

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## TAX APPEAL NO. 148 of 2017

## FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MR.JUSTICE B.N. KARIA

|   |                                                                                                                                               |  |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?                                                                        |  |
| 2 | To be referred to the Reporter or not ?                                                                                                       |  |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?                                                                           |  |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? |  |

ASHOKBHAI H JARIWALA....Appellant(s)

Versus

ASST. COMMISSIONER OF INCOME TAX....Opponent(s)

## Appearance:

MR MANISH J SHAH, ADVOCATE for the Appellant(s) No. 1 - 1.2

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 06/03/2017

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1.0. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal passed in ITA No. 446/AHD/2010 for AY 2006-07, by which, the learned Tribunal has dismissed the said appeal preferred by the assessee, the assessee has preferred present appeal with the following proposed question of law.

*"A. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Appellate was the real owner of Rs.6,38,800/- overlooking such overwhelming evidence in form of statement, panchnama and affidavit ?*

*B. Whether on the facts and in the circumstances of the case, the conclusion of the Tribunal in view of the overwhelming facts to uphold the addition of Rs. 6,38,800/- is perverse in law and hence, the said addition is required to be deleted ?"*

2.0. The facts leading to the present appeal in nutshell are as under:

2.1. That the search and seizer operation under Section 132 of the Income Tax Act was carried out on 14.12.2005 at the residential premise of the original assessee Ashokbhai H Jariwala and survey action under Section 133 A were carried out at the business premises of the assessee on the same day. That at the time of search of the residential premises Rs. 9,48,000/- was found in cash, out of which Rs. 3,09,200/- was seized and the balance amount was returned. It was the case on behalf of the assessee that amount of Rs. 6,38,800/- was belonging to his sister and it was found from her bedroom who has come to stay since last 5 to 6 days with her husband. Therefore, it was the case on behalf of the assessee that the said amount of Rs. 6,38,800/- was belonging to her sister and not belonged to assessee and therefore, same could not be included as unexplained cash in the hands of the assessee. That the AO did not accept the same and add entire amount of Rs. 9,48,000/- as unexplained cash not recorded in the books of account under Section 69 A of the Act and in the hands of the assessee. That the addition of Rs. 6,38,800/- in the hands of the assessee came to be challenged by the assessee before the learned CIT(A). However, learned CIT(A) dismissed the appeal preferred by the assessee and confirmed the addition made

by the AO as unaccounted unexplained cash under Section 69 A of the Act.

2.2. Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A), the assessee challenged addition of Rs. 9,48,000/- comprising of an amount of Rs.6,38,800/- found from the bedroom of assessee's sister, before the learned ITAT. That by impugned judgment and order, learned ITAT has dismissed the said appeal and has confirmed the addition made by the AO confirmed by the learned CIT(A).

2.3. Feeling aggrieved and dissatisfied with the order passed by the ITAT, the assessee has preferred the present appeal with the aforesaid proposed question of law.

3.0. Shri Manish J Shah, learned counsel has appeared on behalf of the assessee. It is vehemently submitted that in the facts and circumstances of the case, the learned Tribunal has materially erred in confirming the entire addition of Rs. 9,48,000/- also comprised of Rs. 6,38,800/- being found from the bedroom of the assessee's sister. It is vehemently submitted by Shri Shah, learned counsel for the assessee that as such from the very beginning and at the stage of search, it was the specific case on behalf of the assessee that the aforesaid amount Rs. 6,38,800/- which was found from the bedroom of the assessee's sister belonged to her and in fact the amount of Rs. 6,38,800/- was returned and not seized. It is submitted that even the reasons for the amount of Rs.6,38,800/- in cash was available with the sister of the assessee was explained in the affidavit filed by his sister. It is submitted that because of some family dispute with the in-laws, sister of the assessee and her husband were residing with the assessee since last 5 to 6 months and the

aforesaid amount of Rs. 6,38,800/- in cash was of *Stridhan*, income of the sister and her husband by doing labour work and the share received from in-laws. It is submitted that despite the above overwhelming evidence, the learned ITAT has confirmed the addition of Rs. 6,38,800/- in the hands of the assessee. It is submitted that as such the learned Tribunal has disposed of appeal on wrong premises / facts and mainly by observing that no evidence is adduced by her sister of her separation or receiving permanent alimony paid by her husband. It is submitted that it was never the case on behalf of the assessee and / or her sister that aforesaid amount of Rs. 6,38,800/- was permanent alimony received by her from her husband. It is submitted that therefore, the impugned judgment and order passed by the learned Tribunal is perverse, which deserve to be quashed and set aside.

4.0. Heard Shri M J Shah, learned counsel for the assessee at length. We have perused and considered in detailed the order passed by the AO, learned CIT(A) and the impugned judgment and order passed by the learned Tribunal. We have also considered in detailed inventory of the cash found, carried out while conducting search on 14.12.2005 and the statement of the assessee recorded under Section 132(4) of the Act. We have also considered the affidavit of sister of the assessee, which as such is dated 4.1.2006 i.e after a period of approximately three weeks from the date of search and seizer of the aforesaid amount of Rs. 9,48,000/- found to be in cash. It is true that Rs. 6,38,800/- was found in cash from the bedroom of the sister of the assessee. However, it is required to be noted that entire residence belonged to the assessee. Even according to the assessee and her sister, her sister had came there to stay voluntarily. As rightly observed by the learned Tribunal, as such nothing is on record that the bedroom was in exclusive possession of the sister. Even otherwise, there are contradictions in the statement of assessee

recorded under Section 132(4) of the Act and even the affidavit of the sister of the husband which as such is after three weeks from the date of search and seized. In answer no.9, the assessee has stated that out of amount of Rs. 7 to 8 lakh found to be in cash, Rs. 2.5 lakh belonged to her sister. He has not stated that the amount in cash is found from the bedroom of the sister, entire amount belonged to her sister. The sister in her affidavit dated 4.1.2006 has stated that the amount of Rs.6,38,800/-found in cash from the room where she was sleeping with her husband was received by her from in laws, out of the aforesaid amount, some amount is of Stridhan received from her in laws and the parental house and towards the savings from the labour work by her and her husband. However, it is required to be noted that no further evidence is produced with respect to any share received from her in laws. As observed herein above, even the said affidavit is dated 4.1.2006 i.e. after a period of three weeks. As observed herein above, assessee has stated that out of Rs. 7 to 8 lakh found to be in cash, Rs. 2.25 Lakh belonged to her sister, thus there are material contradiction in the statement of assessee and even the affidavit of her sister. Under the circumstances, however on appreciation of the evidence the learned AO made addition of Rs. 9,48,000/-as unexplained ash, it cannot be said that the AO has committed an error.

5.0. Now, so far as the submission on behalf of the assessee that at the time of search and seizer out of Rs. 9,48,000/-, Rs.6,38,800/- which was recovered from the bedroom of the sister of the assessee was returned and not seized and therefore, the aforesaid amount of Rs. 6,38,800/- could not have been added in the hands of the assessee as unexplained cash of the assessee is concerned, the aforesaid cannot be accepted. Merely because, at the relevant time aforesaid amount was not seized and returned, it cannot be said that the subsequently during

the course of assessment, the aforesaid amount which was found in cash from the premises of the assessee could not have been added as unexplained income in the hands of the assessee. As such, no question of law arise.

6.0. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the learned Tribunal and confirmed the addition made by the AO as unexplained cash not recorded in the books of account under Section 69 A of the Act. In view of the above, present appeal fails and same deserve to be dismissed and is accordingly dismissed.

(M.R. SHAH, J.)

(B.N. KARIA, J.)

Kaushik

