

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, “SMC” BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.143/SRT/2023 (AY 2016-17)

(Hearing in Physical Court)

Chandubhai Parshottambhai Borad, 162, 163, Akshardham Society, Sarthana, Jakatnaka, Varachha Road, Surat-395006 PAN No: AJFPB 2959 Q	Vs	Income Tax Officer, Ward-3(3)(5), Surat, Aayakar Bhavan, Majura Gate, Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	24.02.2023
सुनवाई की तारीख/Date of hearing	08.06.2023
उद्घोषणा की तारीख/Date of pronouncement	28.08.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld.CIT(A)”] dated 29.11.2022 for assessment year 2016-17, which in turn arises from the addition made by the Income Tax Officer, Ward-3(3)(5) Surat /Assessing Officer in assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 19.12.2018. The assessee has raised the following ground of appeal: -

“1. On the facts and in the circumstances of the case as well in law, on the subject, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of Assessing Officer in making addition of Rs.14,00,000/- on account of unexplained cash credits u/s 68 of the I.T Act.

2. On the facts and in the circumstances of the case as well in law, on the subject, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of Assessing

Officer in making addition of Rs.3,56,880/- by treating agricultural income as income earned from other sources.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Brief facts of the case are that assessee is an individual, filed his return of income for assessment year 2016-17 on 30.01.2017 declaring income of Rs.3,53,170/-. The assessee also shown an agricultural income of Rs. 4,46,100/- for tax rate purposes. The case was selected for scrutiny. During assessment, the Assessing Officer noted that assessee has shown unsecured loan of Rs.14.00 lakh availed from three persons; loan of Rs.5.00 lakh from Nareshbhai Vashrambhai Balar, Rs.4.00 lakh from Jentibhai Jethabhai Kotadiya and Rs.5.00 lakh from Subhashgiri M. Goswami respectively. The Assessing Officer in order to verify the genuineness of loan transaction issued notice under section 133(6) of the Act and sought certain details from lenders. The Assessing Officer noted that notice sent to one lender Jentibhai Jethabhai Kotadiya was not served. The Income Tax Return (ITR for short) of Subhashgiri M. Goswami, where no details of advanced was found and assessee has not furnished his assets & liabilities and Nareshbhai Vashrambhai Balar given loan after depositing cash in his bank account on the same day. On the agricultural income, the Assessing Officer noted that assessee has not furnished any details to prove the genuineness of his agricultural income, except sale bills of agricultural produce. Copy of Form 8/A and Form 7/12 were not furnished. Further, in assessment year

2015-16, the assessee has shown net agricultural income of Rs.1,58,400/-, however, in current assessment year *i.e.*, 2016-17 the agricultural income increased to Rs.4,46,100/-. On the basis of aforesaid observation, the Assessing Officer issued detailed show cause notice to the assessee on both the issues vide notice dated 15.12.2018 and asked the assessee to establish the identity, creditworthiness and genuineness of transactions. The assessee furnished required details, which was already filed. The again assessee furnished copy of bank statements, ITR on the observation about cash deposits in the bank account that one of the lenders, the assessee explained that if the lender has sufficient cash balance, no adverse inference could be drawn against the lender and that he has fully discharged his onus. On the observation against the return of notice under section 133(6) of the Act from Jentibhai Jethabhai Kotadiya. The assessee explained that notice was issued on 29.10.2018, which was the period of Diwali vacation and lender as left for his native place and payment was made through account payee cheques and all the lenders are income tax payee/assessee. On the issue of agricultural income, assessee furnished required details as well as copy of Form 7/12 and Form 8/A respectively.

3. The reply of assessee was not accepted by Assessing Officer. On the issue of unsecured loan, the Assessing Officer held that Nareshbhai Vashrambhai Balar has given loan after depositing cash in bank account. The statement of assessee that Nareshbhai V. Balar was having sufficient cash balance is not acceptable. In case of

Subhashgiri M Goswami, the assessing officer recorded that assessee vide submissions dated 181.20118 submitted that he has received back on account of loan advance given to Subhashgiri M Goswami during earlier year and assessee, but, he has not furnished any details regarding bank statement / confirmation. For lender Jentibhai Jethabhai Kotadiya, the assessing officer concluded that notice issued to him was returned back thus there was lacuna in the story of assessee is not reliable. The Assessing Officer recorded that assessee had claimed to have received Rs. 2.00 lakhs on 01.04.2015 and in turn lender had given an amount of Rs. 5.00 lakhs to the assessee, the balance of Rs. 3.00 lakhs were paid by assessee during the year itself. The assessing officer held that the theory of assessee regarding loan and advance is full of lacunas and is not reliable. The assessing officer held that all three lenders have no capacity for granting unsecured loan and added Rs.14.00 lakhs under section 68 of the Act.

4. On other issue of agricultural income, Assessing Officer held that in earlier assessment year, the assessee has shown agricultural income of Rs.1,58,400/-, however, in the current assessment year agricultural income has shown at Rs.4,46,100/- and no reason is given for substantial increase in agricultural income. The Assessing Officer further noted that assessee has 1/5th share of joint ownership in the land holding. On such observation, the assessing officer allowed agriculture income to the extent of Rs. 89,220/- (being 1/5 of Rs.4,46,100/-) out of total agriculture income declared by assessee

and added remaining agricultural income of Rs.3,56,880/- (Rs.4,46,100 - 89,220/-).

5. Aggrieved by the additions in the assessment order, the assessee filed appeal before Ld. CIT(A). Before NFAC/Ld. CIT(A) assessee filed detailed written submission. On the addition of unsecured loan, assessee submitted that Assessing Officer made addition of Rs.14.00 lakh by treating the unsecured loan as unexplained cash credits. During assessment, the assessee furnished complete evidence to substantiate the identity, genuineness of transaction and creditworthiness of the creditors. The assessee furnished account confirmation, ITR with bank statements and discharged his onus. The unsecured loan was received through proper banking channel and Assessing Officer made adverse inference only on the ground that lenders have credit entry almost same amount prior to give loan to assessee. The plea of Assessing Officer that lenders are not capable of providing such loan as they were having less income than the loan provided to assessee. Such observation cannot be treated as basis for making such addition and addition is based on mere conjecture and surmise. The ld AR for the assessee submits that the loan of Subashbhai N Goswami was paid was in the financial year itself, copy of the account confirmation and bank statement is filed. The assessee submitted that he has discharged his onus and Assessing Officer made addition without bringing any adverse material against assessee. The assessee relied upon the decision of Hon'ble jurisdictional High Court in the case of Dy. CIT vs. Rohini Builders

256 ITR 239 (Guj) and CIT vs. Ranchhod Jivabhai Nakhava 81 CCH 193 (Guj) in Tax Appeal No.50 of 2011 dated 20.03.2012.

6. On the addition of agricultural income, assessee stated that Assessing Officer made addition by taking view that no supporting evidence was provided during assessment except agricultural bills. The Assessing Officer on the basis of ownership document of agricultural holding allowed only 1/5th of agricultural income out of total agricultural income of Rs.4,46,100/-. The assessee furnished details of agricultural holding, which was accepted by Assessing Officer as agricultural activities were carried out by assessee during the year under consideration. Mere fact of co-owners of the agricultural land does not mean that income from such land has to be disturbed in the ratio of ownership of such land. The assessee prayed for delating both the additions.
7. The Ld. CIT(A) after considering the submissions of assessee upheld the addition of unsecured loan under section 68 of the Act by taking inconsistency view. At one place, in para-4.4 of his order recorded that addition under section 68 is unsustainable as evidence relating to loan is not doubted by assessing officer. The book of assessee was not rejected under section 145(3) of the Act. On the other place, Ld. CIT(A) in para-4.5 held that all the persons from whom advance was received failed to file confirmation in response to notice issued under section 133(6) or notice remained unserved, and the lenders have meagre income as compared to give loan amount. The creditworthiness of the parties was very much doubtful and upheld

the addition under section 68. On the addition of agricultural income, Ld. CIT(A) held that assessee could not produce sufficient documentary evidence before Assessing Officer in support of higher agricultural income for current year, it was held that it is highly probable that assessee has concocted the agricultural income to claim excess exempt income. The ld CIT(A) held that the Assessing Officer was reasonable in estimating such agricultural income at Rs. 89,220/- being 1/5th share of the total agricultural income and justified in addition of remaining amount of Rs.3,56,880/- as “income from other source” of assessee. Further aggrieved, the assessee has filed present appeal before the Tribunal.

8. I have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue. Ground No.1 relates to addition of Rs.14.00 lakh under section 68 of the Act. The Ld. AR for the assessee submits that assessee furnished complete details of the lenders to prove the identity, creditworthiness and genuineness of such transactions. The assessee has received unsecured loan of Rs.14.00 lakh from three persons, namely, Nareshbhai V Balar for Rs.5.00 lakh, Jentibhai J. Kotadiya for Rs.4.00 lakh and Subhashgiri M. Goswami for Rs.5.00 lakh respectively. The assessee furnished all necessary evidence *i.e.*, confirmation of bank account and ITR of the respective parties to prove the creditworthy and genuineness of transactions. The Assessing Officer has not pointed out any discrepancies in the evidence rather took his view that the lenders are not capable of

providing such loan to assessee. The assessee vailed a meagre amount of Rs.4.00 lakh or Rs.5.00 lakh, which is not a big amount. The finding of lower authorities is not justifiable when the assessee has fully discharged his onus. The Ld. AR for the assessee submits that the addition made by Assessing Officer and confirmed by NFAC/Ld. CIT(A) are liable to be deleted. To support his submission, Ld. AR for the assessee relied upon following case law:

- CIT vs. Daulatram Rawat Mal (1973) 87 ITR 349 (SC)
- CIT vs. Orissa Corporation (P.) Ltd. (1986) 159 ITR 78 (SC)
- Dhirajlal Girdharilal vs. CIT (1954) 26 ITR 736 (SC)
- Murlidhar Lahorimal vs. CIT (2006) 280 ITR 512 (Guj)
- CIT vs. Pragati Co-Operative Bank Ltd. (2005) 278 ITR 170 (Guj)

9. On the addition of agricultural income as “income from other sources”, the Ld. AR for the assessee submits that Assessing Officer doubted the agricultural income on taking view that agricultural income in preceding assessment year was much less than agricultural income declared in the assessment year under consideration. The assessing officer also held that no supporting evidence was furnished by assessee. The assessee furnished details of agricultural holding and other corroborative evidence. The Ld. AR for the assessee submits that Assessing Officer on the basis of evidence of agricultural holding was of the view that assessee is having 1/5th share in the joint agricultural holding therefore, Assessing Officer allowed agricultural income to the extent of 1/5th income out of total agriculture income declared by assessee. Once the agricultural holding is accepted by the Assessing Officer and the assessee claimed

that he has earned agricultural income and Assessing Officer has no right to disturb agricultural income on the basis of ratio of holding of agricultural holding. The disallowance made by Assessing Officer is based on conjecture and surmise without bringing any adverse material found on record.

10. On the other hand, Ld. Sr-DR for the Revenue submits that all the submissions made by Ld. AR for the assessee was duly considered by the lower authorities. On addition of unsecured loan as unexplained cash credit, Ld. DR for the revenue submits that the assessee miserably failed to prove the creditworthiness of all the lenders. Thus, the action of Assessing Officer is fully rational and justified. So far as addition of agricultural income is concerned, Ld. Sr-DR for the Revenue submits that Assessing Officer on a very reasonable manner after considering the joint ownership *qua* the agricultural holding allowed relief to the extent of assessee's share. The assessee has not filed any evidence to substantiate that no other co-owner has claimed similar agricultural income or agricultural activities exclusively carried out by him. The Ld DR for the revenue prayed for dismissal of the appeal.

11. I have considered the submissions of both the parties and perused the records carefully. I have also deliberated on various case law relied upon by Ld. AR for the assessee. Ground No.1 relates to addition under section 68 of the Act. I find that the Assessing Officer made addition by taking view that the lenders were not capable of giving such loans. I find that Assessing Officer issued notice under section

133(6) of the Act, which was duly served on lenders, namely, Nareshbhai V Balar as well as Subhashgiri M Goswami and notice sent to one Jentibhai J Kotadiya was returned back. However, confirmations on behalf of all three persons were filed. Before me, the ld AR for the assessee explained that notice was issued only 12.10.2018, which was the vacation period of Diwali festival in Surat and the lender has left for native place. I find that Assessing Officer has not called any of the lenders for recording their statement nor bring any adverse material against the lenders. I find that during assessment proceedings, assessee has field complete details of lenders including identity of lenders and their creditworthiness and genuineness of such transaction. The loan was received through banking channel. I find that Ld. CIT(A) has given a contradictory finding, in para-4.4, where he held that addition under section 68 is unsustainable and that Assessing Officer has not doubted the evidence relating to the loan and not rejected the books of assessee. The Ld. CIT(A) again held that assessee failed to establish creditworthiness of creditors. I find that identity was not disputed by the Assessing Officer. Considering the fact that assessee has discharged his primary onus in furnishing complete details to prove the genuineness of such transactions and the Assessing Officer has not examined the lenders nor brought any adverse material. The entire transactions took place through banking channel, therefore I do not find any justification for making such addition. In the result, ground No.1 of appeal raised by assessee is allowed.

12. Ground No.2 relates to addition of Rs.3,56,880/- by treating agricultural income as “income from other sources”. The Assessing Officer made addition by taking view that in the previous assessment year, the assessee has shown agricultural income of Rs.1,58,400/-, however, in the current assessment year, the assessee has shown agricultural income of Rs.4,46,100/-. The Assessing Officer further held that no reason for substantial increase in assessee’s agricultural income was explained. And that on verification of record on ownership, the Assessing Officer was of the view that agricultural land holding owned by five persons including assessee, thus Assessing Officer allowed the ratio of 1/5th of agricultural income as claimed by assessee to the extent of Rs.89,220/- ($4,46,100 \div 5 = 89,220$). I find that once the Assessing Officer has accepted the ownership in the joint names of assessee, the right course of action was to call for or examine the remaining co-owners, if they have claimed similar agricultural income or agricultural activities are exclusively carried out by the assessee or not. I find that Assessing Officer has not brought any adverse material on record to substantiate his contention that he is not exclusively undertaking the agricultural activities in the agricultural land under joint ownership. Considering the facts and circumstances of the case that neither the assessee has fully discharged his onus by filing confirmation from other co-owners that the land jointly owned by them is fully occupied and cultivated for the purpose of agriculture activities by assessee only, nor the assessing officer has brought any adverse material to fully discard the contention

of the assessee. Therefore, keeping in view the agriculture income of earlier year accepted by the department, in my view an estimated/lump sum allowance of Rs.3.00 lakh as agriculture income would be sufficient to meet the end of justice. Thereby, remaining disallowance of agriculture income of Rs. 146,100/- is upheld. Thus, the assessee gets part relief accordingly. In the result, ground No.2 of assessee's appeal is partly allowed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in open court on 28/08/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 28/08/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT, Surat