

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 3183/AHD/2014

निर्धारण वर्ष/Asstt. Year: 2008-2009

Bhavesh A. Patel, Near Talav Bhileshwar Road, At & Post Kunjrao, Dist. Anand-388335. PAN: AJJPP7838F	Vs.	Income tax Officer, Ward-2, Anand.
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(Applicant)		(Respondent)
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Assessee by	:	Shri D.K. Parikh, A.R
Revenue by	:	Shri L.P. Jain, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **21/04/2021**

घोषणा की तारीख/**Date of Pronouncement**: **31/05/2021**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-IV, Baroda, dated 17/09/2014 arising in the matter of assessment order passed under s.144 r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2008-2009.

2. The assessee has raised the following grounds of appeal:

1. *The Ld.C.I.T. (Appeals) erred both in law and on facts in confirming addition of Rs.12,50,000/- out of Rs.31,50,000/- as unexplained investment. The IdCIT(Appeals) ought to have deleted entire addition made by the AO . It be held so held now and addition be directed to be deleted now.*
2. *The Ld. C. I .T. (Appeals) erred in law and on facts in not appreciating the submission of the appellant regarding the appellant and his family members had sizable agricultural land and as per the evidences produced, the sources for making payment of Insurance premium were fully explained. It be so held now and addition of Rs.12,50,000/- retained by IdCIT(A) be deleted.*
3. *The Ld.CIT(A) failed to appreciate that the only source of income of the appellant and his family members was from agriculture income and in view of the decision of the Jurisdictional Tribunal cited before him, no addition u/s.69 could be made for investment out of alleged undisclosed income. It be so held now and addition be deleted.*
4. *Both the lower authorities erred in making addition u/s.69 which is not justified on the facts and legal position invoking section 69. It be so held now and addition made and retained be deleted.*
5. *The Id.CIT(A) ought to have allowed the appeal of the appellant in toto.*
6. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

3. The solitary issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO in part by sustaining the addition for ₹12.50 lakhs out of Rs. 31.5 lakh instead of deleting the addition in entirety on account of unexplained investments under section 69 of the Act.

3.1 The AO received an information from the Investigation Wing of the Income Tax Department alleging that the assessee has made investments in the Baja Alliance Life Insurance Company for ₹ 76,64,389/- along with his brother and wife over a period of 3 years i.e. between F.Ys. 2007-08 to 2009-10. Accordingly, the AO after recording the reasons under section 147 of the Act initiated the proceedings by issuing notice under section 148 of the Act for all the years

3.2 The facts as arising from the order of the authorities below are that the assessee in the present case is an individual and earning income by way of commission from the Bajaj Alliance Life Insurance Company and agricultural

operations. The assessee in the year under consideration along with his brother and wife has made payment of insurance premium to the Bajaj Allianz Life Insurance Company for an amount of ₹ 31.5 lakh only. On question by the AO, about the source of investment in the LIC, the assessee contended that he has generated fund in the manner as detailed under:

- i. Commission from the Bajaj Allianz to the tune of ₹ 11,01,500/-
- ii. Loan from the relatives who are also into agricultural operations
- iii. Income from the agricultural operations

3.3 The assessee further claimed that he has huge ancestral land where the agricultural operations are carried out. The assessee in support of his contention filed 7/12 extract of the lands.

3.4 However, the AO disregarded the contention of the assessee by observing that the assessee has not furnished any details about the loan taken from the relatives. Likewise, the assessee has not furnished any details about the sales & purchase of the agriculture products. Accordingly the AO treated the investment of 31.5 lakh as unexplained investment under section 69 of the Act and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the learned CIT (A).

5. The assessee before the learned CIT (A) besides reiterating the contentions raised before the AO, submitted that he is engaged in the agricultural activity and his only source of income is from agricultural activity till the year under consideration in which he has undertaken Bajaj Allianz agency. The assessee contended that the AO failed to appreciate the submission made before him, but proceed to treat the insurance premium as undisclosed income without bringing any material on record suggesting that he has earned undisclosed income from any other source.

5.1 The assessee further submitted that the provision of section 69 of the Act does not oblige the AO to treat an investment as income even if the same is not explained satisfactory. However the AO in his case treated the payment of insurance premium as income despite the fact that he has explained the sources investment.

5.2 The assessee further submitted that AO completed the assessment by rejecting his explanations without verifying or examining the veracity of the same. As such the AO should have verified the same by taking further inquiry and affording the assessee with opportunity for his rebuttal. Hence, the principles of natural justice were not followed.

6. However the learned CIT (A) after considering the facts provided part relief to the assessee by observing as under:

*6.1.4 I have gone through the assessment order and the submissions / evidence adduced by the appellant in support of the contention taken with regard to the source of funds invested in the purchase of insurance policies. There is no doubt that the appellant is having ancestral agricultural land as the same is evidence by the confirmation from the Gram Panchayat. However, how much of the investments of Rs. 31,50,000/- could be reasonably be attributed to the known sources of the appellant, his wife and his brother is the moot question. The Assessing Officer has completely rejected the argument given by the appellant whereas on perusal of the return of income and the general standard of living of the appellant and his family, it is clear that the amount of investments made in the insurance policies is far too disproportionate. The certificate from the Dy. Sarpanch with regard to approximately earning of the appellant of about 10 lacs during the year does not completely explain the amount of investments made by the family. The approximate agricultural income as per certificate of the Sarpanch in any case is not more than 20 lacs, part of which are obviously deployed to meet the day to day expenses of the household. The confirmation by Mr. Mihirbhai Patel also does not completely explain the transaction as the books of accounts are not maintained by either of them. There is no legality involved in this matter with regard to the quantum. All that one can do is to reasonably estimate the income which could be attributed to the known sources along with the borrowings, towards the investments in insurance policies. The Assessing Officer has made the substantive addition in the income of the appellant, for the amount shown to be invested by his wife Smt. Darshanaben B-Patel and his brother Shri Kalpesh A. Patel., However, still protective assessments have been made separately in respect of] these two persons. As Shri Kalpesh Patel and Darshanaben Patel do not? have separate and independent source of income, apart from the one discussed with reference to the appellant, therefore the issue **with** regard to the reasonable estimation of known sources of income is decided in the case of appellant only.*

Considering Rs. 20 lacs of income of the two brothers, it is reasonable to estimate that not more than 14 lacs of income could be invested in the purchase of insurance policies. The cash borrowings from Mihirbhai Patel are shown at not more than 5 lacs. Therefore, the investments of Rs. 19 lacs could be attributed to the known sources of the appellant and the other two members of the family. The balance amount i.e. Rs. 12,50,000/- has to be

considered as the unexplained investments u/s. 1 69 of the IT Actj The addition in question is therefore restricted to Rs. 12,50,000/- as against Rs. 31,50,000/- made by the Assessing Officer. The assessee will get a relief of Rs. 19,00,000/-. The grounds of appeal I are therefore partly

7. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

8. The learned AR before us submitted that the Revenue in the subsequent assessment years 2009-10 and 2010-11 has accepted the agricultural income to the tune of ₹32 lakhs. Accordingly, the income from the agricultural operations for the year under consideration should also be taken at ₹32 lakhs only.

8.1 It was also contended by the learned AR that once the assessee has explained the source of investment, then the provisions of section 69 of the Act cannot be applied. The learned AR in support of his contention relied on the order of Hon'ble Supreme Court in the case of CIT Vs. P.K. Noorjahan reported in 237 ITR 570.

8.2 The learned AR alternatively submitted that the resource of investments should be taken for ₹25 lakhs on account of income from the agricultural operations and the loan taken from the party besides giving the benefit of past savings additionally.

9. On the other hand, the learned DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the case on hand have already been elaborated in the preceding paragraphs which are not in dispute. Accordingly, we are not inclined to repeat the same for the sake of brevity.

10.1 It was contended by the learned AR that the Revenue in the subsequent 2 assessment years i.e. 2009-10 and 2010-11 has accepted the income of the assessee from the agricultural operations amounting to of ₹ 32 lakh respectively. Accordingly, the same amount of income should be adopted/taken of the assessee for the year under consideration.

10.2 However, we are unable to accept the contention of the assessee. In the subsequent assessment years, the assessee besides carrying out agricultural operations in his own land, has also carried out the agricultural operations on the lands belonging to others. The details of the same stand as under:

<u>S.No.</u>	<u>Name of the land owners</u>	<u>Amount</u>
1.	Shri Mihir Patel	12 to 13 Lakh
2.	Shri Jigneshbhai	3 to 4 lakh
3.	Shri Faulad Bhai Patel	6 to 7 lakh

10.3 The relevant submission of the assessee before the AO in the assessment year 2009-10 reads as under:

From santh agricultural income appro. Yearly Rs. 9 to 11 lakhs incomes were received. Rs.3 to 4 lakhs agricultural income was received from land of Shri Jigneshbhai and Rs. 6 to 7 lakhs agricultural income was received from land of Shri Fulabhai Patel. Santh agreement were already submitted in the last hearing.

10.4 In view of the above submission of the assessee, the AO was pleased to accept the additional agricultural income for ₹ 12 lakhs including the previous savings in the subsequent assessment years.

10.5 However in the case before us, we find that there is neither any discussion in the order of the authorities below nor any submission of the assessee before them (authorities below) suggesting that the assessee was carrying out agricultural operations on the land of the other parties. In the absence of such information, the learned CIT-A, in our considered view has rightly not taken the cognizance of the additional agricultural income of ₹ 12 lakhs.

10.6 This is also pertinent to note that the Revenue in the subsequent 2 assessment years has only treated the income from agricultural operations for ₹ 20 lakhs only based on the certificate issued by the Serpent. The fact of the other 2 assessment years are exactly the same as in the year under consideration. There was a certificate issued by the Gram sarpunch stating the income of the assessee for ₹ 20 lakhs only.

10.7 However, we find that in the subsequent 2 assessment years there was no deduction made by the AO against the income declared by the assessee for the drawings. In other words the entire amount shown by the assessee was treated as income available for investment. It is not out of place to mention that the assessee has family members such as his brother, brother's wife and his wife. Therefore, some deduction has to be made from the income of the assessee towards the drawing for the household expenses before allocating the same for the purpose of investment. The next issue arises to determine the quantum of the household expenses. Indeed, the assessee is privy to such information. But the assessee has not furnished any information qua to the household expenses. Thus there remains no alternate except to estimate the household expenses on reasonable basis. In this connection, we find that the learned CIT (A) has treated an amount of ₹ 6 lakhs as household expenses but failed to bring any basis for the estimation of such expenses. Therefore in interest of justice and fair play, we deemed it appropriate to treat such expenses to the tune of ₹ 3 Lacs only. It is also important to note that such household expenses should not be taken as the precedent for any other case of the assessee. It is just on ad hoc basis.

10.8 It was also contended by the learned AR that the assessee should be given benefit considering the past savings of the assessee. However the learned AR has not brought anything on record suggesting about the past savings made by the assessee which was available for the investment. Furthermore, we note that the AO in the assessment year 2009-10 and 2010-11 has already given benefit to the assessee for the past savings, without making any deduction on account of

household expenses. The relevant finding of the AO for the assessment year 2009-10 reads as under:

Therefore, considering Rs.20,00,000 of agricultural income of two brothers, Santh Agricultural income is estimated at Rs.12,00,000/- including past savings of agriculture income, it is reasonable to estimate that not more than Rs.32,00,000/- of income could be invested in purchase of Insurance Policies of the assessee and his family members.

10.9 In view of the above concurrent findings of the AO for the assessment years 2009-10 and 2010-11 with respect to the past savings and without allocating any expense towards the household expenses, it seems to us that no further benefit to the assessee should be granted. Accordingly we are not convinced with the contention of the learned AR.

10.10 We also note that the learned AR has relied upon us the decision of this tribunal's in case of Devjibhai Dhanjibhai Gabani (HUF) vs. ITO in ITA No-1249/Ahd/2007, however we find that the facts of that decisions are distinguishable from the facts of the present case. In that case, there was the agricultural income along with rental and interest income declared by the assessee which was not believed by the AO. Accordingly the agricultural income was treated as the income from undisclosed sources. The view of the AO was subsequently confirmed by the learned CIT (A). However, the Tribunal was pleased to delete the addition by observing that there was only one source of income available in the hands of the assessee i.e. agricultural operations and the Revenue failed to bring any other source of income of the assessee which can be alleged as undisclosed income. However in the case on hand, there was the investment in the Life Insurance premium paid by the assessee and the onus was upon the assessee justify the source of investments based on the documentary evidence which the assessee failed. As such the assessee has issued Gram Sarpunch certificates where in the income of ₹ 20 lakhs from the source of agricultural operation was declared. But the assessee has not brought any evidence suggesting that there was more income earned from the agricultural operations than the certified income of ₹ 20 lakhs.

10.11 The learned AR also made a reference to the judgment of the Hon'ble Supreme Court in the case of CIT Vs. P.K. Noorjahan reported in 237 ITR 570, but to our humble understanding the ratio of such judgment is not applicable in the case on hand. Indeed the AO may make the addition on account of unexplained investments under section 69 of the Act, if the assessee failed to justify the source of such investments. Admittedly, the assessee failed to justify the source of investments and therefore we are of the view that addition has been rightly made by the AO which was rightly confirmed by the learned CIT (A). Accordingly, we do not find any reason to interfere in the order of the authorities below except to grant the relief of ₹ 3 Lacs for the household expenses against the estimate made by the learned CIT (A) for ₹ 6 lakhs. Hence the ground of appeal of the assessee is partly allowed.

11. In the result the appeal filed by the assessee is **partly allowed**.

Order pronounced in the Court on 31/05/2021 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
31/05/2021