

आयकर अपीलार्थ आधिकरण: राजकोट ँयायपीठ: राजकोट  
**IN THE INCOME TAX APPELLATE TRIBUNAL: RAJKOT BENCH:  
RAJKOT**

श्री सी एम गगण ँयायक सदस्य एवं श्री ओपीमीना, लेखा सदस्य के समु  
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND  
SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.712/RJT/2014**

**जुधाणवष / Assessment Year: 2010-11**

Shri Rajendrasinh B. Jadeja,  
Plot No.88, Ruda Nagar,  
Sadguru Society, University Road,  
Rajkot.

**[PAN: ABKPJ 8944R]**

**(अपीलाथ / Appellant)**

**Vs.** Income Tax Officer,  
Ward-3(2),  
Rajkot.

**(अुयथ / Respondent)**

जुधाएती क ओरसे / Assessee by

: Shri M.J. Ranpura, A.R

राजकुवक ओरसे / Revenue by

: Shri Praveen Verma, Sr. D.R

सुनवाई क तारख / Date of Hearing

: 19-11-2018

घोषणा क तारख / Date of Pronouncement

: 19-11-2018

**आदेश / ORDER**

**PER C.M. GARG, JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order of Commissioner of Income Tax (Appeals)-III, Rajkot (CIT(A)) for short) dated 16.10.2014 for the Assessment Year (A.Y) 2011-12.

2. The grounds raised by the Assessee read as follows:

*"1.0 The grounds of appeal mentioned hereunder are without prejudice to one another.*

*2.0 The learned Commissioner of Income-tax (Appeals)-III, Rajkot (hereinafter referred to as the CIT(A) erred on facts as also in law in retaining addition of Rs. 22,76,500/- out of the total addition of Rs. 31,66,025/- made by the Assessing Officer u/s 69A of the Income-tax Act, 1961 on account of alleged unexplained cash deposits in the bank accounts held with Indian Bank and Bank of Baroda. The addition retained is in total disregards to the facts of the case and appellants submission and is unjustified on facts as also in law and deserves to be deleted and may kindly be deleted.”*

3. We have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. The Id. Assessee's Representative (AR) submitted that the Id. CIT(A) erred on facts as also in law in retaining addition of Rs. 22,76,500/- out of the total addition of Rs. 31,66,025/- made by the Assessing Officer u/s 69A of the Income-tax Act, 1961 (in short ~~the Act~~) on account of alleged unexplained cash deposits in the bank accounts held with Indian Bank and Bank of Baroda. The addition retained is in total disregards to the facts of the case and appellants submission and is unjustified on facts as also in law and deserves to be deleted and may kindly be deleted.

4. The Id. AR submitted that from the copies of the Form No.7/12 clearly shows that the assessee and his brothers Shri Jyothikumar Jadeja and Shri Jaydeepsinh Jadeja are the owners of the agriculture lands and they have earned and shown substantial exempt agriculture income there from. The Id. AR further submitted that since the brother of appellant, Shri Jaydeepsinh Jadeja had given cash of Rs. 3,25,000/- to the

appellant for purchase of car in his name. He was not having any bank account, this amount was deposited into the appellant's account, from which account, cheque was issued in favour of the car owner. The car was purchased by appellant's brother is proved from the copy of RC book attached at Page 52 to 56. The bank statement clearly reflects the fact that the appellant had issued the cheque in favour of the car owner Shri Bhupat Sinh, from whom pre-owned car was purchased. The Id. AR submitted that after payment the car was transferred in the name of brother of the assessee Shri Jaydeep Sinh, which is also clear from the said copy of RC Book. The Id. AR also drew our attention towards Page 16 of assessee's paper book i.e., copy of statement of account, wherein cheque of Rs. 3,25,000/- has been issued to Shri Bhupat Sinh and prior to this cash amount was deposited to this account.

5. Secondly, the Id. AR submitted that the appellant had received cash of Rs. 4,25,000/- from his relative/cousin sister Smt. Jagrutiba H. Gohil to make payment to Sutreja Construction for purchase of shop on her behalf since she did not have any bank account. The same was deposited into the appellant's account and cheque was issued from the appellant's account and the property was purchased and registered in the name of the appellant's sister. Copy of purchase deed is attached at Pages 57 to 80, wherein payment of purchase price has been noted from the same

cheque numbers, which have been shown in the copy of the statement of bank account submitted by the assessee at Pages 14 to 19 of assessee's paper book. The Id. AR also submitted that in this situation, the assessee simply assisted his sister in buying a property and allowed her to make payment through said bank account and amount deposited in the same for cheques of Rs. 4,25,000/- was given to the assessee by his sister out of her agriculture income and other savings.

6. Replying to the above, the Id. Departmental Representative (DR) strongly supported assessment and first appellate order and submitted that in this economic world nobody would trust even on sibling for routing money transactions for purchase of car or property therefore, all the story is afterthought and unreliable and the authorities below were right in dismissing the same at the threshold.

7. On careful consideration of above rival submissions, we may point out that from the assessment order, we observe that the AO made addition of Rs. 31,66,025/- on account of cash deposits by the assessee to the two bank accounts, which were not disclosed in the return of income. On appeal, the Id. CIT(A) gave part relief to the assessee and directed the AO to tax the peak amount of Rs. 22,76,500/- by combining the cash transactions of both the alleged bank accounts. Now, the main

prayer of the assessee is twofold first that the amount of Rs. 3,25,000/- routed by his brother through his bank account towards purchase of car and Rs. 4,25,000/- routed through his bank account towards purchase of a property by his sister should be allowed out of peak amount reducing the addition by these two amounts.

8. It is not in dispute that Shri Jaydeep Sinh is brother of the assessee and Smt. Jagrutiba H. Gohil is real sister of the assessee and all brothers and sister own agriculture land and earned exempt agriculture income by producing and selling agriculture produce on the agriculture land owned by them respectively. From copy of the Registration Certificate of car available at paged 50-256 of assessee's paper book reveals that the Dar No. GJ-03-CA 4961 was owned by Shri Bhupat Sinh Jadeja on 08.10.2007 and subsequently on 01.05.2011 this car was transferred in the name of Shri Jaydeep Sinh Jadeja i.e., brother of the assessee. From copy of bank statement, in descending order placed at page 16 & 17 of assessee's paper book shows that the assessee made payment of Rs. 3,25,000/- through cheque No.385408 dated 01.03.2011 to the car owner Shri Bhupat Sinh and prior to issuing cheque cash of Rs. 2,50,000/- and Rs. 2,00,000/- was deposited to this bank account. Totality of these documentary evidence and facts along with circumstances clearly reveals that the assessee make payment of Rs.

3,25,000/- on behalf of his brother towards purchase of car. Undisputedly, when the brother of assessee Shri Jaydeepsinh has shown exempt agriculture income of Rs. 6,35,358/- in financial year 2010-11 pertaining to present AY 2011-12 then, the source of said payment towards purchase of pre-owned car has to be held as explained by the assessee and this amount deserve to be allowed to the assessee out of peak amount and we hold so. Consequently, the AO is directed to allow Rs. 3,25,000/- to the assessee on account of payment on behalf of brother of the assessee towards purchase of car out of peak amount.

9. So far as second contention of the assessee is concerned from the copy of bank account of the assessee page 16-19 reveals that the payment of Rs. 2,00,000/- was made to Sutreja through cheque No.385406 dated 27.07.2010 and on the very same date another cheque No.713533 was also issued in favour of Syreja Consts of Rs. 2,25,000/-. From the copy of registered sale deed/purchase deed executed (assessee's paper book pated 57-80, English translation of the same was also submitted during arguments) by the Sutreja in favour of Smt. Jagrutiba H. Gohil, we observe that the same amount and cheque numbers have been noted which have been given to the builder Sutreja Construction Pvt. Ltd. by the assessee on behalf of his sister against purchase of property. Copy of bank statement at Page 16 reveals that

immediately prior to issuance of cheque of Rs. 2,00,000/- on 27.07.2010 Rs. 1,40,000/- cash was deposited on 23.07.2010 and Rs. 60,000/- cash was deposited on 24.05.2010. Similarly, from the copy of the bank statement Page 18 shows that prior to issuing cheque No.713533 of Rs. 2,25,000/- cash amount of Rs. 1,40,000/- on 23.07.2010, cash of Rs. 65,000/- was deposited on 22.05.2010 and cash of Rs. 50,000/- was deposited on 15.05.2010. The AO has disputed the fact that the sister of assessee is owing agriculture land and earning exempt agriculture income besides other income and savings therefore, if the bank account of the assessee has been used by her sister for making payment towards purchase of property then, the said transaction cannot be held as bogus or after thought in presence of reliable evidence in the form of copy of registered sale deed, bank statement etc. In this situation, we are inclined to hold that the assessee is entitled to get credit of amount of Rs. 4,25,000/-, which was paid by his sister through his bank account towards purchase of property in her name hence, the AO is directed to allow credit of this amount to the assessee out of peak amount.

10. Finally, in view of foregoing discussion, grounds of the assessee are partly allowed and the AO is directed to allow credit of Rs. 3,25,000/- and Rs. 4,25,000/- totaling Rs. 7,50,000/- out of peak amount of Rs.

22,76,500/- and to recalculate the taxable income of the assessee accordingly.

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

*Order pronounced in the open court on this day of 19<sup>th</sup> November, 2018*

**Sd/-**

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्य के समक्ष /Accountant Member

Rajkot/राजकोट; दिनांक/Dated :November 19<sup>th</sup>, 2018/ EDN, Sr. P.S

**Sd/-**

(सी.एम.गर्ग /C.M.GARG)

लेखासदस्य के समक्ष /judicial member

**आदेश का प्रतिलिपि, अर्पण/Copy of the Order is forwarded to :**

1. अपीलार्थी/The Appellant; 2. प्रत्यर्थी/The Respondent; 3. आयकर आयुक्त(अपील)/The concerned CIT(A); 4. The concerned Prl. CIT; 5. व्रभागीय प्रतिलिपि, आयकर अपीलार्थी आधिकरण, / DR, ITAT, राजकोट/Rajkot; 6. गार्डफाईल / Guard file.