

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOTBENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.602/RJT/2024

Assessment Year: (2017-18)

(Hybrid Hearing)

Ambarambhai Velabhai Jetpariya 201, Satyam Palace, Opp. Narsang Mandir Bapa, Sitaram Chowk, Ravapar Road, Morbi, Gujarat- 363641	Vs.	Income Tax Officer, Ward-(1), Morbi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AQKPJ8898F		
(Appellant)		(Respondent)
Appellant by	Shri D. M. Rindani, AR	
Respondent by	Shri Abhimanyu Singh Yadav, Sr. DR	
Date of Hearing	19/12/2024	
Date of Pronouncement	20/12/2024	

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-5, Delhi [in short “the Id. CIT(A)”], dated 19.06.2024, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 19.11.2019.

2. Grounds of appeal raised by the assessee are as follows:

- “1. The Learned Commissioner (Appeals), ACIT/JCIT (A) - 5, Delhi erred in sustaining addition of Rs 6,20,000/-, out of Rs.8,90,000/- made by the ITO, Ward -I, Morbi, by treating the entire cash deposits made in bank accounts of Appellant as unexplained money u/s 69A of the Act.*

2. *The appellant craves leave to add, amend, alter or withdraw all or any ground of appeal at any time upto the date of hearing of the appeal."*

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual and had filed his return of income for assessment year (A.Y.) 2017-18, on 05/03/2018, declaring therein total income of Rs. Nil/- and agricultural income of Rs.5,40,888/-. The return of income was processed u/s 143(1) of the Act. Later on, the case of the assessee was selected through CASS for "Limited Scrutiny" for verification of cash deposited during demonetization period for the year under consideration. Hence to verify the genuineness of transaction done by the assessee for the year under consideration, the statutory notice u/s 143(2) of the Act was issued on 24/09/2018 and duly served upon. The Notices u/s 142(1) of the Income Tax Act, 1961 dated 18/07/2019 and 07/08/2019 was issued and served electronically upon the assessee requesting him to provide relevant details and documents for the assessment procedures.

4. In response to the notice issued u/s 142(1) of the Act, the assessee has submitted details and documents, such as, proof of agricultural activities, copy of ledger account of agricultural income and expenses, copy of revenue records in Form No.7/12 etc. The assessee also submitted Form No.8A relating to agriculture. The assessee also submitted the copies of electricity bills in respect of electricity used in agricultural activities. The assessee also submitted the copy of returned income and computation of total income for A.Ys. 2014-15, 2015-16, 2016-17 & 2017-18 before the assessing officer, showing the agricultural income in the past assessment years.

5. However, the assessing officer ignored these evidences and made addition to the tune of Rs.8,90,000/-.

6. Aggrieved by the order of the assessing officer (AO), the assessee carried the matter in appeal before the Ld. CIT(A), who has deleted the addition of Rs.2,70,000/- and sustained the addition of Rs.6,20,000/- observing as follows:

“In view of above detailed discussion and various legal and factual aspects of the case, it is concluded, on the basis of facts, circumstances and preponderance of probabilities, that the explanation furnished by the appellant as source of cash deposit during demonetization period is a part of afterthought story in an attempt to explain the source of cash deposits during demonetization. It is further pertinent to reiterate that the sudden and unexpected announcement of demonetization caught the appellant unaware and he had no option but to deposit unexplained cash in to bank which now it is trying to pass off.

It is well settled principle that the onus is on the appellant to prove the genuineness of these transactions and once the appellant has failed to discharge this onus it is open for Revenue to arrive at conclusion based on facts and circumstances of the case.

It is also reiterated that the appellant has failed to provide satisfactory explanation regarding the source of the cash deposits except to the extent of Rs 2,70,000 for which benefit can be allowed to the appellant for being made out of last withdrawal of Rs.2,70,000/- on 25.05.2016.

Further, during the assessment proceedings, the appellant's explanation was scrutinized and found to be inconsistent and insufficient to justify the cash deposits. Despite multiple opportunities, the appellant did not substantiate the claim with credible evidence.

Thus, in view of above discussion, the AO rightly invoked the provisions of Section 69A. The appellant was in possession of cash deposits for which no satisfactory explanation regarding the nature and source was provided. Consequently, the amount in question was deemed to be the income of the appellant for the relevant financial year. Therefore, this ground of appeal is only partly allowed and the AO is directed to delete addition only to the extent of Rs.2,70,000/- out of the total additions made u/s 69A of the Act and the remaining addition made by AO is upheld.”

7. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

8. Shri D. M. Rindani, Ld. Counsel for the assessee, argued that the Ld. CIT(A) ought to have deleted the entire addition of Rs.8,90,000/- in stead of Rs.2,70,000/-. The Ld. CIT(A) has himself accepted that the assessee is

a senior citizen and agriculturist and has been showing agricultural income since many years. The assessee has also filed the income tax return and computation of total income in respect of A.Ys. 2014-15, 2015-16, 2016-17 & 2017-18 showing the sufficient agricultural income. Therefore, the Ld. CIT(A) ought to have deleted the entire addition.

9. On the other hand, Ld. DR for the Revenue reiterated the findings of the Ld CIT(A), which we have already noted in our earlier para and is not being repeated for the sake of brevity.

10. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee. The necessary facts of the case have already been discussed in paragraphs above. On examination of the facts and circumstances of the case we find that assessee has discharged his onus in submitting the sufficient documents and evidences before the lower authorities. We note that assessee submitted five years' computation of total income and income tax return, in which, we found that the assessee has been showing agricultural income since a long period. Besides, the assessee is a senior citizen, and engaged in agricultural activities since from his childhood. We also note that the assessee has submitted the sufficient evidences, like ledger account of the agricultural income and expenses, copy of the bank passbook, copy of the Revenue records in Form No.7/12 and copy of Form No.8A regarding holding of agricultural land, copy of electricity bills stating the consumption of electricity in agricultural activities. Therefore, all these evidences fairly speak that the money was deposited out of the agricultural income and the Ld. CIT(A) has accepted the plea of the assessee that he is agriculturist and has been doing agricultural activities since a long period, however, instead of deleting the entire addition, the Ld. CIT(A) has deleted part addition to the extent of

Rs.2,70,000/-, which is not acceptable. We note that the whole exercise is to be based on facts and it was the duty of the assessing officer to marshal all the facts and come to a logical conclusion about the income of the assessee for the year under consideration. For that we rely on the Judgment of Hon'ble Supreme Court in case of **Sreelekha Bannerjee** (491 ITR 122), wherein it was held that “ *before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...*”

11. We note that assessee is in appeal before us for the rest amount of Rs.6,20,000/- and the facts explained above are not doubted by the Ld. DR for the Revenue. We therefore, are of the view that a lump sum disallowance of Rs.62000/- should be made in the hands of the assessee instead of Rs.6,20,000/-, which would be just and proper and the same would take care of the inconsistencies, if any, in explanation submitted by the assessee. Therefore, we direct the assessing officer to make disallowance of Rs.62,000/- in the hands of the assessee.

12. We also make it clear that since the assessee has deposited the cash in the bank account out of his agricultural activities and from the defined sources and all the money pertains to the assessee, therefore, it should not be taxed u/s.115BBE (60% rate) of the Act. Hence, we direct the assessing officer to tax amount of Rs.62,000/-, in the hands of the assessee, under the normal provisions (normal rate) of the Income Tax Act.

13. We once again emphasise that this decision is rendered on the peculiar facts of this case and having regard to the smallness of the amounts involved, and considering the fact that assessee is a senior citizen, and, therefore, it cannot be construed as laying down propositions of law of

general applications. We also make it clear that instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 20/12/2024 at Rajkot.
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Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot

दिनांक/ Date: 20/12/2024

True Copy

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot