

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

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**  
**And**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 464/AHD/2018  
निर्धारण वर्ष/Asstt. Year: 2012-2013

Devendersingh Sajubhai Jadeja, C/101, Baroda SKYZ, Opp. Adarsh Duplex, Gorwa Road, Vadodara-390022.  <b>PAN: AELPJ2883F</b>	Vs.	Income Tax Officer, Ward-1(2)(1), Vadodara.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri P.F. Jain, A.R
Revenue by :	Shri S.S. Shukla, CIT.D.R

सुनवाई की तारीख/**Date of Hearing** : **13/08/2021**  
घोषणा की तारीख/**Date of Pronouncement**: **28/09/2021**

**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)-4, Vadodara, dated 17/10/2017 arising in the matter of assessment order passed under s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

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

*1. The order passed u/s.144 r.w.s.147 by issuing Notice u/s.148 is submitted to be bad in law and on facts inasmuch as that the requisite conditions for reassessment are not fulfilled in the case of appellant.*

*2. The Id.CIT(Appeals) has erred in law and on facts in upholding addition of Rs. 57,00,000/- u/s.69 for purchase of Agricultural land without properly appreciating and considering the facts of the appellant.*

*3. He has erred in law and on facts in not considering the additional evidence furnished by the assessee explaining the source of investment and considering the same in violation of Rule 46A inasmuch as that the same was forwarded to the A.O. who submitted the Remand Report.*

*4. He has erred in law and on facts in upholding the addition u/s.69 in respect of purchase of agricultural land without appreciating the facts that the source of purchase was family funds duly supported by relevant proof.*

*5. On account of change in address, there was delay in receiving order of CIT(A) resulting into un-intended delay of 12 days which is prayed to be condoned.*

*6. On the facts, no such addition ought to have been made.*

*7. The assessee craves leave to add, to alter and/or to modify any grounds of appeal.*

3. The assessee in ground No. 1 has challenged the validity of the assessment framed under section 143(3) read with section 147 of the Act.

4. The learned AR before us contended that the time-limit for issuing notice under section 143(2) of the Act was available to the AO but the AO has chosen to issue notice under section 148 of the Act on account of escapement of income. Thus, the assessment framed under section 147 read with section 144 of the Act is invalid and liable to be quashed.

5. On the other hand the learned DR submitted that the time-limit for issuing notice under section 143(2) of the Act was expired in September 2013 whereas the notice under section 148 of the Act was issued dated 13<sup>th</sup> February 2014. Thus, the AO has rightly initiated the proceedings under section 148 of the Act within the time provided therein but after the expiry of time available under section 143(2) of the Act. The learned DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. The assessee in the case on hand has filed the belated return under section 139(4) of the Act dated 31<sup>st</sup> March 2013 after the expiring of the time of filing the return of income provided under section 139(1) of the Act i.e. July 2012. Furthermore, the time-limit for issuing notice under section 143(2) of the Act was to be reckoned from the end of the year in which the return of income was furnished by the assessee. Consequently, the time-limit available to the AO for issuing notice under section 143(2) of the Act was to 30<sup>th</sup> September 2013. But the AO has not issued any notice till the time provided under section 143(2) of the Act. Thus the notice was rightly issued within the provisions of law as provided under sections 148 r.w.s. 149 of the Act. Accordingly we disagree with the contention of the learned AR of the assessee and hence dismiss the technical ground raised by the assessee.

7. The 2<sup>nd</sup> issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for ₹ 57,00,000/- under the provisions of section 69 of the Act.

8. The AO during the assessment proceedings found that the assessee has made investments in two immovable properties at ₹ 57,06,000.00 each aggregating to ₹ 1,14,12,000/- but failed to justify the source of investments. Accordingly the AO treated the same as unexplained investment under section 69 of the Act by making the addition of ₹ 1,14,12,000/- to the total income of the assessee.

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

10. The assessee before the learned CIT (A) contended that he has made investments only in one property for ₹ 50 Lacs only and jantari value of the same was of Rs. 57,06,000/- only. This fact was also admitted by the AO in his remand report dated 24 April 2017.

10.1 Regarding the source of investments in one property, the assessee submitted that the investment in the property was financed by the family members from their saving who were earning the agriculture income since the last many years. The assessee in support of his contention has filed the extract of form 7/12, 8 ledgers and 6 hakka pattal as well as the certificate from the gram panchayat about the annual agricultural income in the hands of the relatives.

10.2 However the AO in his remand report dated 24<sup>th</sup> April 2017 contended that the certificate about the source of income in the hands of the family members of the assessee was issued by the gram panchayat dated 7<sup>th</sup> February 2017 after finalization the assessment proceedings and filing of the appeal. Thus such certificate was prepared afterthought and therefore the same cannot be relied upon. There, was no detail furnished by the assessee about the agriculture activity, such as sale bill of the agricultural product, expense details etc.

10.3 The income shown by the family members of the assessee in the in gram panchayat certificate was the same in all the financial years beginning from 2006-07 to 2011-12. Therefore no reference can be made to such certificates.

10.4 The assessee has not furnished the manner and the mode in which the purchase of the property was financed by the family members. Assuming if the cash has been provided then same will be in violation of the provisions of the Act.

10.5 In view of the above the AO in his remand report submitted that the identity and creditworthiness as well as genuineness of the transactions has not been proved by the assessee as required under section 69 of the Act. Therefore the addition was rightly made by the AO in the assessment proceedings framed under section 147 read with section 144 of the Act vide order dated 26<sup>th</sup> March 2015.

10.6 In view of the above the learned CIT (A) confirmed the order of the AO in part by observing as under:

*In respect of the investment in the land, the appellant has submitted the details as Additional Evidences under rules 46A of the Act during the appellate proceedings and stated that the purchase of impugned land was entirely financed by the assessee and his family from their savings of years from Agricultural activities. The assessee has submitted copies of Form 7/12 utara, Form-6 (Hakk Patrak), Form-8-(Land ledger) and "Certificates of Income-cast" from the Talati of Village Bhankh, Taluka Upleta, Dist. Rajkot as evidence of the agricultural income. The assessee has not submitted any supporting evidences i.e. bills regarding sale of agriculture products, income and expenditure for agriculture etc. to prove agriculture income earned by him and his family members for financial years 2006-07 to 2010-11. The assessee has stated that the source for purchase of land was financed by his family members, however, the assessee has not stated the mode of loan taken (cash/cheque) from his family members. It was also seen that the assessee has not furnished confirmations of his family members who have financed him for purchasing the land in question. Further, he has also not furnished any document to prove their identity & credit worthiness. Moreover, it is not believable that all family members saved their entire agriculture income for so many years in cash. In view of these contradictions, the Addl. Evidences were not accepted as the, same are not filed in accordance with the provisions of Rule 46A. Hon'ble Allahabad High Court in the case of Ram Prasad Sharma Vs CIT [1979] 119 ITR 867 (All.) has held that the production of additional evidence either before the first appellate authority or the Tribunal was not as a matter of right and in case a discretion was exercised in accordance with law there was no occasion to interfere. Similar view has been taken by Rajasthan High Court in the case of CIT Vs Rao Raja Hanut Singh [2001] 252 ITR 528 (Raj.). Hon'ble Gujarat High Court has also affirmed these decisions in the case of Fairdeal Filaments Ltd. Vs CIT [2008] 302 ITR 173 (Guj.)- After considering the report of the AO and the submissions of the AR, the additional evidence is not accepted as the same is in violation of Rule 46A. Moreover, the appellant has filed such incomplete Addl. Evidences which cannot be fully relied in absence of documentary evidences viz. the creditworthiness of the five persons who have allegedly advanced monies to the appellant. Further, the appellant has maintained total silence about the mode of transactions with his family members i.e., when and how (whether in cash or by self cheques or by withdrawing the amounts from their respective bank accounts) the monies were paid to the appellant. The Assessing Officer has also mentioned in his report that the assessee has not furnished confirmations of his family members who have allegedly financed him for purchasing the land in question. Further, he has also not furnished any documents to prove their identity, credit worthiness and genuineness of the family members. Thus, in view of the Remand Report of the A.O. and detailed findings of the facts, the addition is confirmed to the extent of Rs.57,00,000/- and appeal of the assessee is partly allowed.*

*4. In the result, the appeal of the assessee is partly allowed.*

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

12. The learned AR before us filed a paper book from pages 1 to 142 and contended that the details about the source of income in the hands of the family members of the assessee were duly furnished before the learned CIT (A). However the same was rejected without conducting any enquiry by AO in remand report as well as by the learned CIT (A).

13. On the other hand, the learned DR submitted that the assessee has not justified based on the documentary evidence the mode of borrowing from the family members. Likewise, the certificate issued by the gram panchayat is not a conclusive evidence about the income of the family members. The learned DR vehemently supported the order of the authorities below.

14. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee has made investment in the property for Rs. 50 lakh and stamp value of the property was of Rs. 57,06,000/- but the assessee failed to justify the source of investment in such property. Therefore, the addition was made by the AO which was subsequently confirmed by the learned CIT (A).

14.1 From the preceding discussion, we find that the assessee has contended before the authorities below that he has received fund from his family members for making the investment in the property in dispute who were holding agricultural land and earning income from agricultural activity. For this purpose, the assessee has furnished the details 7/12 extract/form 8A ledger/form 6 hakkapatra showing agricultural land held them. The assessee has also furnished a certificate from gram panchayat certifying annual agricultural income earned by them. The details of the same stand as under:

<i>Name</i>	<i>F.Y. 2006-07</i>	<i>F.Y. 2007-08</i>	<i>F.Y. 2008- 09</i>	<i>F.Y. 2009- 09</i>	<i>F.Y. 2010-11</i>
<i>I.ilaha Sajubahs Jadeja</i>	<i>350000</i>	<i>350000</i>	<i>350000</i>	<i>350000</i>	<i>350000</i>
<i>Parakrarsingh Sajubha jadeja</i>	<i>250000</i>	<i>250000</i>	<i>250000</i>	<i>250000</i>	<i>250000</i>
<i>Devendrasing Sajubha Jadeja</i>	<i>250000</i>	<i>250000</i>	<i>250000</i>	<i>250000</i>	<i>250000</i>
<i>Ramdevsingh .Sajiibha Jadeja</i>	<i>250000</i>	<i>250000</i>	<i>250000</i>	<i>250000</i>	<i>250000</i>

<i>Liaba Sajubaha Jadeja and Children (Land of Deceased Husband Sajubha Jadeja)</i>	<i>400000</i>	<i>400000</i>	<i>400000</i>	<i>400000</i>	<i>400000</i>

14.2 But, the learned CIT (A) did not believe the version of the assessee on the reasoning as detailed under:

- (i) No evidence such sales bills of agricultural products, expenses incurred in agriculture etc. in support of agriculture income earned by the family member was submitted
- (ii) The mode of loan whether in cash or through banking channel was not provided.
- (iii) No confirmation from family member who were claiming to have given loan to the assessee for the purchase of property.
- (iv) No evidences establishing Identity and creditworthiness of family members and genuineness of transaction was provided.
- (v) It is not possible that agricultural income earned in cash by all family members was saved for so many years in its entirety.

14.3 However we find that, there were certain documentary evidence which were available before him in the form of 7/12 utran extract/ 8A leger/ hakptrak 6 form establishing agriculture land held by the family members which is tabulated at page 7 of learned CIT (A) along with detail of annual agricultural income certified by gram panchayat.

14.4 Admittedly, the AO and learned CIT-A did not point out any defect in the extracts 7/12 and certificate from gram panchayat furnished by the assessee with respect to agricultural income of his family. The from 7/12/8A ledger is land record maintained by land revenue department which contains various details such as

ownership of land, nature of land i.e. agricultural land, crops cultivated on such land throughout the period. Thus, from such form it proved that the assessee's family members were engaged in agricultural activity and earning income thereon. Further, gram panchayat which is a statutory authority also certified that that family members were earning income from agricultural activity to the tune of 14 lakh annually. Thus, merely in the absence of sales bills, expenditure details etc., the income in the hands of the family members of the assessee cannot be rejected. Likewise, the certificates issued by the gram panchayat have been rejected by the learned CIT (A) merely by assuming them as afterthought. In our considered view these are the documents which have been issued by the government departments/ authorities such department of land revenue local authority i.e. gram panchayat which cannot be rejected without carrying out the necessary verification and bringing contrary materials on record.

14.5 The revenue has been given a lot of powers under the statute to discharge their responsibilities in effective manner so that the correct income should be brought to tax. Besides this, there are various supporting staff available with the income tax authorities such as inspector of income tax, tax recovery officer etc. But, the lower authorities despite having so many powers have rejected details furnished by the assessee on their face value. In our considered view, the AO and learned CIT (A) was under the obligation of carrying out the necessary verification before rejecting the documents furnished by the assessee based on cogent reasons.

14.6 Admittedly, the additional documents furnished by the assessee under rule 46A can be accepted by the learned CIT (A) only in the situations provided therein. In other words under the specific circumstances the learned CIT (A) was empowered to accept the additional evidences. However in the present case, we find that the learned CIT (A) has called for the remand report and deleted the addition made by the AO in part which evidences that the learned CIT (A) has admitted the additional evidences. Accordingly in our considered view, the learned CIT (A) cannot reject the other additional documents filed by the assessee in piecemeal. The learned CIT (A)

either was to accept the additional documents in totality or reject the same in totality. As such he cannot pick and choose documents for the admission of additional evidences. Thus, once initial documents have admitted by the learned CIT (A) and remand report has been called upon from the AO, then the same cannot be rejected without any cogent reasons and conducting necessary enquiries.

14.7 We also note that the revenue being a tax authority having a lot of resources in terms of manpower and judicial powers under the provisions of Act but failed to exercise them. Thus the Revenue shall not be given another opportunity for conducting necessary enquiries.

14.8 In view of the above and after considering the facts in totality, we are not inclined to uphold the findings of the authorities below. Accordingly, we set aside the finding of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

15. In the result the appeal of the assessee is **partly allowed**.

**Order pronounced in the Court on 28/09/2021 at Ahmedabad.**

**Sd/-**  
**(RAJPAL YADAV)**  
**VICE PRESIDENT**

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

Ahmedabad; Dated  
*Manish*

**(True Copy)**  
28/09/2021