the transactions in the impugned bank account related to Samir Shah & Co., stock sub-broker, indicating that the account was being operated for purposes completely unrelated to the assessee. This strongly indicated that the account was used by third parties for their own benefit, and the assessee had no control or dominion over such transactions. The AR also submitted that the assessee had, during the course of the appellate proceedings, filed a sworn affidavit (Pages 32–39 of the Paper Book) clearly stating that the bank account in question does not belong to him, and that the transactions carried out therein are not attributable to him. However, the CIT(A) has not even referred to the said affidavit while confirming the addition in paragraph 8.2 of the impugned appellate order.

5.2 In support of the legal proposition, reliance was placed on the judgment of the Hon'ble Gujarat High Court in the case of **Glass Lines Equipment Co. Ltd. v. CIT [(2001) 253 ITR 454 (Guj)]**, wherein it was held that the revenue cannot challenge the correctness of the statement made by the deponent in the affidavit unless the deponent has been cross-

examined by the AO. In the present case, no such cross-examination was carried out and the affidavit remains uncontroverted.

5.3 It was further contended that the AO has acted mechanically on the AIR information without verifying the identity of the account holder through PAN validation, specimen signature matching, or third-party verification from the bank. The AR also submitted that the learned CIT(A) erred both in law and on facts in confirming the addition without properly appreciating the documentary evidence placed on record and by completely ignoring the affidavit of the assessee and the discrepancy in signatures, both of which go to the root of the matter. The AR further submitted that in the alternative, and without prejudice, the matter may be restored to the file of the Assessing Officer for conducting a detailed investigation and verification of the genuineness of the bank account, the documents used for its opening, and the identity of the person actually operating it.

6. The learned Departmental Representative (DR), on the other hand, strongly opposed the contentions advanced on behalf of the assessee. It was submitted that the assessee's claim of the bank account being fraudulently opened in his name is self-serving and unsubstantiated, particularly in the absence of any complaint or legal action initiated by the assessee against the alleged misuse of his identity. The DR specifically questioned why, if the assessee was indeed not the beneficiary or operator of the said account, no FIR or police complaint was lodged at the relevant time. In response, the learned AR clarified that the assessee had indeed taken appropriate action after the appellate order passed by the CIT(A) by filing an FIR with the concerned police authority, asserting that the bank account had been fraudulently opened and operated in his name without his knowledge or consent. It was submitted that the assessee was not in possession of all the requisite documentary evidence during the course of assessment or even during the first appellate proceedings, but had pursued the matter further after gaining full access to the documents under RTI and through the remand proceedings. The learned AR also expressed serious concern over

the manner in which the learned CIT(A) dealt with the affidavit filed by the assessee. It was submitted that the CIT(A) has simply brushed aside the duly sworn affidavit, without assigning any cogent reasons for disbelieving the contents thereof, and without calling for any cross-examination or independent verification.

7. We have carefully considered the rival contentions advanced by both parties, perused the orders of the lower authorities, the remand report, the material placed in the paper book including the affidavit of the assessee, RTI responses, bank correspondence, KYC documents, and the copy of the FIR filed post the appellate order. On a holistic appreciation of the record, we are of the considered view that the matter requires fresh examination and verification by the Assessing Officer with a focused inquiry on the identity of the real beneficiary of the cash deposits and the use of the bank account in question.

7.1 It is not in dispute that the reassessment was initiated solely based on AIR information, which reflected cash deposits of Rs.15,97,500/- in a savings bank account bearing no. 251210110000072 with Bank of India, Karelilbaug Branch, allegedly held in the name of the assessee. Based on the bank's response to notice under section 133(6) and production of the account statement and KYC documents, the AO concluded that the account belonged to the assessee and, in the absence of explanation, added the entire cash deposit under section 69A.

7.2 During the appellate proceedings, the assessee filed substantial evidence including a sworn affidavit denying ownership of the account, copy of RTI correspondence showing the bank initially unable to trace the account, specimen signature mismatch, and the absence of link between the account and the assessee's demat account. It was also highlighted that the transactions in the said account were largely related to Samir Shah & Co., stock sub-broker, and that the assessee had no dealing with the said broker or any financial infrastructure to operate such volume of trades. These aspects raise a genuine and serious doubt about the actual



ownership and operation of the account, and call for deeper verification by the department.

7.3 It is further pertinent to note that neither the Assessing Officer nor the CIT(A) has examined or recorded any findings on the end use of the cash deposited in the said account. No inquiry has been made to ascertain whether the said cash was withdrawn or transferred to third-party accounts, or to identify the ultimate beneficiary of such funds. In our considered view, mere titular ownership of the bank account is not conclusive, and the department must go beyond form and look into the substance of the transactions in order to reach a fair and just conclusion. The principle that the onus lies on the revenue to establish the source and benefit of the unaccounted income, especially where the assessee has denied knowledge and supported it with *prima facie* evidence, cannot be lightly ignored.

7.4 The learned CIT(A), in our view, has also erred in summarily rejecting the affidavit without any cogent reasoning or independent inquiry. As held by the Hon'ble Gujarat High Court in *Glass Lines Equipment Co. Ltd. v. CIT* (supra), it is not open to the revenue to challenge the correctness of a duly sworn affidavit unless the deponent is cross-examined by the Assessing Officer. In the present case, the affidavit stands uncontroverted and untested, yet it has been brushed aside by the CIT(A) without any legal basis.

7.5 We also note that the assessee has since filed an FIR alleging identity fraud and misuse of PAN in connection with the impugned bank account. While this FIR was filed after the appellate proceedings, it adds weight to the assessee's consistent claim of non-ownership and merits consideration during factual investigation.

7.6 In view of the above, we are of the considered opinion that the addition made under section 69A cannot be sustained without a proper inquiry into the identity of the actual beneficiary of the cash deposits, the trail of



withdrawals and fund flow, the purpose of the bank account, and the documents used for its opening. The matter, therefore, deserves to be restored to the file of the Assessing Officer for conducting a fresh assessment after giving due opportunity to the assessee.

8. The Assessing Officer is directed to:

- Conduct a comprehensive investigation into the beneficial ownership and usage of the impugned bank account, including obtaining confirmation from the bank regarding KYC documentation, introduction details, and account opening form;
- Examine the transactions in the said account, including fund inflow and outflow, counterparty details, and potential third-party beneficiaries;
- Verify the FIR filed by the assessee and whether any inquiry or proceedings have been initiated thereon by the police;
- Provide a reasonable opportunity to the assessee to furnish further evidences or cross-examine any third parties if relied upon.

8.1 The Assessing Officer shall pass a speaking and reasoned order in accordance with law after carrying out the above inquiries. The assessee is also directed to extend full cooperation and furnish any evidence required to assist in arriving at the correct factual conclusion.

8.2 The impugned addition of Rs.15,97,500/- made under section 69A of the Act is set aside, and the matter is restored to the file of the Assessing Officer for fresh adjudication in accordance with law, in light of the observations and directions contained hereinabove.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the Court on 29<sup>th</sup> July, 2025 at Ahmedabad.**

Sd/-  
**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, dated 29/07/2025