

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1024/AHD/2017
निर्धारण वर्ष/Asstt. Year:2008-2009

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| Vasantkumar Hiralal Patel, 29, Deep Ganga Society, Unjha, Dist. Mehsana, PAN: AOXPP2754F | Vs. | I.T.O, Ward-1, Patan. |
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| (Applicant) | | (Respondent) |
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| Assessee by : | Shri S.V. Agrawal, A.R |
| Revenue by : | Shri Urjit Shah, Sr.D.R |

सुनवाई की तारीख / **Date of Hearing** : **15/02/2022**
घोषणा की तारीख / **Date of Pronouncement**: **11/05/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income (Appeals), Gandhinagar dated 21/03/2017 arising in the matter of assessment order passed under s. 143(3) r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2008-09.

2. The assessee has raised the following grounds of appeal:

1. *Learned CIT(A) had erred in confirming addition of Rs.9,22,000 made by A.O. U/s-68 of the Act, being cash deposited in bank a/c in as much as,*

1.1. *Appellant had factually explained the agriculture income of Rs,9,22,000 with evidences, being source of cash deposited in bank a/c.*

1.2. *The A.O. had in his remand report accepted the agriculture income of Rs.9,22,000 & same as source of cash deposited in bank A/c. Even then CIT(A) had not accepted remand report of A.O.*

2. *Learned CIT(A) had erred in confirming addition of Rs.26,59,225 made by A.O. U/s-68 of the Act being cash deposited in bank A/c, as much as,*

2.1. *Appellant was doing business of share trading/investment & had factually explained how cash of Rs.26,59,225 arose in share trading/investment and deposited in bank a/c.*

2.2. *The A.O. had in his remand report accepted source of cash deposited Rs.26,59,225 in bank a/c. Even then CIT(A) had not accepted Remand report of A.O.*

3. *Learned CIT(A) had erred in confirming addition of Rs.35,81,225 made by A.O. (Rs.9,22,000+ Rs.26,59,225) and did not accept peak credit offered to tax of Rs.6,81,278 though accepted by A.O. in remand report.*

4. *The assessee carves for liberty to amend, modify and add any grounds of appeal or furnish additional evidences.*

3. The interconnected issue raised by the assessee is that the learned CIT(A) erred in confirming the addition made by the AO for Rs. 35,81,225/- on account of cash deposited by the assessee in the bank account treating the same as unexplained cash credit/unexplained income.

4. The facts in brief are that the assessee in the present case is an individual and engaged in the business of share trading besides having the agricultural income. The assessee was maintaining two bank accounts bearing account number 220515500013963 and 220517200000355 with Karur Vasya Bank. There were cash deposits in both the bank accounts amounting to Rs. 19,97,280/- and Rs. 26,59,255/- respectively. The assessee claimed that the amount of cash deposits of Rs. 19,97,280/- in the bank account bearing number 220515500013963 includes the amount of cash deposit of ₹ 9,22,000/- representing the agricultural income. The assessee in support of the agriculture income has filed the extract of 7/12 form

and the bills issued by the commission agent namely M/s Aditya Grishbhai Unjha against the purchase of the agricultural produce from him (the assessee).

4.1 However, the AO found that the bills issued by the commission agents were pertaining to the period beginning from 30th June 2007 to 31st December 2007 but the bills were defective insofar all the bills are bearing the bill numbers in consecutive seriatim i.e. 103 to 107. According to the AO, it was not possible to issue the bill by the commission agent in seriatim which were pertaining to the different period. The AO further found that the TIN-VAT Number of the commission agent was also cancelled. Accordingly the AO doubted on the genuineness of the bills issued by the commission agents. Thus the AO called upon the commission agent to verify the bills issued by him. But the commission agent failed to appear.

4.2 Likewise, the AO also found that the assessee was in possession of the land for 4.2 Bigha in his personal capacity and he was also in possession of the land along with his 2 brother for 3.2 bigha in joint owner capacity. According to the AO the impugned land was not sufficient enough to generate the agriculture income to the tune of ₹ 922,000/-. Accordingly, the AO disbelieved the claim of the assessee for having an agriculture income of ₹ 9,22,000/- and thus treated the same as income from undisclosed sources by treating the same as an unexplained cash credit under section 68 of the Act.

4.3 The AO with respect to the cash deposit of ₹ 26,59,255/- observed that the assessee has not explained the source of the same and therefore the AO treated the same as income from undisclosed sources. Thus, the AO made the aggregate addition of ₹ 35,81,255.00 to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A.

6. The assessee before the learned CIT-A has filed the additional evidences to justify that the amount of agriculture income does not represents the unexplained cash credit and likewise the amount of cash deposit amounting to ₹ 26,59,255/- in the bank account bearing number 220517200000355 does not represent the undisclosed income. The learned CIT(A) called for the remand report from the AO on the additional evidences filed by the assessee. The AO in his remand report dated 24th February 2017 has accepted the contention of the assessee that the amount of cash deposit of ₹ 9.22 lacs represents the agricultural income of the assessee. As per the AO, the proprietor of commission agent namely M/s Aditya Grishbhia Unjha was called upon to verify the veracity of sale purchase of the agricultural produce who in turn confirmed to have purchased the agricultural produce from the assessee for Rs. 9.22 lacs in cash in the year under consideration. Likewise, the AO also observed in his remand report that the assessee was not only carrying out agricultural activity on his land held individual capacity and on the land held in joint owner capacity but also the assessee was also carrying out agricultural activity on contract basis on the lands belonging to the other. Thus the AO accepted the contention of the assessee in his remand report by holding that the amount of cash deposit of ₹ 9.22 lacs represents the income from the source of agricultural activity. Likewise, the AO in his remand report has also accepted the genuineness of cash deposit made by the assessee for ₹ 26,59,255/- by holding that there were relatives of the assessee who handed over the cash to the assessee for making the investment in the shares. The assessee claimed to have received such cash from 9 parties which was used in the deposit of the bank account. Out of 9 parties, 4 parties were called upon and the furnished the statement under section 131 of the Act by admitting to have given cash to the assessee for making investment in the shares. The assessee has also filed confirmation from all the 9 parties. Accordingly the AO in his report concluded that the amount of cash deposit made by the assessee represents from the genuine sources and therefore, no addition is warranted. However the AO found that, there was negative cash balance on different dates as per the cash book furnished by the assessee. The aggregate negative cash balance

in the cash book stands at ₹ 6,81,275/- which was treated as income from other sources. Thus the AO in the remand report confirmed the addition of ₹ 6,81,275/- and submitted that the balance amount of ₹ 19,77,950/- needs to be deleted.

7. However the learned CIT-A disregarded the remand report furnished by the AO vide letter dated 24th February 2017 by observing that the commission agent namely M/s Aditya Grishbhai Unjha has not appeared during the original proceedings for the confirmation of the transactions. Furthermore, the TIN/VAT of the commission agent has been cancelled which means that the commission agent was not carrying out any business activity

7.1 The learned CIT-A further observed that the assessee has not claimed any expense against the agricultural income which is very unusual. Likewise, the assessee has not disclosed any income from the agricultural activity in the earlier years as well as in the later assessment years except the year under consideration. The learned CIT-A with respect to the cash deposit of the assessee for ₹26,59,255/-s observed that the AO in his order dated 18-2-2016 has given unambiguous finding that amount of cash withdrawal from the bank account bearing number 220517200000355 was not incorporated in the cash book furnished by the assessee.

7.2 Likewise, contention of the assessee that he has made investment in the shares on behalf of certain parties/relatives from whom the cash was received was devoid of any merit. It is for the reason that there was no documentary evidence furnished by the assessee on record so as to justify the share activity of the assessee on behalf of other parties.

7.3 All the parties who have given money to the assessee in cash were holding the bank account. Therefore, there was no reason for them to withdraw the cash from the bank account and handover to the assessee for the deposit in the bank account of the assessee. As such the amount was withdrawn in low volume which

was given to the assessee for the investment in the shares after considerable time gap.

7.4 The relevant finding of the Id. CIT-A stands as under:

The appellant has claimed that whenever shares are allotted in application made by him in the name of wife, friends and relatives, such shares are sold and 50% profit is shared with such parties. However, no documentary evidences of sharing of such profits is submitted by appellant nor ledger accounts submitted by appellant reflect such fact.

cheques are deposited in respective bank account and cash are withdrawn for redeposited such amount is appellant's bank account. However, when refund is already deposited in bank account of such family members and friend, they would have easily transferred such amount through cheque in appellant's bank account. Simply submitting confirmation and PAN would not prove that cash deposited in appellant's bank account are genuine.

The appellant has also claimed that he was making application in IPO in names of various members again and again. When shares are not allotted in their name, refund is credited in bank account of such third parties, hence, as per appellant's argument, there was sufficient bank balance in respective bank account. In such cases, appellant would have made application directly from their bank account when according to him entire control in bank account is with appellant. There was no need at all for withdrawing cash from bank account of third parties and redepositing in appellant's bank account. The circumstantial evidences nowhere support appellant's argument.

*The appellant has submitted working of peak credit wherein cash withdrawn from different bank account of appellant along with other family members, relatives etc are shown as well as cash deposited are reflected. Such working is pursued. The appellant has taken plea that cash withdrawn from bank account of wife was also utilised for making cash deposit in appellant's bank account. It is observed that in appellant's wife account, there is cash withdrawal of small amount below Rs.5000/- in various dates and such can never be intention of appellant to reutilise it for redepositing cash in his account. Even no house hold withdrawals are shown in above referred cash account. **Thus** plea of appellant cannot be accepted.*

The appellant has also not immediately redeposited cash withdrawn from bank account of other parties in his bank account which itself contradicts the stand of appellant that when there are no allotment of IPO, cheques are credited in respect bank account of third parties which includes family members, relatives and friends, cash are withdrawn and same are deposited in appellant's bank account. Had it been the case, appellant would have deposited such cash withdrawn immediately i.e within one or two days in bank account. The appellant has shown cash balance of Rs.3,18,175/- on 29/11/2007, Rs.5,95,375/- on 03/12/2007 after considering cash withdrawn from third party for Rs.92,400/- on 03/12/2007. The said cash balance increased to Rs.9,40,475/- on 08/12/2007 after considering cash withdrawal from third party for Rs.3,69,600/- on 04/12/2007. On 11/12/2007, cash balance was Rs.10,06,475/- and only Rs.2,82,250/- is deposited in bank account on 12/12/2007. Rs.4,70,300/- was deposited on 13/12/2007. Had the cash available with appellant, he would have immediately deposited cash in his bank account. This pattern has continued throughout the year. Even cash balance on 01/03/2008 was Rs.20,61,520/- which is unusual balance and no prudent person keep such cash with him.

It is also observed that appellant has claimed to have cash of Rs.14,83,580/- in cash book as on 26/02/2008 and such cash is even not deposited in bank account till 31st March 2008.

The closing cash balance shown in cash book was Rs.16,19,060/- which is substantially higher and as per appellant's own theory such cash would have been deposited in bank account. The details submitted by appellant itself are contrary to facts and for reasons stated herein above, appellant's theory cannot be accepted.

The appellant's theory that cash withdrawn from bank account of various persons were utilised in deposited in appellant's bank account is contrary to facts and not supported by evidences. Even AO in remand report has recorded statement of 4 parties out of 9 parties and no parties have submitted copy of their bank book or return of income to prove that cash withdrawn from their bank account belongs to appellant Mere admission by third party in statement recorded during remand proceeding does not mean that appellant's explanation is proper when same is not supported by cogent evidences.

(v) The appellant has also argued that there was opening cash balance of Rs.2,28,300/- and cash was deposited in current year is out of such opening cash balance. The appellant has not filed any return of income in earlier assessment year hence sanctity of opening cash balance in the hands of appellant cannot be accepted. Appellant has argued that opening cash balance cash withdrawn from relative & friends bank account in tifs month of March 2007. However, in preceding paras, I have ..already held that appellant cannot be given credit of cash withdrawn from bank account of such relatives & friends as they are no dummy account of appellant and considering detailed finding given herein above, explanation of appellant that opening cash balance was also utilised in making cash deposit in bank account cannot be accepted.

Considering these facts, addition made by AO for Rs.26,59,225/- is confirmed and relevant ground of appeal is rejected.

8. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

9. The learned AR before us contended that the AO in the remand proceedings has verified the commission agent who purchased the agricultural produce from the assessee. Furthermore, there were documentary evidences for the sale of agricultural produce. Similarly, the fact that the assessee was holding the agricultural land cannot be ignored. The learned AR reiterated the submissions made before the authorities below with respect to the cash deposited for ₹9.22 lakhs in the bank out of agricultural income.

9.1 The learned AR with respect to the cash deposits of Rs. 26,59,255.00 in the bank account bearing number 220517200000355 has filed the additional evidences in the form of paper book running from pages 1 to 143. According to the learned AR, the additional evidences filed by the assessee goes to the root of the matter and therefore the consideration of the same is necessary for deciding the issue.

10. On the contrary, the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there was no doubt raised by the authorities below with respect to the lands held by the assessee in his individual capacity and as joint ownership. Therefore, the possibility of agricultural income cannot be ruled out in entirety merely on the reasoning as pointed out by the learned CIT-A, which have been reproduced somewhere in the preceding paragraph. Though, the reasons given by the learned CIT-A appears to be valid for not having agricultural income in the hands of the assessee, but such reasoning cannot overlook the fact of the land held by the assessee in his individual and joint owner capacity. Accordingly we are of the view that the entire amount of cash deposit of ₹9.22 lakhs cannot be treated as income from other sources. In our considered opinion, justice shall be served to the assessee as well as to the revenue if the sum of ₹5 lakhs out of the total cash deposit of Rs. 9.22 lakhs is treated as income from agricultural operations and the remaining amount as income from other sources. Hence the 1st ground of appeal of the assessee is partly allowed.

11.1 With respect to the addition of ₹ 26,59,255.00, we note that the assessee has filed the additional evidences before us which are available on record. We have perused the additional evidences and note that the consideration of these additional evidences at the level of the AO is essential. Accordingly, we exercise our power granted under rule 29 of ITAT rules and admit the additional evidence filed by the assessee. Thus in the interest of justice and fair play, we remit the issue to the file of the AO for fresh adjudication as per the provisions of law and after considering

the additional evidences filed by the assessee. Hence the 2nd ground of appeal of the assessee is allowed for the statistical purposes.

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

Order pronounced in the Court on 11/05/2022 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
11/05/2022
Manish