

आयकर अपीलिय अधिकरण, सुरत न्यायपीठ, सुरत
INCOM TAX APPELLATE TRIBUNAL-SURAT-BENCH-SURAT
 श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE C .M. GARG, JM & O. P. MEENA, AM

आ.अ.सं./I.T.A No. 1040Ahd/2015: निर्धारण वर्ष/Assessment Year: 2006-07

Shri Mehul Rohitkumar Bhartia, Balahadi, Station Road, Taluka Pardi, Valsad : PAN:AHRPB 3944L	V.	Income Tax Officer Ward-2, Vapi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
निर्धारिती की ओर से Assessee by		Shri Sapnesh Sheth, CA
राजस्व की ओर से Revenue by		Smt. Smitha V. Nair Sr. D.R.
सुनवाई की तारीख Date of hearing		21.08.2018
उद्घोषणा की तारीख Date of pronouncement		18.09.2018

आदेश /ORDER

PER O. P. MEENA, AM

1. This appeal at the instance of the Assessee is directed against an order dated 20.02.2015 passed by learned Commissioner of Income tax (Appeals)-Valsad (in short "the CIT (A)") for the Assessment Year 2006-07.
2. **Ground no. 1 & 2 States that Ld. CIT (A) has erred in confirming the action of the AO in making addition of Rs. 12,60,183 unexplained cash deposits.**
3. Succinct facts are that the Assessing Officer (AO) noticed that the assessee has cash deposits of Rs. 12,60,183 in his saving bank account with Sardar Bhiladwala Pardi Peoples Co-operative Bank Ltd., Vapi. The assessee has not filed any return of income. Hence, case was reopened by issue of notice under section 148 of the Act of the Act. In response to which, the assessee has filed return of income showing income at Rs. 32,553. The source of cash deposits was explained as for retail trading of mangos etc., which he forget to disclose under the impression that this is an

agricultural income. It was submitted that fruits were sold for Rs. 12,55,700 and entire amount was deposited in saving bank account. The assessee has also disclosed some names from whom these fruits were purchased for sale. It was contended that whole transaction should be treated as business income under section 44AF of the Act of gross turnover of Rs.12,55,700 which worked out @5% to Rs.62,735 should be brought to tax. However, the AO did not accept the version of the assessee, as the assessee has failed to adduce any evidence regarding to business conducted.

4. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). It was contended that only 5% of profit be added under section 44AF of the Act. However, Ld. CIT (A) observed that the appellant has not been filing his return due to total salary being below the taxable limit. However, as no evidence has been adduced for fruit business hence, the addition made on account of unexplained cash deposits was upheld.

5. Feeling aggrieved and dissatisfied, the assessee has come up before this Tribunal by way of this appeal. The learned counsel for the assessee repeated the same submissions as made before authorities below. He referred bank statement placed at Paper Book Page No. 8 to 13 and submitted that perusal of pattern of cash deposits and cash withdrawals appearing in the bank account indicates that the assessee has done business activity on small scale. In such a situation, addition can be made of profit and not the entire sales. The learned Counsel has placed reliance in support of his plea in the case of CIT v. President Industries 158 CTR 372 (Gujarat) of Hon'ble Gujarat High Court, and claimed that the addition ought to have

been made @5% of turnover as per provision of section 44AF of the Act. Without prejudice to above, the learned counsel for the assessee further submitted that addition if any can be made of peak credit balance of Rs. 1,34,328 as on 14.10.2005 appearing in said bank account as no unaccounted assets has been found by the AO. The learned counsel also placed reliance in the case of Smt. Manjulaben Champaklal v. ITO I.T.A.No. 1155/Ahd/ 2011, ACIT v. Baldev Raj Charla & Of Rs. 121 TTJ (Del) 366 and others as per his written submissions dtd. 10.02.2015.

6. Per contra, the Ld. DR relied upon the orders of the lower authorities

7. We have heard the rival submissions and perused the relevant material on record. The perusal of replied filed before the AO which is placed at Paper Book Page No. 4 to 7 shows that the assessee had furnished names and address of 26 parties from whom the fruits were purchased by him. Further, perusal of bank statement placed at Paper Book Page No. 8 to 13 reveals that there are credit entries ranging between Rs. 1000 to Rs. 19,000 by cash and there are cash and cheque withdrawals were ranging between Rs. 1000 to Rs. 20,000. It is further seen that some of debit entries are by cheques in the name of Thakorbhai, Dineshbhai, Mital, Jagdish, Kaushal, Vinod, Tarun, Mehul and others of which names are also appearing in list of purchaser submitted by the assessee before the AO during the course of assessment proceedings. On careful consideration of these facts and patterns of cash deposits and cash withdrawals and cheque withdrawals, leads to infer that the assessee has was doing small business activity of purchase and sales of fruits. We also find the this bank account was opened on 12.07.2005 and closing balance at the

end of financial year as on 31.03.2006 was at Rs. 63,183 Considering these facts, we are of the considered opinion, that beside salary income from private company, the assessee was also doing small business of fruits, therefore, the entire cash deposits cannot be treated as income of the assessee. The learned counsel for the assessee submitted the provision of section 44AF be applied which gives 5% Net profit rate on total sales. Accordingly, the AO is directed to calculate the addition @ 5% of net profit as per section 44AF of total credits of Rs. 12,60,183 considering the gross turnover. Thus, the addition is reduced to 5% credit entries. This ground of appeal is thus, partly allowed.

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

9. The order pronounced in the open Court on 18.09.2018

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत Dated: 18-09-2018

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

1.अपीलार्थी/ The Appellant; 2. प्रत्यर्थी/ The Respondent; 3. आयकरआयुक्त (अपील) The CIT(A)4.आयकरआयुक्त / Pr. CIT 5.विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/D.R. (ITAT) 6. गार्डफाईल / Guard file ITAT.

By order

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Assistant Registrar, Surat