

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
श्रीसी.एम.गर्ग, न्यायिकसदस्य तथा श्रीओ.पी.मीना, लेखासदस्यकेसमक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No.347/RJT/2013

निर्धारणवर्ष/Assessment Year : 2008-09

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| PradeepsinhDanubhaJadeja, Office No.15, 2 nd Floor, Plot No.326, Ward-12/B, Bandhidham- - Kutch. [PAN: AFOPJ 4638 J] | Vs. | The Income Tax Officer, Ward-1, Gandhidham. |
| अपीलार्थी Appellant | | प्रत्यर्थी/Respondent |

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| निर्धारितीकीओरसे /Assessee by | Shri Kalpesh Doshi - A.R. |
| राजस्वकीओरसे /Revenue by | Shri Praveen Verma - D.R. |

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| सुनवाईकीतारीख/ Date of hearing: | 19.11.2018 |
| उद्घोषणाकीतारीख/Pronouncement on | 20.11.2018 |

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

1. This appeal filed by the Assessee is directed against order of learned Commissioner of Income Tax(Appeals)-II, Rajkot(in short "the CIT (A)") dated 29.08.2013 pertaining to Assessment Year 2008-09 which in turn has arisen from order passed by the Income Tax Officer, Ward-1, Gandhidham(in short "the AO") dated

30.12.2010 under section 143(3) of Income Tax Act, 1961 (in short 'the Act').

2. Grounds raised by the Assessee read as under :

"1 That, the learned CIT(A) has wrongly confirmed part of the total addition out of total addition of Rs.41,85,700/- on account of cash deposited in bank accounts

The grounds on individual addition out of total addition confirmed by learned CIT(A) are as under :

2 That, the learned CIT (A) has wrongly considered sales of Rs. 33,99,500/- as against sales shown of Rs. 19,79,205/- u/s 44 AF of the I.T. Act and wrongly confirmed unaccounted cash deposit of Rs. 21,84,032/- as the difference between Rs.33,99,500/ and Rs. 12,15,468/

3 That, the learned CIT (A) has wrongly disallowed the credit of Rs. 3,25,295/- out of cash received from the opening balance of debtors and deposited in bank accounts.

4 That, the learned CIT (A) has wrongly disallowed the credit of Rs. 11,77,200/-. Out of cash withdrawn from Gandhidham Mercantile Cooperative Bank account and re-deposited in the bank accounts.

5 That, the findings of learned CIT(A) as stated above are not justified and required to be deleted."

3. Ground No.1 to 4 states that the CIT(A) has wrongly confirmed part of total addition out of total addition of Rs.41,85,700/- on account of cash deposit in bank account. Thereby, the CIT(A) has wrongly confirmed sales of Rs.33,99,500/- as against sales shown of Rs.19,79,205/- u/s.44AF and wrongly confirmed unaccounted cash deposit of

Rs.21,84,032/- as the difference between Rs.33,99,500/- and Rs.12,15,468/-.

4. Ground No.3 states that CIT(A) has wrongly disallowed the credit Rs.3,25,295/- out of cash received from opening balance of debtors and deposited in bank accounts and Rs.11,77,200/- cash withdrawn from Gandhidham Mercantile Bank Account and re-deposited in the bank account. The above ground no.1 to 4 are inter-linked and co-related, hence, being considered together.

5. Brief facts of the case are that the assessee has deposited Rs.11,69,00/- in his bank account with ICICI Bank, Gandhidham and Rs.29,96,700/- with Gandhidham Mercantile Bank Ltd., total to Rs.41,65,700/-. These deposits were claimed to be retail trading of agricultural produce which have been offered as income u/s.44AF of the Act. Accordingly, the assessee has shown net income u/s.44AF of Rs.1,85,512/- as against the gross receipts of retail sales of Rs.37,10,240/-. However, the explanation provided by the assessee was not found acceptable by the AO and accordingly the AO has made addition of Rs.41,65,700/- on account of aforesaid cash deposits in the bank account.

6. Being aggrieved, the assessee filed an appeal before the Id.CIT(A). The Id.CIT(A) after considering the explanation of the assessee noted that the appellant had contended that there were cash withdrawals of Rs.9 lakhs from ICICI Bank and Rs.11,77,200/- from Gandhidham Mercantile Co-operative Bank(GMCB). The contention of the appellant was verified with respect to the bank statement of respective bank and the contention in respect cash withdrawals Rs.9 lakhs from ICICI Bank was found to be correct and properly explained, hence, this addition was deleted. However, with regard to withdrawals of Rs.11,77,200/- from GMCB the entry for cash withdrawals reads as "Pay cash - cheque number" it is thus not clear whether these cash withdrawals by self or cash payments made to another parties, accordingly this addition was confirmed. Further, CIT(A) has also accepted the claim of net agricultural income of Rs.75,325/-. However, CIT(A) did not accept the explanation with regard to opening debtors receivable at Rs.3,25,295/- and gross sale proceeds of Rs.19,79,205/-, accordingly same were confirmed.

7. Being aggrieved, the assessee filed this appeal before this Tribunal. The Id.Counsel for the assessee submitted that opening

debtors receivable at Rs.3,25,295/- are included in the gross sale proceeds of Rs.19,79,205/- for which re-conciliation has been filed which has been placed at paper book, page no.82. The Id.Counsel further referred PB Page No.79 and submitted that the amount of Rs.3,25,295/- is sundry credit balance brought forward as on 01.04.2007 which can be seen from the Trial Balance appearing at page 79, therefore genuineness and source of cash deposits to that extent is explained. It was further submitted that this amount is part of actual sales of Rs.19,79,205/- out of which sales of Rs.12,15,468/- are already accepted as shown in the income. Balance amount of Rs.7,63,737/- is to be decided. With regard to cash withdrawals of Rs.11,77,200/- from GMCB during the year, it was submitted that the CIT(A) wrongly presumed the same to be unexplained whereas same are the cash withdrawals made by the assessee from his bank account from GMCB for which the Id.Counsel has also filed a certificate from GMCB dated 14.11.2018 explaining that "pay cash" means cash withdrawals shown in the above bank account. Therefore, the CIT(A) not justified in confirming the addition of Rs.11,77,200/-.

8. On the other hand, the Id.Senior Departmental Representative (Sr.DR) supported the orders of the Lower

Authorities and submitted that the assessee could not able to explain the same before Lower Authorities.

9. We have heard the rival submissions and perused the material on record. We find that the amount of Rs.3,25,295/- is opening debtors receivable as on 01.04.2007 and this amounts included in the gross sale proceeds of Rs.19,79,205/-. We further find that the cash deposits in the bank accounts of the assessee are on account of gross sale proceeds which comes to Rs.19,79,205/- as against which the assessee has considered gross sales at Rs.12,15,468/- only under the provisions of section 4AF of the Act and offered 5% profit thereon. However, the total gross sale proceeds considering the cash deposits in both the bank accounts the would work out to Rs.19,79,205/- out of which the assessee has considered Rs.12,15,468/- as gross sales whereas the balance amount of Rs.7,63,737/- has not been considered for working out profit as per provisions of section 44AF of the Act. Accordingly, we are of the considered opinion that 5% of the balance gross sale of amount of Rs.7,63,737/- is also required to be considered as income of the assessee. Accordingly, the AO is directed to calculate the 5% profit on 7,63,737/- and tax the same accordingly. Further, we find that

the cash withdrawals ofRs.11,77,200/- from GICB are actually cash withdrawals made by the assessee, therefore, the addition sustained by the CIT(A) for this amount is deleted accordingly.

10. Similarly, disallowance of Rs.3,25,295/- of opening balance of debtors has been considered in the total gross sale of Rs.19,79,205/-, hence the addition of this amount is therefore deleted.

11. In view of these facts and circumstances the Ground No.1 to 4 of the appeal is partly allowed as per the terms indicated above.

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

13. The order pronounced in the open court on 20.11.2018.

Sd/-

(सी.एम.गर्ग/C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

राजकोट/ **Rajkot**, दिनांक **Dated:** 20th November, 2018/S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Rajkot