

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1398/PUN/2019  
निर्धारण वर्ष / Assessment Year: 2015-16

Rajendra Shamrao Patil, Flat No.05, Dharmaraj Plaza Apartment, Gangapur Road, Old Gangapur Naka, Nashik-422005. PAN : ABIPP2109A	Vs.	ITO, Ward-1(4), Jalgaon.
Appellant		Respondent

Assessee by : Smt. Saumitra Gokhale  
Revenue by : Shri Arvind Desai  
Date of hearing : 24.05.2022  
Date of pronouncement : 30.05.2022

**आदेश / ORDER**

**PER S. S. GODARA, JM:**

This assessee's appeal for assessment year 2015-16 arises against the CIT(A)-2 Nashik's order dated 01.07.2019 passed in case no.Nsk/CIT(A)-2/141/2017-18 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short the Act.

Heard both the parties. Case file perused.

2. The assessee's delay of 12 days in filing of the instant appeal is condoned since neither intentional nor deliberate in light of his averments in condonation affidavit dated 19.09.2019 attributing reasons thereof to communication gap between auditor and arguing counsel.

3. Coming to the assessee's sole substantive grievance on merits that both the lower authorities have erred in law and on facts in making section 68 unexplained cash credit addition of Rs.10,12,177/- during the course of assessment dated 27.12.2017 as upheld in the CIT(A)'s order, it transpires at the outset that he has failed to offer any reasonable explanation controverting the same in entirety. The CIT(A) detailed discussion affirming the impugned addition reads as under :-

*"5.2 On the other hand, the AR of the appellant argued that, department of the employee requires the details of his asset and liabilities and accordingly, the return was revised on 10.12.2016 as per the advice of the consultant. The AR of the appellant reiterated that, the income shown in both the return were same and appellant has also submitted the 7/12 extracts, which shows that, the appellant has approximately 15.3 Acre of land where crops like Banana, Moong, wheat were grown. The appellant further reiterated that, the ld AO has no evidence which proved that, the appellant has earned undisclosed income from undisclosed sources and made addition of Rs.10,12,177/- on account closing balance of cash in hand u/s 68, mere filing of revise return of income during demonetization period.*

*5.3 I have carefully considered the facts of the case and rival contention. On perusal of the same, it is seen that, the original return was filed on 28.08.2015 and revised return was filed on 10.12.2016 with the intention to declare the closing balance of cash in hand of Rs.10,12,177/-. The revised return was filed during the demonetization period from 8<sup>th</sup> November to 30<sup>th</sup> December, 2016. The appellant is deriving income from salary and agricultural activity, therefore, the original return filed in ITR-4 was correct. On perusal of submission of the appellant, it is seen that, such huge cash balance was never reflected in its accounts, prior and post this assessment year under appeal. Therefore, this cash has been shown on account of demonetization of Rs. 1000/- & Rs. 500 currency notes. Now, the issue is that, whether this closing balance of cash is from unaccounted source or accounted source. In this regard, we have to see/analyse the nature and source income earned by the appellant and in this regard, the appellant is deriving income from salary and agricultural income only. The appellant is a Government employee, working as IMV, RTO Nashik, earning net salary income of Rs.4,83,474/- and the closing balance of cash in hand of Rs.10,12,177/- declared as 31.03.2015 cannot be out of salary income, therefore, the same is ruled out. The*

*appellant has also shown income from interest from FD & saving bank account of Rs.67,013/-. The agricultural income earned by the appellant has been shown at Rs.6,32,604/- in the original return. The appellant has not been able to prove as to how the closing balance of cash in hand is from agricultural income and the explanation of the appellant are not supported by cash flow statement and have not reconciled with the sale of agricultural produces. Another glaring issue is the bank balance of Rs.14,53,005/- as at 31.03.2015 and the source and break up of this bank balance has not been provided, therefore, it is presumed that, the sale out of agricultural income must be deposited in the bank accounts and the closing bank balance cannot be out of salary income and income from other sources. Therefore, the explanation given by the AR of the appellant is not satisfactory. In fact, the grounds of appeal filed by the appellant is against the addition u/s.68 as bad in law because the appellant is not maintaining books of accounts. It is also surprising that, in the original return filed on 28.08.2015, the appellant has no closing cash balance and the closing cash balance has been created in the revised return filed on 10.12.2016. In this regard, the addition is made u/s.68 on the ground that, the appellant has failed to explain the nature and source of closing cash balance as at 31.3.2015 reflected in his balance sheet, therefore, the appellant cannot take the plea that the addition made u/s.68 is bad in law. In fact, in the grounds of appeal, the appellant is only harping on legal issue, without explaining the nature and source of closing cash balance at the year end. The case laws relied upon by the appellant is not applicable in the instant case, because the facts are different and it is not comparable.*

*In view of the above stated facts, the addition made by the AO is justified. Hence, addition made by the AO is sustained and the grounds of appeal are dismissed.”*

4. The factual position has remained the same before the tribunal as well wherein the assessee could not explain source of the impugned credits. The fact however remain that the assessee derives income from salary and he also owns approximately 15.3 acres of agricultural land along with the reasonable assumption of having some cash in hand. Faced with this situation, I hold that a lump sum addition of Rs.6,12,177/- out of that in issue of Rs.10,12,177/- would be just and proper with a rider that the

impugned estimation shall not be treated as a precedent. The assessee gets relief of Rs.4 lakhs in other words. Necessary computation shall follow as per law. Ordered accordingly.

5. This assessee's appeal is partly allowed in above terms.

Order pronounced on this 30<sup>th</sup> day of May, 2022.

Sd/-  
(S. S. GODARA)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> May, 2022.

*Sujeet (DOC)*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Nashik.
4. The Pr. CIT-2, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.