

**IN THE INCOME TAX APPELLATE TRIBUNAL
“ SMC ” BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1834/Ahd/2016

(निर्धारण वर्ष/Assessment Year : 2006-07)

Shri Gopalbhai Joitaram Patel Ambicanagar At & Post : Aithor – 384 175 Tal. Unjha, Dist. Mehsana (N.G.)	बनाम/ Vs.	The ITO Patan Ward-4 Patan – 384 265
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : APJPP 9471 N		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Mehul Talera, AR Shri S.N. Divatia, AR
प्रत्यर्थी की ओर से/Respondent by:	Shri Mudit Nagpal, Sr.DR

सुनवाई की तारीख/ Date of Hearing	12/11/2018
घोषणा की तारीख/Date of Pronouncement	30 /11/2018

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)–Gandhinagar, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)/GNR/410/2014-15 dated 17.12.2015 arising in the assessment order passed under s.143(3) r.w.s.147 of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 31.12.2013 relevant to Assessment Year (AY) 2006-07.

2. The assessee has raised following grounds of appeal:

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- 1.1. *The order passed u/s.250 on 17.12.2015 for AY 2006-07 by CIT(A)-GNR, Abad upholding the addition of Rs.6,73,100/- 12 unexplained investment u/s.69 made by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2. *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the app with regard to the impugned addition.*
- 2.1. *The Ld.CIT(A) has grievously erred in law and on facts in confirming that the cash deposits to the extent of Rs.6,73,100/- was unexplained.*
- 2.2. *That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld that the cash deposits to the extent of Rs.6,73,100/- was unexplained.*
- 3.1. *The Ld.CIT(A) has failed to appreciate that the proceedings initiated u/s.147 and notice issued u/s.148 were bad in law and illegal so that liable to be quashed.*

3. At the outset, the ld.counsel for the assessee submitted that he has been instructed by the assessee not to press ground No.3.1. Accordingly, we dismiss the same as not pressed.

4. The only issue raised by the assessee is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of Rs.6,73,100/- u/s.69 of the Act.

5. Briefly stated facts are that the assessee in the present case is an individual and engaged in the agricultural activity. The Assessing

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Officer during the assessment proceedings observed that the assessee has deposited cash of Rs.7,28,100/- in his Savings Bank Account.

5.1. On question by the Assessing Officer about the source of cash deposit in the bank account, the assessee failed to make any reply. Therefore, the Assessing Officer treated the same as unexplained cash deposit and added to the total income of the assessee.

6. Aggrieved assessee preferred an appeal to the Ld. CIT(A).

7. The assessee before the ld. CIT(A) has submitted that the cash was deposited in the bank account from the following sources:

1. Sale of agricultural produce of Rs. 4,35,403/-.
2. Unsecured loan was taken during the year from the parties as detailed under:

Sr.No.	Date	Name	Amount
1.	23/01/2006	Ravjibhai K. Prajapati	19,000
2.	27/01/2006	Harshadkumar Babulal Patel	18,000
3.	30/01/2006	Vitthalbhai C.Patel	17,500
4.	04/02/2006	Laxmanbhai J.Patel	18,500
		Total	73,000

3. Sale of agricultural land amounting to Rs. 90,000/-.
4. There was a cash withdrawal of Rs. 15,50,000/- and the sum of Rs. 15,39,000/- was deposited in cash which implies that there was sufficient cash available with the assessee to deposit in the saving bank account.

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7.1. The Id. CIT(A) called for the remand report from the AO on the additional evidences filed by the assessee during the appellate proceedings.

7.2. The AO vide letter dated 17.11.2015 submitted the remand report. The relevant content of the remand report is extracted as under:

“Additional evidence with respect to the cash deposited: *In this regard for verification of agricultural sales vouchers, it is submitted that summons was issued to the purchaser of the agricultural produce i.e. Shri Rameshlal Joitaram Patel (copy enclosed) AND DULY SERVED UPON THE PURCHASER FOR VERIFICATION OF THE BILLS/VOUCHERS. In response to the said summons Shri Rameshlal Joitaram Patel attended this office on 23.10.2015 and produced the required books of accounts and details as called for. The said details were verified and necessary evidence were put on record. On perusal of the said details, the claim of the assessee appears to be genuine. Therefore, this claim of the assessee may be decided on merits.*

c) **Further the assessee has also claimed to have taken loan from his family members and other persons namely:**

Shri Harshadbhai Babulal Patel ii) Shri Vithalbhai Chaturdas Patel iii) Shri Laxmanbhai Joitaram Patel iv) Shri Ravjibhai Kalidas Prajapati

To verify the claim of the assessee, this office issued summons to all these persons, and in response to the said summons, except Shri Harshadbhai Babubhai Patel appeared before the undersigned and produced necessary details as called for Statements u/s.131 were also recorded in the case of Shri Vitthalbhai Chaturbhai Patel and Shri Ravjibhai Kalidas Prajapati. Copies of statement recorded and copies of their ITR filed are enclosed herewith for your kind reference. In their statements, these two persons accepted the fact that they have given loan to the assessee and have received back the same during the same financial year. Therefore, this claim of the assessee appears to be genuine and the same is required to be decided on merits Shri Laxmanbhai Joitram Patel also attended

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produced the copy of ITR filed for AY 2006-07. Shri Laxman Joitaram Patel is a retired Government teacher and has shown the gross total income at Rs.1,71,239/- which mainly consists of pension income & interest income. From the above, it appears that the claim of the a appears to be genuine and the same is requested to be decided on merits. Since Sh.Harishdbhai Babulal Patel has not appeared before the undersigned, the same could not be verified and hence no comments are offered on this point."

7.3. The Id. CIT(A) after conserving the submission of the assessee and remand report deleted the addition made by the AO in part by observing as under:

"6.5. I have considered the facts of the case, assessment order, submission made by the appellant, remand report and rejoinder filed by the appellant. AO has made the addition of Rs.7,28,100/- to the total income of the appellant without giving the credit of cash withdrawals and peak cash credit contending that the above cash was continuously deposited in the bank account by the appellant upto 3/2/2006. Therefore, appellant was not eligible for peak credit. Also, during the remand proceedings, AO was requested to comment upon the additional evidences filed by the appellant on the basis of additional evidences filed by the appellant with reference to the addition made of Rs.7,28,100/-. From the rejoinder filed by the appellant, the following facts are revealed:

(1) AO has made the addition of Rs.7,28,100/- as unexplained cash deposit on the basis of bank statement by not giving credit of peak cash as claimed by the appellant due to the fact that the order was finalized by the Assessing Officer u/s.144 of the Act. However, this issue has been considered by the AO during the remand proceedings and reported that Ramesh Joitaram Patel, purchaser of agricultural produce was summoned and after verification of books of purchases of agriculture produce reported that claim of the appellant appears to be genuine.

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Further, AO has also recorded statement of three persons who had advanced money to the appellant viz. Shri Vithalbhai, Laxmanbhai, Ravjibhai and Kalidas Patel and reported that the depositors appear to be genuine; however, may be decided on merit. Further, AO has also reported that Shri Harshadbhai Patel did not attend the proceedings and therefore could not be examined and reported to decide the issue on merits. AO has also reported that the sale deed of land is registered and found to be genuine. The sale of land and the cash received from sale of land is found to be genuine.

After considering the above report of the Assessing Officer, additional evidences and rebuttal of the appellant, the following facts emerge:

AO has verified the facts of agricultural land, 7/12 and Agriculture produce bills but failed to report that appellant had 5 brothers and possessing total of 2.75 acres i.e. below 3 acre land and appellant's share in the agriculture land is only 1/5th from which appellant has claimed to have earned more than Rs.8 lac from agriculture produce in two years. This fact was brought to the notice of the AR of the appellant and necessary proof of agriculture expenses were called for to earn such huge agriculture income from such a small land holding which is just impossible. The AR has been unable to reply to the queries made which has been recorded in the order sheet.

Further, it is seen that appellant has sold two years crop to one Shri Ramesh Joitaram who has been examined by the AO but he is the brother of the appellant the returns filed by Shri Ramesh Joitaram for AYs 2004-05 and 2005-06 is below Rs.55,000/-. Further, it is also noticed that from the ledger account of Shri Rameshbhai that he has been showing highest amount of purchase of agriculture produce from the appellant and other purchases are nominal which are not agriculture produce. The AR also failed to produce the source of huge household expenses of 5 brothers who are having source of income from agriculture only. In such circumstances it is held that the claim of the appellant that the

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cash introduced in the bank of Rs.8,43,123/- is purely a colourable device, an afterthought, post receipt of notice u/s.148 of the Act. Further, the claim of the appellant that Rs.25,000/- and Rs.65,000/- received against sale of land is also an afterthought of the appellant when the case was under scrutiny. The two pieces of land are belonging to 6 family members and appellant is silent about the distribution of money amongst other 6 members of family including mother and even the AR of the appellant is silent on the family management and distribution of money therefore, the entire sale consideration sale of two pieces of land cannot be considered of the appellant and this amount of cash of Rs.25,000/- and Rs.65,000/- introduced in bank cannot be considered as explained as out of sale of plots.

Further, appellant has also tried to explain the cash introduction to the extent of Rs.73,000/- in the name of Shri Ravjibhai K.Prajapati-Rs.19,000/-, Harshadkumar B Patel-Rs.18,000/-, Vithalbhai C.Patel-Rs.17,500/- and Laxman J Pael-Rs.18,500/-. In this regard, AO has reported that Shri Harshadkumar B., Patel has not attended before him S/Shri Ravjibhai Prajapati, Vithalbhai C Patel and Laxman J.Patel were examined and the deposits given by them was found genuine. Since the AO has examined the 3 persons and found to be genuine and considering the small deposits below Rs.19,000/- these deposits and cash introduction in the bank are treated as explained except that of Shri Harshadkumar B.Patel of Rs.18,000/- who has not attended before the AO for examination.

Considering the above facts, it is amply clear that the appellant has tried to explain the sources of cash introduction considered by the AO as unexplained out of agricultural produce and depositors and the sale of 2 pieces of land, are found to be an afterthought of the appellant after receiving the notice u/s.148. AO has well added Rs.7,28,100/- as unexplained cash deposit is confirmed after giving credit of Rs.55,000/- (Rs.73000/- less Rs.18000/-). The claim of the peak credit of total cash deposit or Rs.15,39,000/- after considering withdrawals has already been given by the AO and hence, the net unexplained cash deposit of

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Rs.6,73,100/-is hereby confirmed. Appellant gets relief, accordingly. This ground of appeal is partly allowed.”

8. Being aggrieved by the order of Id. CIT(A) assessee is in appeal before us. The Id. AR before us filed two paper books running from pages 1 to 99 and 1 to 52 and the explained the source of cash deposited in the saving bank account as detailed under:

Particulars	As per AO	Remark
Rs.3,64,100	Cash deposits during 30.8.05 to 20.10.2005	Agri. Income as per bank details (Pg 6-8) totalling to Rs.3,50,763/-. (48790+131320+84125+86528)
Rs.3,64,000	Cash deposits during 1.12.05 to 3.2.2006	Redeposit out of previous withdrawals of Rs.2,90,000/- (Rs.1,60,000/- on 29.10.05 + Rs.1,30,000/- on 8.11.2005) (Pg 23-24) and loans from relatives of Rs.73000/- out which Rs.55,000/- is accepted by CIT(A).
Rs.7,28,100	Total cash deposits	

9. The Id. AR also submitted that the AO in its remand report had accepted the genuineness of sales of the agricultural produce but the Id. CIT(A) erred by disagreeing with the contention of the AO as mentioned in the remand report.

9.1. On the other hand the Id. DR submitted that the income shown by the assessee is disproportionate to the land owned by the assessee.

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9.2. The AO in the remand report has accepted the sale of agricultural produce merely on the basis of the statement furnished by Shri Rameshbhai J.Patel, the brother of the assessee. As such the AO has not carried out any verification to ensure that the assessee has actually made the sale of agriculture produce to his brother. The Id. DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions and perused the material available on record. The issue in the instant case relates to the cash deposited by the assessee in his saving bank account. The explanation furnished by the assessee for the deposit of cash was rejected by the authorities below. Therefore, the addition was made by the AO for Rs. 7,28,100/- which was partly sustained by the Id. CIT(A) for Rs. 6,73,100.

10.1. Now the controversy arises before us whether the justification for the source of cash deposit explained by the assessee are genuine or not in the given facts & circumstances.

10.2. In this regard, we note that the agriculture produces sold by the assessee was rejected by the Id. CIT(A) on the ground that the assessee was holding 1/5th share in the total area of land i.e. equal to 2.75 acres which cannot derive income of Rs. 8 lacs approximately in two years.

10.3. Indeed the observations of the Id. CIT(A) creates doubts in holding that the assessee has shown disproportionate income in relation to the land as observed by him during appellate proceedings. However,

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the other evidences furnished by the assessee about the sale of agricultural produce cannot be just brushed aside. Indeed the buyer of the agricultural produce was relative of the assessee but that cannot be ground for rejecting the amount of sale. We also note that the buyer of the agricultural produce has appeared and confirmed the purchase of agricultural produce from the assessee before the AO. The buyer also produced the books of accounts for the purpose of verification and after that the contention of the assessee was admitted by the AO in the remand report. In our considered view, the claim of the assessee cannot be denied merely on the ground that the land held by the assessee was in small in size. The undisputed facts are that the land is possessed by the assessee and the agriculture produce was sold by him to a party which admitted the same during the assessment proceedings.

10.4. There was no evidence brought on record suggesting that the income declared by the assessee is not from agricultural source. Once the assessee has claims before the AO that the income is from the source of the agricultural activity on the basis of documentary evidence, then the onus shifts on the Revenue to prove otherwise. In holding so, we find support & guidance from the order of the Ld. ITAT Kolkata in case of laboratories griffon (P) Ltd. reported in 93 Taxmann.com 29 wherein it was held as under:

“We note that the assessee has discharged the initia onus casted upon it to claim the expenditure by submitting the name, address, PAN etc, (of the professionals) the AO could not have added the amounts back without further verification and ought not to have casted any doubt about the genuineness of the expenditure without bringing any adverse material against the assessee”

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10.5. In view of above, we are not impressed with the finding of Id. CIT(A) for holding that the cash deposit as unexplained income to the extent of the agricultural income claimed before us in the written submission.

10.6. Similarly, the income shown by the brother of the assessee namely Shri Rameshbhai J Patel cannot be ground for making the disallowance of the sale declared by the assessee.

10.7. All the transactions were duly disclosed by the assessee in relation to his agriculture income. There was no evidence brought on record suggesting that the income shown by the assessee is a colorable device. In our considered view, it was the duty of the AO to prove with the tangible evidences that the income shown by the assessee was not agriculture income. Therefore, the income shown by the assessee cannot be treated as colorable device to escape from the tax liability in the given facts and circumstances.

10.8. We also note that the assessee has produced the bank statement to justify the cash withdrawal from bank account which was utilised to deposit the same in the saving bank account the copy of the bank statement available on record which is placed on pages 15 to 57 of the paper book. However the Id. CIT (A) has disregarded the contention of the assessee without adducing any reason. There is also no allegation by the authorities below that the amount withdrawn by the assessee has either been incurred as an expense or has been invested somewhere by way of capital expenditure. Therefore, we can safely presume that the

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cash withdrawn by the assessee was available with him for depositing the same in the saving bank account.

10.9. We also note that the assessee has claimed to have received a loan of Rs.18,000/- from Mr. Harshadkumar babula Patel. However, the assessee has not filed sufficient documentary evidence in support of the impugned loan. Therefore, we are inclined to confirm the addition for such loan.

11. In view of above, we set aside the order of Id. CIT(A) and direct the AO to delete the addition made by him except the loan of Rs.18,000/- taken from Mr. Harshadkumar Babulal Patel. Hence, the ground of appeal of the assessee is partly allowed.

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

This Order pronounced in Open Court on	30/11/2018
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Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 30 /11/2018

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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)-Gandhinagar, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

1. Date of dictation (word processed by Hon'ble AM in his computer)
2. Date on which the typed draft is placed before the Dictating Member ...27.11.2018
3. Other Member...
4. Date on which the approved draft comes to the Sr.P.S./P.S ...
5. Date on which the fair order is placed before the Dictating Member for pronouncement.....
6. Date on which the fair order comes back to the Sr.P.S./P.S.....
7. Date on which the file goes to the Bench Clerk.....
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....