

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “SMC” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 789/AHD/2017
(Assessment Year: 2008-09)**

| | | |
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| Shri Bharatji K Rajput. At Kuder, Post Samoda Taluka Patan , Gujarat | V/S | The Income Tax Officer, Ward-I, Patan |
| (Appellant) | | (Respondent) |

PAN: AIZPR 9829H

**Appellant by : Shri Jimit Shah, A.R.
Respondent by : Shri Somogyan Pal, , Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 08 -02-2019

Date of Pronouncement : 24 -04-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A), Gandhinagar, Ahmedabad dated 27.02.2017 pertaining to A.Y. 2008-09 and following grounds have been taken:

1. The Id.AO as well as the Id. CIT (A) has erred in law and in considering the facts of the case and has disallowed the gift received from the relatives of the

appellant. The Id. CIT (A) has disallowed the gift of Rs.1,25,000/- from his mother, Rs.75,000/- from his wife and Rs.4,50,000/- from his father.

2. The Id. CIT (A) has erred in law and has erred in considering the documents placed on record and has made the addition without considering the statements recorded by the Id.AO during the course of remand report proceedings.

3. The Id. CIT (A) as well as the Id. AO has erred in law and in facts of the case and has made the entire addition on the basis of the presumption basis. Thus the addition made by the Id.AO and upheld by the Id. CIT (A) needs to be deleted.

4. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s 234A/B/C of the Act.

5. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s 271(l)(c) of the Act.

2. During the assessment proceeding the assessee filed his return of income on 14/10/2015 declaring total income at Rs. 78,812/- and agriculture income at Rs. 2,02,150/-. The following issue arose for discussion during the course of assessment proceedings.
3. The assessee has made the cash deposits of Rs. 10,72,800/- in saving bank account No. 247010100063151 with the Axis bank account. During the assessment proceedings it is come to the noticed that the assessee is also having saving bank account No. 07821000007295 with HDFC bank wherein the assessee has made the cash deposit at Rs. 5,04,500/- during the F.Y. 2007-08. The assessee was asked to furnish the source of aggregate cash deposits at Rs. 15,77,300/- (1072800+504500) in his savings bank accounts with substantial evidences.

4. In response to the notice the assessee has furnished the books of account alongwith the bank statement and Cash book. The assessee has also furnished the copy of form No. 12 (agriculture land record).
5. On verification of the land record it is noticed that in land at survey no. 167/1 admeasuring 10345 sq. meter land, in land record column of crop grown name written as "useless farm" (Padtar land)'. As regards the survey no. 10/ paiki 2 admeasuring 4995 sq. meter land it has been written as "no information available" in, land record. It is noticed that the assessee has shown opening cash on hand at Rs. 4,25,255/-, agriculture income at Rs. 2,02,000/- and unsecured loan at Rs. 2,03,500/-. The assessee has not furnished any supporting evidence as regards to opening cash on hand at Rs. 4,25,255/-. Further, the assessee has also not furnished any supporting sale bills of agriculture sale products with regards to the agriculture income. Since the assessee has failed to furnish the source of cash deposits at Rs. 15,77,300/- (1072800+504500) in saving bank accounts the assessee vide this office letter bearing No. ITO/Wd-1 /Patan/142(1)/RBK/Show cause/2015-16 dated 15/09/2015 asked to show cause as to why the cash deposit of Rs. 15,77,300/- should not be treated as deposited from the unaccounted source of income and added to your total income.
6. In response to the show cause notice the assessee vide his letter dated 19/10/2015 stated that whatever cash deposited by him in the Axis Ban account and HDFC bank accounted is deposited by withdrawing from the said bank accounts and redeposit. Therefore, instead of making addition of entire cash deposit take the peak of my cash and make the addition accordingly.

7. The reply of the assessee has considered carefully and found there is some force in the contention of the assessee's reply. Therefore, the calculation of peak cash amount is worked as under:

| <i>Date</i> | <i>Op. balance</i> | <i>Withdrawal</i> | <i>Deposit</i> | <i>Balance</i> |
|---------------|--------------------|-------------------|----------------|----------------|
| 04.04.2007 | | 2000 | | 2000 |
| 04.04.2007 | 2000 | 500 | | 2500 |
| 18.04.2007 | 2500 | | 2400 | 100 |
| 19.04.2007 | 100 | 20000 | | 20100 |
| 19.04.2007 | 20100 | 20000 | | 40100 |
| 20.04.2007 | 40100 | 400 | | 40500 |
| 03.05.2007 | 40500 | 10000 | | 50500 |
| 04.05.2007 | 50500 | 2000 | | 52500 |
| 21.05.2007 | 52500 | 1500 | | 54000 |
| 29.05.2007 | 54000 | | 2500 | 51500 |
| 05.06.2007 | 51500 | 200 | | 51300 |
| 06.06.2007 | 51300 | | 1 00000 | -48300 |
| j. 07.06.2007 | -48300 | | 9900 | -58200 |
| i 09,06.2007 | -58200 | | 50000 | -108200 |
| 12.06.2007 | -108200 | | 25000 | -133200 |
| 15.06.2007 | -133200 | | 8500 | -141700 |
| 22.06.2007 | -141700 | 8200 | | -133500 |
| 25.06.2007 | -133500 | 700 | | -132800 |
| 25.06.2007 | -132800 | 20000 | | -112800 |
| 29.06.2007 | -112800 | 2000 | | -110800 |
| 10.07.2007 | -110800 | 500 | | -100300 |
| 1 1 .07.2007 | -110300 | 2000 | | -108300 |

| | | | | |
|------------|---------|--------|-------|---------|
| | | | | |
| 12.07.2007 | -108300 | 4000 | | -104300 |
| 13.07.2007 | -104300 | 100 | | -104200 |
| 24.07.2007 | -104200 | 500 | | 103700 |
| 25.07.2007 | -103700 | | 10000 | -113700 |
| 28.07.2007 | -113700 | 2000 | | -111700 |
| 01.08.2007 | -111700 | | 1700 | -113400 |
| 01.08.2007 | -113400 | | 23000 | -136400 |
| 01.08.2007 | -136400 | | 17000 | -153400 |
| 02.08.2007 | -153400 | | 3000 | -156400 |
| 02.08.2007 | -156400 | | 2500 | -158900 |
| 07.08.2007 | -158900 | | 45000 | -203900 |
| 08.08.2007 | -203900 | | 10000 | -213900 |
| 13.08.2007 | -213900 | | 4500 | -218400 |
| 16.08.2007 | -218400 | | 2000 | -220400 |
| 17.08.2007 | -220400 | 15000 | 6000 | -229400 |
| 21.08.2007 | -229400 | 80000 | | -149400 |
| 21.08.2007 | -149400 | 4000 | | -145400 |
| 22.08.2007 | -145400 | | 18000 | -163400 |
| 29.08.2007 | -163400 | | 50000 | -213400 |
| 03.09.2007 | -213400 | 2500 | | -210900 |
| 06.09.2007 | -210900 | 7500 | | -203400 |
| 12.09.2007 | -203400 | 2000 | | -201400 |
| 21.09.2007 | -201400 | 150000 | | -51400 |
| 24.09.2007 | -51400 | 2500 | | -48900 |
| 24.09.2007 | -48900 | 20000 | | -28900 |

| | | | | |
|------------|---------|-------|--------|---------|
| 25.09.2007 | -28900 | 20000 | | -8900 |
| 25.09.2007 | -8900 | 20000 | | 11100 |
| 26.09.2007 | 11100 | 12000 | | 23100 |
| 03.10.2007 | 23100 | | 6500 | 16600 |
| 04.10.2007 | 16600 | | 28000 | -11400 |
| 05.10.2007 | -11400 | | 49500 | -60900 |
| 06.10.2007 | -60900 | | 49900 | -110800 |
| 15.10.2007 | -110800 | | 1000 | -111800 |
| 22.10.2007 | -111800 | | 49500 | -161300 |
| 24.10.2007 | -161300 | | 49900 | -211200 |
| 25.10.2007 | -211200 | | 49500 | -260700 |
| 26.10.2007 | -260700 | | 48500 | -309200 |
| 29.10.2007 | -309200 | | 4000 | -313200 |
| 02.11.2007 | -313200 | | 2500 | -315700 |
| 05.11.2007 | -315700 | | 35000 | -350700 |
| 06.11.2007 | -350700 | | 45000 | -395700 |
| 07.11.2007 | -395700 | 4500 | 1 5000 | -407200 |
| 21.11.2007 | -407200 | --- | 1 0000 | -417200 |
| 22.11.2007 | -417200 | | 12000 | -529200 |
| 03.12.2007 | -529200 | 15000 | | -514200 |
| 06.12.2007 | -514200 | 15000 | | -499200 |
| 10.12.2007 | -499200 | 6000 | | -493200 |
| 24.12.2007 | -493200 | 18000 | | -475200 |
| 31.12.2007 | -475200 | 1000 | | -474200 |
| 08.01.2008 | -474200 | 20000 | | -454200 |
| 08.01.2008 | -454200 | 20000 | | -434200 |

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|--------------|----------|--------|--------|--------------------------|
| | | | | |
| 10.01.2008 | -434200 | | 200000 | -634200 |
| 11 .01 .2008 | -634200 | | 75000 | -709200 |
| 16.01.2008 | -709200 | | 10000 | -719200 |
| 16.01.2008 | -719200 | | 5000 | -724200 |
| 23.01.2008 | -724200 | | 83000 | -807200 |
| 24.01.2008 | -807200 | | 70000 | -877200 |
| 25.01.2008 | -8777200 | | 100000 | -977200 |
| 08.02.2008 | -977200 | | 7000 | -984200 |
| 13.02.2008 | -984200 | | 3500 | Peak Balance - 987700 |
| 1 6.02.2008 | -987700 | 11000 | | -976700 |
| 18.02.2008 | -976700 | | 1500 | -978200 |
| 03.03.2008 | -978200 | 6000 | | -972200 |
| . 05.03.2008 | -972200 | 70000 | | -832200 |
| 05.03.2008 | -832200 | 20000 | | -812200 |
| 05.03.2008 | -812200 | 180000 | | -632200 |
| 260.32008 | -632200 | | 3000 | -635200 |

8. The reply of the assessee dated 19.10.2015 considered and peak cash of HDFC bank and Axis bank account wherein the assessee has made the cash deposit is worked out as above and peak cash at Rs.9,87,700/- is added to the total income of the assessee.
9. Against the addition of Rs. 9,87,700/-, assessee preferred first statutory appeal before the ld. CIT(A) who partly allowed the appeal of the assessee.
10. Now assessee has come before us.

11. We have gone through the relevant record and impugned order. So far an amount of Rs. 1,25,000/- is concerned, this amount was taken by the assessee from his Mother Kantaben Rajput. She appeared before the Assessing Officer during remand proceeding and stated on oath that she is engaged in dairy farming. She earns income from dairy farming activities. She does not have any permanent account number and neither does she have any bank account and she is mother of the assessee and further stated that her income is approximately Rs. 1,00,000/- per annum and from his past savings. She had deposit of Rs. 1,25,000/- as well as also submitted an affidavit to this effect. And department could not bring anything against the statement of the mother of the assessee. Thus, statement of Kantaben Rajput cannot be discarded, it can be easily believed that a house wife must have been an amount of Rs. 1,25,000/- as in Indian family system there is tendency that house wife generally keep some money with them from their past saving for emergency purpose. Therefore, in India house wife is also called Laxmi (Goddess of Wealth). Therefore, we allow the claim of the assessee.
12. The assessee has claimed to have Rs. 75,000/- from his wife and Rs. 4,50,000/- from his father, the A.O. has recorded statements of both the persons were recorded and parties admitted that they have given gift to the appellant out of animal husbandry business and they have also filed affidavit before the ld. A.O. And his father is having agricultural land 2.54 hectare. And before the A.O. during remand proceedings, one person proprietary of Vardhman Traders, Patan also appeared before the ld. A.O. to whom appellant has sold agriculture produce and copies of bills etc. were submitted with the A.O. and ld. A.O. could not bring anything on record which prove that these details are incorrect. It is fact that family members are having income from dairy farming

and agriculture activities and their statements have been recorded by the A.O. Thus, claim of the assessee cannot be rejected. Thus, this ground of appeal of the assessee is allowed.

13. In the result, appeal filed by the assessee is allowed.

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| Order pronounced in Open Court on | 24 - 04- 2019 |
|-----------------------------------|---------------|

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad: Dated

True Copy

24 /04/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad