

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

(Convened through Virtual Court)

BEFORE HON'BLE MR. JUSTICE P. P. BHATT, PRESIDENT
& SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2429/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2015-16)

Sunilkumar Narsinhbhai Patel Vadagam, Dhansura, Aravali	बनाम/ Vs.	Income Tax Officer Ward-1, Modasa
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACXPP2738B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri B. K. Patel, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. S. Shukla, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	13/04/2020
घोषणा की तारीख /Date of Pronouncement	15/06/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax(Appeals)-2, Ahmedabad ('CIT(A)' in short), dated 15.10.2018 arising in the assessment order dated 18.12.2017 passed by the Assessing Officer (AO) under s. 144 r.w.s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. The grounds of appeal raised by assessee read as under:

“Addition on account of unexplained cash deposited in the bank account of Rs. 27,20,249/-

The Hon'ble CIT (Appeals)-2, Ahmedabad has erred in law and on facts by confirming the addition of Rs, 27,20,249/- made by Ld Assessing Officer for the sale of agriculture produce being sold to Dariyalal Aloo Bhandar to whom the assessee sold the agriculture produce and the bill for the same was produced to the Ld CIT(A). However, The notice sent to the said party has been returned unserved with the remark "Shop Closed".

The method of purchasing and sale of agriculture produce like potato comes to the farm and make the payment against the delivery which in legal sale-transaction as the purchaser has taken the delivery on the farm and issues the bills against the payment in cash. The Ld AO has made addition of this amount as unexplained cash deposit in the bank and the Ld CIT(A) has confirmed without considering the legal and factual position in the farm commodity.

Therefore, it is prayed that the addition confirmed by Ld CIT(A) be directed to be deleted in the interest of justice.”

3. We have perused the assessment order and the order of the CIT(A) and material placed on record. The controversy involved is on account of addition of Rs.27,20,249/- towards unexplained cash deposits in the bank account.

4. In the course of the assessment of the return of the assessee for F.Y. 2015-16, the AO *inter alia* added a sum of Rs.52,41,942/- towards cash deposit in the bank account as unexplained income. In the first appeal before the CIT(A), the assessee submitted that he is a farmer having only agricultural income and having his land in the joint names of family members of about 46 Bigha. The assessee mainly cultivates the crop of potato in the land and have sold Potato to following two purchasers:

1) Noor Traders	Rs. 25,21,693
2) Dariyalal Aloo Bhandar	Rs. 27,20,249
Total	Rs. 52,41,942

It was claimed that the amount of the above proceeds received from sale of Potato is deposited in the Bank account of assessee which was wrongly treated as unexplained income of the assessee. In the appeal

proceedings, the CIT(A) remanded the matter for verification to the AO and AO issued notices to both parties above u/s 133(6) of the Act. Out of the above amounts, the CIT(A) eventually accepted the amount of Rs. 25,21,693/- as explained Income on the basis of the reply received from Noor Traders about the transactions. However, another notice u/s 133(6) of the Act issued to Dariyalal Aloo Bhandar was returned undelivered due to closure of shop. Consequently, while the CIT(A) allowed the source of cash received from Noor Traders towards sale of potato amounting to Rs. 25,21,693/- as explained, the addition towards other amount of Rs. 27,20,249/- was confirmed owing to non-confirmation from Dariyalal Aloo Bhandar. It was also observed that individual share in land is not sufficient to produce Potato of such quantity purportedly sold to Dariyalal Aloo Bhandar.

5. In this regard, it was contended on behalf of assessee that:

(i) It is a normal practice that harvesting of potato is a specific period during which the farmer sales and gives the delivery at farm itself and therefore period of sales is a specified span of time due to perishability of the agricultural product and purchaser pickup from the farm and make the payment to the farmer. Therefore the Bills produced before AO were for the period between 06/04/2014 to 08/05/2014.

(ii) The AOs observation that the assessee's share in the land is only 6.42 bigha out of the total land of 46.17 bigha is correct as per bare reading of form 7 and 12, however in fact the land is belonging to the family members of assessee and he is the forefront farmer of the family and therefore all decisions including purchase and sales and Banking transactions are made by assessee in his name which is normal precedence in joint families of farmers. It is to be noted that even if the land is in the name of family members it is not necessary that the farm produce should be sold in proportionate manner.

(iii) The Ld. CIT has also stated that as the confirmation of Dariyalal Aloo Bhandar is not received, the transactions stands unexplained, It is submitted that the Dariyalal Aloo Bhandar was an existing firm at the time when the assessee have sold the Potato and have received the Money, thereafter the owner of said firm have closed his shop due to losses to him and is absconding since then. In fact the Survey u/s 133(6) is conducted by a notice which is issued after several years after the date of transactions made, which is received back unserved due to "SHOP CLOSE", thereafter, AO did not bothered for verifying the fact by physical visit of the place and to inquire about the fact, whereas he have made mere assumption that the party never exist and have treated the amount of sale to such party as unexplained.

(iv) The Dariyalal Aloo Bhandar has closed the business since 2016 in confirmation of this fact the assessee submits the affidavit (Panchnama) (produced herewith along with translation in English) from surrounding farmers who are aware of the fact that Dariyalal Aloo Bhandar is absconding from market due to heavy business losses.

(v) Further, the Panchanama of the witnesses of the shops near Dariyalal Aloo Bhandar (produced herewith along with translation in English) specifically states that the said firm was in existence in shop no. 69 and was carrying on the business however since last three years the said firm is found to be closed.

(vi) Further, the certificate from the Agricultural Produce Market Committee, Bhuj is received by the assessee (produced herewith along with translation in English) showing that in 2018 the Dariyalal Aloo Bhandar is not in existence in market. (Page no. 13 to 14 of paper book)

(vii) In the light of above submissions, it was submitted that:

a) The assessee was having sufficient land along with the other family members of about 46 Bigha which was enough for the cultivation of the Potato sold.

b) Entire sales bills are between the date 06-04-2014 to 08-05-2014, the genuinely on this ground cannot be doubted as much as the harvesting of potato is a seasonal activity and having a short span of harvesting and therefore the sale of potato in such short span of time is obvious.

c) The conclusion on the basis of remand report that the Notice is received back unserved as stated hereinabove as the Dariyalal Aloo Bhandar closed down and absconded from market. The AO could have initiated the inquiry on return of such notice which he has failed.

6. Simultaneously, we notice that the Revenue has relied upon the order of the AO and pointed out that assessee has failed to prove the source of the cash deposits and explanation offered towards cash deposit does not pass the test of human probabilities and surrounding circumstances.

7. On weighing the rival contentions, we find considerable merits in the plea raised on behalf of the assessee. It is noticed that assessee is having sufficient land alongwith other family members to support the case of cultivation of potato sold. The CIT(A) has accepted the fact of production of potato and has taken the receipt of cash from one of the parties (Noor Traders) as explained. The CIT(A) has rejected the source of cash from other party (Dariyalal Aloo Bhandar) primarily on the ground of lack of confirmation. The assessee has supported the closure of the business of Dariyalal Aloo Bhandar by way of affidavit from the surrounding farmers who were having the personal knowledge of the fact of the closure of the shop since 2016. The agricultural land of 46 Bigha appears sufficient to support the

production of potato as claimed. Under these circumstances, the benefit of doubt, in our mind, must go to the assessee who happens to be a farmer and from whom the due diligence of highest level for storage of evidence is not necessarily expected. We thus find mitigating circumstances existing in the case to enable us to agree with the contention raised on behalf of the assessee. We thus set aside the order of the CIT(A) and direct the AO to delete the addition of Rs.27,20,249/- in question.

7. In the result, the captioned appeal of the assessee is allowed.

This Order pronounced on 15/06/2021

Sd/-
(JUSTICE P. P. BHATT)
PRESIDENT

Ahmedabad: Dated 15/06/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।