

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "बी" अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.1356/Ahd/2015

निर्धारण वर्ष/A.Y. 2011-12

Shri Pravinbhai Lallubhai Patel, Opp. Abhujin Para, B/h. Gayatri Mandir, Kalol, Dist. Gandhinagar PAN : ADRPP 2052 M	Vs	Income Tax Officer, Ward-14(2), Ahmedabad
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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By Assessee(s) :	Shri S.N. Divatia, AR
By Revenue :	Shri Sumit Kumar Varma, Sr. DR

सुनवाई की तारीख/Date of Hearing : 04/04/2018

घोषणा की तारीख/Date of Pronouncement: 23/04/2018

आदेश/O R D E R

PER S.S. GODARA, JUDICIAL MEMBER :-

This assessee's appeal for assessment year 2011-12 arises against CIT(A), Ahmedabad-5's order dated 30.03.2015 passed in case No.CIT(A)-5/Wd.14(2)/77/2014-15 affirming Assessing Officer's action adding unexplained cash credit under section 68 of the Act amounting to Rs.32,500/- and unexplained investment under section 69 of the Act amounting to Rs.8,04,200/-; respectively in proceedings under Section 143(3) of the Income-tax Act, 1961; in short "the Act".

Heard both sides. Case file perused.

2. Learned counsel representing assessee states at the outset that he does not wish to press for above former substantive ground challenging correctness of addition of Rs.32,500/- under section 68 of the Act. The same is therefore rejected as not pressed.

3. This leaves us with the second issue of correctness of unexplained investment under section 69 of the Act amounting to Rs.8,04,200/- as affirmed in the lower appellate proceedings with the following detailed discussions:-

“4.3. I have considered the facts of the case and submission made by the appellant. The AO has made the two additions i.e. with regard to the cash deposits in his bank account and the unexplained investment in the land. During the course of assessment proceedings, the appellant submitted various details in respect of the additions so made and the same have been examined. However, with regard to the addition of Rs.49,500/-, it was found that this amount was deposited in the bank account by the appellant on 12.5.2010, although the appellant submitted the date wise cash book explaining the sources. But by not accepting the same, the A.O. made the addition of this amount of Rs.49,500/-. For ready reference the relevant part of the cash book upto 12.5.2010 is as under:-

Date	Description	Debit (Rs.)	Credit (Rs.)
1.4.2010	Opening balance	1,00,000.00	
1.4.2010	By Hari Om Corporation		40,000.00
6.4.2010	By Hari Om Corporation		35,000.00
10.4.2010	Withdrawal from Axis Bank A/c.	29,000.00	
21.4.2010	Withdrawal From Axis Bank A/c.	10,400.00	
30.4.2010	Patel Pravinbhai lallubhai		8,000.00
12.5.2010	By SBI Ah A/c.No.10529171132		49,950.00

4.4. Further the AO has rejected the opening balance of cash of Rs.1 lakh for want of verification. Further the cash inflow/receipt of Rs.29,000/- and Rs.10,400/- on 10.4.2010 and 21.4.2010, the appellant submitted that these were the withdrawals made from the bank account of his wife in Axis Bank. But no confirmation, identity and creditworthiness and PAN of his wife were submitted during the assessment proceedings. Therefore, he did not took note of the submission and the sources to this extent were not accepted. During the course of assessment proceedings and in the appellate proceedings also the appellant did not prove the identity, creditworthiness and PAN of his wife from whose bank account these amounts were stated to be withdrawn and utilized for the deposit in the bank account on 12.5.2010.

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4.5. Although in the show cause notice issued dtd.6.2.2014, the A.O. vide last para at page-2 has called for the details and sources of the cash payments made with supporting evidences of the sources but the appellant has failed to provide such evidences in the form of confirmation of his wife etc. But on the other side the appellant has claimed that the opening balance as on 1.4.2010 at Rs.1 lakh has been accepted by the A.O. himself for the reason that the appellant has withdrawn Rs. 10,31,000/- from S.B.I. Saving Bank Account and having closing balance at Rs.2,27,703/- at the end of the year. Hence, there was no doubt on the opening cash balance of Rs.1 lakh. Since the AO himself has impliedly accepted the opening cash balance hence the same cannot be simply rejected for want of any verification. Therefore, considering the opening cash balance of Rs.1 lakh as on 1.4.2010 out of which as per the cash book on 1.4.2010, 6.4.2010 and on 30.4.2010 the payments of Rs.40,000/-, Rs.35,000/- and Rs.8,000/- have been made, leaving the closing cash balance available of Rs.17,000/- (Rs. 1,00,000/- (-) Rs.83,000/-) for deposit in the S.B.I. bank account on 12.5.2010 against which the appellant has deposited the amount of Rs.49,500/-. Thus, the sources for the negative cash balance at Rs.32,500/- (Rs.49,500/- (-) Rs.17,000/-) there was no explanation with regard to the sources and hence the addition made by the A.O. amounting to Rs.49,500/- is restricted to Rs.32,500/- being unexplained cash representing the undisclosed income of the appellant.

4.6. Further the AO has made the addition of Rs. 8,79,200/- paid in cash in respect of the agricultural land purchased at Kalol on 7.6.2010 through the registration No.KAL/5683/1-15/2010. The aforesaid land was purchased in total consideration of Rs.9 lakhs out of which Rs. 1,50,000/- has been paid by way of cheque on 7.4.2010 and the remaining consideration of Rs.7,50,000/- was paid through cash on various dates. Over and above, the appellant has also paid the stamp duty charges of Rs.45,000/- and the registration expenses at Rs.9,200/- totaling to Rs.54,200/-. On going through the sale deed dtd. 7.6.2010 it is noticed that the seller of the land namely Shri Patel Rameshbhai Babaldas has already received the cash of Rs.7,50,000/- apart from the cheque of Rs. 1,50,000/- totaling to Rs. 9 lakhs from the appellant upto the date of sale deed. But as per the appellant, in the cash book, the payments to Shri Patel Rameshbhai Babaldas has been shown on various dates after the date of sale deed starting from 5.7.2010 to 22.10.2010 while the sale deed was already been executed on 7.6.2010. So the AO was of the view that as per the sale deed the seller of the land had already been paid the cash then how the payments subsequent to the sale deed on various dates as per the cash book could be made and accepted. So to explain the sources of the cash payments the appellant has concocted this story of subsequent payments to the seller by creating various sources

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before hand and In support an affidavit of the seller was also produced before A.O.

4.7. Since legally the authenticity of the sale deed is much more than the affidavit of the seller produced subsequently in the assessment proceedings more particularly when the sale deed clearly mentions about the receipt of the cash payments of Rs.7,50,000/- from the appellant till the date of sale deed. Thus, the notarized affidavit cannot substitute the terms and conditions of the sale deed and therefore the explanation of the sources of the payments by the A.O. on the subsequent dates to the sale deed in found not acceptable.

4.8. In this regard on principle the AO's stand for making the addition by treating the cash payments as unexplained is found correct and justified but the quantum of addition is not correct. Since the appellant has paid the cash of Rs.7,50,000/- to the seller of the land and also made the payment of stamp duty and registration charges of Rs.54,200/-. Thus, the total addition on this account comes to Rs.8,04,200/- only which is replaced to the addition of Rs.8,79,200/- made by the A.O. It is needless to mention that in the cash book the appellant has also shown the gifts from her mother at Rs.65,000/- on 6.6.2010 but the same is also not accepted for the reason that the appellant has totally failed to prove the genuineness and also did not submit the confirmation or any other evidences."

4. We have heard the rival contentions. The sole reason for the CIT(A) for affirming the impugned addition is that although the assessee has placed on record its vendor confirmation along with all necessary documents, i.e. cash book/closing cash balance, the same is not accepted since registered sale deed carries presumption of truth at the cost of the above oral evidence. We do not see any reason to concur with the same. The CIT(A) is fair enough in not finding any fault per se with assessee's detailed evidence coupled with the vendor's affidavit/confirmation. We observe in these circumstances that the above stated presumption of registered document's presumption stands rebutted if considered in the light of above overwhelming evidence by applying the principles of preponderance of probabilities. It thus transpires that the assessee had not

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paid the entire sale consideration amount to his vendor which changed hands post facto sale deed execution. We thus accept assessee's latter substantive ground. The impugned addition of Rs.8,04,200/- stands deleted accordingly. This assessee's appeal is partly allowed.

Order pronounced in the Court on 23rd April, 2018 at Ahmedabad

Sd/-

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

(S.S. GODARA)
JUDICIAL MEMBER

Ahmedabad; Dated 23/04/2018

Dr

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad