

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

ITA No. 168/Rjt/2021 Assessment Year 2017-18

Chandubhai Ramjibhai Kathiriya, 49 Motisheri, Juna Pipalia, Jasdan, Rajkot-364490 Gujarat PAN: BWRPK2156F (Appellant)	Vs	The CIT(A), NFAC, Delhi (Respondent)
--	----	--

**Assessee Represented: Shri Gaurang Khakhar, A.R.
Revenue Represented: Shri K.L. Solanki, Sr.D.R.**

Date of hearing : 20-07-2023
Date of pronouncement : 29-09-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee against the exparte Appellate order dated 26.08.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as “NFAC”), as against the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) relating to the Assessment Year (A.Y) 2017-18.

2. The solitary issue before us is that the Ld. CIT(A) erred in upholding addition of Rs. 14,32,782/- being 50 percent of agricultural income treating as unexplained cash credit u/s. 68 of the Income Tax Act in the absence of books of accounts.

3. The brief facts of the case is that the assessee is an individual and agriculturist by profession filed his Return of Income on 26-07-2017 declaring the total income as Rs. 340/- and agricultural income of Rs. 28,65,563/-. The assessee case was selected for scrutiny assessment since the assessee shown large agricultural income and the assessee was requested to justify the same with necessary evidences.

3.1 The assessee replied that he was holding agricultural land measuring 19.12 acres wherein crops were grown and produced Form No. 7/12 copy and other Revenue records. The assessee also shown agricultural income for the earlier previous two Assessment Years and the Gross total income which is much less than the basic exempt income of Rs. 2,50,000/- as follows:

A.Y.	Gross Total Income	Exemption Limit	Net Agricultural Income
2017-18	340	2,50,000	28,65,563
2016-17	123	2,50,000	29,92,400
2015-16	663	2,50,000	14,52,800

3.2. Thus the assessee claimed that he is not interested in showing higher income though the basic exemption limit is not fully exhausted by the assessee.

3.3. The Ld. A.O. issued notice u/s. 133(6) to Radhe Fertilizer, however there was no response from that party. Therefore the Assessing Officer held that 50% of the agricultural income is

considered to be reasonable and balance 50% namely Rs. 14,32,782/- is treated as unaccounted income brought in the guise of exempt agricultural income and thereby added to the total income of the assessee u/s. 68 r.w.s. 115BBE of the Act and also initiated penalty proceedings.

4. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals) and made detailed submissions as follows:

“.....Assessee has earned income of Rs. 13,72,140/- during the year under consideration by cultivating on his own land (42.66 vighas) as well as land of other farmers (53.85 vighas) by taking the same on "Ganot" at villages namely Tighra, Bhutsad, Italva and Pardi.

The Assessing Officer has merely doubted the agricultural income earned by cultivating land of other farmers which was worked out by him at Rs. 7,65,618/- and he made the impugned addition by treating such agricultural income as income earned from other sources.

. He submitted that the AO failed to appreciate the agreements entered into in 2005 by the assessee with Padmaben R. Ranka (mother) and Anjaliben D. Shah (mother-in-law) according to which the assessee cultivated their agricultural land since those persons were not able to cultivate land on account of their old age.

ITAT Ahmedabad conclusion

The AO had disbelieved the claim on the basis that the assessee did not place on record other evidences, namely, bills and vouchers in respect of cultivation, harvesting, seeding, labour, irrigation, weeding, thrashing, packing, marketing, transporting, etc.

. The AO has accepted the claim of earning agriculture income of the assesseequa his land but disbelieved his claim in respect of other The AO has accepted the claim of earning agriculture income of the assessee qua his land but disbelieved his claim in respect of other farmers, this kind of act of the AO is not justified. Therefore we do not find any infirmity in the order of the Id. CIT(A). the same is hereby upheld.

The facts of the case are similar with Judgment of Honorable ITAT wherein ITAT has upheld the addition deleted by CIT(A)

Further, the Appellant placed reliance on the decision of the Hon'ble Karnataka High Court in the case of S. L. Basavaraj Vs. ACIT (2015) 61 taxmann.com 67 (Karn) to contend that the agricultural income declared by the assessee cannot be rejected if there is only a marginal increase in the said income during the relevant year as compared to earlier years. Reliance was also placed on the decision of the Hon'ble Allahabad High Court in the case of CIT VS. Landmark Innovation (P) Ltd., (2013) 38 taxmann.com 217 (Allahabad) to contend that where agricultural activities on land was accepted for earlier years, same could not be doubted in the subsequent year in the absence of cogent evidence.

In view of the above, appellant pray your honour to kindly delete the addition of Rs. 14,32,872/- being agricultural income treated as unexplained cash credit u/s 68 of the Income Tax Act, 1961.

5. The above submissions of the assessee were considered by the Ld. NFAC and rejected the same by dismissing the assessee appeal observing as follows:

".....6.7 The addition was based upon the statements of appellant recorded by the AO. Since, the appellant did not have land holding and as he has shown to have sown groundnuts, 50% of the agricultural income was considered to be genuine for the land holding shown & groundnut crop sown. The remaining 50% i.e., 14,32,782/- was treated as unaccounted income shown in the guise of exempt agricultural income the same has been added as unexplained expenses u/s 68 of the IT Act.

6.8 (a) Addition is factual in nature and not legal. Hence, decision in other cases cannot be squarely applied without going into the facts of the case.

(b) The affidavit of Shr. Dineshbhai Sojtra confirming the leasing of land is Self-serving document created as an afterthought to show a higher holding as mentioned by the AO.

(c) The appellant's claim that the same was not produced before the AO because it was not called for is not acceptable. The notice of the AO gives an opportunity to the assessee to produce all details relevant to the case. The appellant also failed to produce evidences of agricultural operations being carried out at the scale as claimed and vouchers & other details called for by AO were never produced.

In these circumstances the action of the AO is found to be reasonable and this ground of appeal is accordingly dismissed."

6. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeals:

1) The Honorable Commissioner of Income tax (A) has erred in law as well as on facts in upholding addition of Rs. 14,32,782/- being 50 percent of agricultural income treating as unexplained cash credit u/s 68 of the Income Tax Act, 1961.

2) That on the facts and in the circumstances of the case, The Honorable Commissioner of Income tax (A) has erred in law as well as on facts in upholding addition unexplained cash credit u/s 68 of the Income Tax Act, 1961 in the absence of books of accounts.

3) That the order passed by the Ld. CIT u/s.250 of the I.T. Act, 1961 was arbitrary, bad in law and unjust.

4) That the assessee craves leave to urge such other ground or grounds before or at the time of hearing of appeal.

7. Heard rival submissions extensively and perused the materials available on record and the Paper Book, case laws filed by the assessee. It is not in dispute that the assessee is holding agricultural land by himself 19.12 acres and also doing agricultural activities for Shri Dineshbhai Premjibhai Sojitra for 25 bighas of land and filed Affidavit by the Shri Dineshbhai Premjibhai Sojitra. The assessee also placed on record, the Income Tax Returns filed by the assessee for the Assessment Years 2015-16 & 2016-17 wherein the assessee has shown agricultural income of Rs. 14,52,800/- and Rs. 29,92,400/- and gross total income of Rs. 663/- and Rs. 123 for the relevant Assessment Years 2015-16 & 2016-17 respectively. Thus the agricultural income held by the assessee are cannot be doubted. However the Assessing Officer not satisfied with the evidences filed by the assessee treated 50% of the agricultural income are unexplained and invoked Section 68 r.w.s. 115BBE of the act which in our considered opinion, is not correct in law. The assessee has shown

gross total income of Rs. 340 only for the Assessment Year and agricultural income of Rs. 28,65,563/-.

7.1. It is the contention of the A.O. that the cash deposit of Rs. 1,89,000/- was made in HDFC Bank between November, 2016 to July, 2019 by the assessee and Rs. 1,05,000/- cash deposit was made in Rajkot District Cooperative Bank Ltd. between 1st April, 2014 to January, 2017. Thus total cash deposit of Rs. 2,94,000/- was made by the assessee from the Assessment Years 2015-16 to 2020-21. The Co-ordinate Benches of the Tribunal have held that any sum found credited in bank passbook could not be treated as an unexplained cash credit under section 68 of the Act, since the bank account of the assessee is not considered as part and parcel of the books of accounts. Thus the addition made by the Assessing Officer was deleted.

7.2. In the case of Smt. Ramilaben B. Patel Vs. ITO reported in [2019] 174 ITD 694 it was held as follows:

“Income from undisclosed sources-Addition under section 68Credit in bank passbook---Bank statement is not considered as books of account, therefore, any sum found credited in bank passbook could not be treated as an unexplained cash credit under section 68.-Certain credit entries were reflecting as cash deposit in bank account of assessee. AO treated the same unexplained cash credit and made addition under section 68.Held: Bank statement is not considered as books of accounts, therefore, any sum found credited in bank passbook could not be treated as an unexplained cash credit under section 68.”

7.3. The Bombay High Court in the case of CIT v Bhaichand N. Gandhi (1983) 141 ITR 67 (Bom) has held that the pass book supplied by the bank to the assessee cannot be regarded as a book maintained by the assessee or under his instructions. Accordingly, the Tribunal is justified in holding that a cash credit for the previous year shown in

the assessee's bank pass book issued to him by the bank but not shown in the cash book maintained by him for that year, does not fall within the ambit of section 68 of the Act.

7.3. The Madras High Court in the case of CIT vs. Taj Borewells (2007) 291 ITR 0232 has held that Section 68 is a charging section and it is also a deeming provision. Unless the following circumstances exist, the revenue cannot rely on section 68, viz., (a) Credit in the books of an assessee maintained for the year. (b) The assessee offers no explanation or if the assessee offers explanation and if the assessing officer is of the opinion that the same is not satisfactory, the sum so credited is chargeable to tax as 'income from other sources'. In the present case, there is no dispute that the assessee-firm did not maintain any books of account during the year, hence no addition can be made."

8. Respectfully following the above judicial decisions, we have no hesitation in holding that the Lower Authorities are not legally correct in invoking section 68 of the Act, as against the agricultural income shown by the assessee. Therefore the additions made on this count is liable to be deleted.

9. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on	29-09-2023
---------------------------------------	------------

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 29/09/2023

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