

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.2695/AHD/2016
निर्धारणवर्ष/Assessment Year: 2012-13**

Chetankumar Vinodbhai Patel, 14, Bapunagar Society, Luncikui, Navsari.	V.	Income Tax Officer, Ward-1, Navsari.
[PAN: AMYPP 9477 G]		
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Suresh K. Kabra, CA
राजस्वकीओरसे /Revenue by	Ms. Anupama Singla, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	11-02-2020
उद्घोषणाकीतारीख/Pronouncement on:	13-02-2020

आदेश /O R D E R

PER O.P.MEENA, AM:

1. This appeal filed by the Assessee is directed against the order of Commissioner of Income-Tax (Appeals), Navsari [in short “the CIT(A)”] dated 11-08-2016, for the assessment year 2012-13.
2. Ground No.1 & 2 relates to confirming the addition of Rs.9,00,000/- made towards unexplained investment in appellant’s bank account.
3. The AO noticed that the assessee has made bank cash deposits in the bank account with Central Bank of India, amounting to Rs.63,79,950/-. The assessee has furnished the details of bank summary and cash summary. However, on verification of details, the AO noticed that the assessee has not shown the source of cash deposit of Rs.9,00,000/- received from Jyotsna C Patel through Vinod H Patel. Accordingly, the assessee was asked to furnish explanation as to why cash deposit of Rs.9,00,000/- should not be added to the total income of the assessee. However, the AR of the assessee

has not furnished any explanation or objection and agreed for proposed addition of Rs.9,00,000/- and therefore the same was added to total income.

4. Being aggrieved, the assessee carried the matter before the Id. CIT(A). Wherein it was submitted that the assessee has furnished cash summary for the year 2011-12, the details as assumed by the said details obtained from Shri V N Patel. However, on the certificate dated 19-03-2015 obtained from Shri V N Patel and from the bankers for the credit to wife Smt. Jyotsna C Patel account. Therefore, V N Patel was summoned as per the section 131 and his statement recorded, wherein the AO has not found any adverse point in his statement. Therefore, the details and the evidences stated above prove the genuineness, creditworthiness of the party from whom amount was received duly explained by the AO. However, the AO has not given sufficient evidence. However, the AO treated the receipt of Rs.9,00,000/- from his wife as unexplained, the said amount was returned from father-in-law as gift. The confirmation other details provided to the AO obtained from the wife and father-in-law. However, the CIT(A) observed that during the assessment proceedings, the AR of the assessee has agreed for addition, hence, the addition was confirmed by the CIT(A).

5. Being aggrieved, the assessee filed this appeal before this Tribunal. The Id. counsel for the assessee submitted that the amount of Rs.9,00,000/- was received as gift by Shri Jyotsna C Patel from her father-in-law. The said amount was credited to her account and there is no dispute that the gift details was filed. The AO has also examined Shri V N Patel and no adverse found in his statement. The said gift has duly shown in the computation

income of the assessee. The same has reflected in the bank account by the assessee appearing at page no.15 in the name of Jyotsna C Patel. The assessee has filed confirmation of Shri V N Patel, father of the assessee received at Rs.9,00,000/- was made by him and Smt Jyotsna C Patel. Therefore the identity and genuineness of the gift is established and the gift is reckoned by wife from her relative. The CIT(A) confirmed the addition in merely on the ground that the addition was agreed. However, the assessee furnished an affidavit from Shri P K Shah, CA of the assessee who was representing the assessee for AY.2012-13, wherein he has disposed that documents were not handy at the moment, he orally asked for the time, so the details can be submitted. However, the ld. AO was not prepared to give any time and wanted to complete the proceedings then and there. Therefore, there was no option and mentioned on the order sheet that “Presently, there is no evidence/explanation. So, he agreed for addition.” That is why the word ‘presently’ was the starting words. Therefore, it was requested that the CIT(A) has not rightly interpreted his stand as unconditional agreement for addition. The ld. counsel further relied on the decision of Punjab & Haryana High Court in the case of Chhat Mull Aggarwal v. CIT (1979) 116 ITR 694 (Punjab & Haryana), wherein it was held that the ITO made addition of amount agreed to by assessee being his unexplained investment in house property-AAC however, deleted addition by accepting assessee’s explanation that he having actually spent said sum over and above initial investment, had agreed to addition of said sum, without understanding consequences of agreement. Whether in a case where assessee’s admission has been wrongly recorded in assessment order, it is

open to assessee to file a petition for rectification, but where said order is appealable, it is equally open to assessee to avail of remedy of appeal and appellate authority shall have to decide said appeal on merits. Whether assessee may choose to file an affidavit in support of his submissions, and if he does not, circumstances appearing on file have to be judged in light of material available, and if there are sufficient circumstances on file to come to conclusion that assessee's admission was not binding on him, in that case he will be entitled to relief in appeal. Similarly, in the case of ITO v. Sidhivinayak Dyeing & Printing Mills (P) Ltd. (2009) 119 ITD 169 (Ahmedabad). Since, the contention of admission was being disputed, therefore matter was set-aside to the CIT(A). The ld. counsel further relied on the decision of CIT v. Dayaram Vasudeo (1991) 57 TAXMAN 209 (BOM).

6. *Per contra*, the ld. Sr. DR relied on the order of the lower authorities.

7. We have heard the rival submissions and perused the relevant material available on record. We find that the assessee's wife has received gift of Rs.9,00,000/- from V N Patel on 05-05-2011 out of love and affection. The confirmation of V N Patel has been filed which is placed at paper book page no.6, the gift was given by out of overdraft account/savings account on encashment of fixed deposit. The gift is appeared in the bank account of Central Bank of India of Smt Jyotsna C Patel and same was received by the assessee from Smt Jyotsna C Patel. Since, donor and donee have accepted the gift and sources is explained. Therefore, during the course of assessment proceedings but the details were rightly not available. Therefore, the ld. AR of the assessee agreed for addition for the present moment for the said amount which he has explained vide his affidavit filed

before us. The ld. counsel has placed reliance on the decision of Chatt Mull Aggarwal (supra) and the Hon'ble Punjab & Haryana High Court, wherein agreed addition can be deleted by accepting the explanation of the assessee, if the same is proved to be acceptable. Similar findings are also given by the ITO in the case of Sidhivinayak Dyeing & Printing Mills (P) Ltd. (supra). Considering these facts, we are of the considered opinion that the addition based on agreement for the time being for non-filing explanation/source, evidences can be sustained if it is found that the sources of the addition is explained by the AO and the same is found acceptable by the lower authorities. In view of this fact, this addition of Rs.9,00,000/- was sustained by the lower authorities, is therefore treated as deleted.

8. In the result, the appeal of the assessee is allowed.
9. The order pronounced in the open Court on 13-02-2020

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 13th Feb, 2020/Samanta, PS

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

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By order

Assistant Registrar, Surat