

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

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.428/Ahd/2019**  
**Assessment Year : 2012-13**

Shri Sanjeev Gajendra Pancholi Silver Avenue B/h. Ramvatika Society Panigate, Baroda PAN : ADRPP 9022 B	Vs	ITO, ward-3(1)(1) Baroda.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	Ms.Urvashi Shodhan, AR
Revenue by :	Shri R.R. Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 20/04/2022  
घोषणा की तारीख /Date of Pronouncement: 0306/2022

**आदेश/O R D E R**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

This appeal is filed by the assessee against order dated 25.2.2019 passed by the Commissioner of Income-tax (Appeals)-2, Vadodara relating to the Asst.Year 2012-13.

2. Brief facts of the case is that the assessee is an individual and an architect by profession and also partner in the partnership firm viz. M/s.Royal Enterprise, Baroda. For the Asst.Year 2012-13, the assessee filed its return of income on 30.9.2012 declaring total income of Rs.2,20,390/- along with agriculture income of Rs.35,690/-. The assessee's case was selected for scrutiny assessment and notices under section 143(2) and 142(1) of the

Income Tax Act, 1961 ("the Act" for short) was served upon the assessee and assessment was completed on 30.3.2015 assessing total income at Rs.19,59,220/- by making an addition of Rs.17,27,000/- under section 68 of the Act. The ld.AO has also made another addition of Rs.11,830/- on account of excess rent received by the assessee. As far as addition of Rs.17,27,000/- is concerned, the assessee claimed that this was a gift received from his uncle, Shri Narendra Maganbhai Pancholi by way of selling agriculture land situated at village Bharan. The assessee has produced copy of unregistered gift deed dated 31.3.2012 wherein Shri Narendra Maganbhai Pancholi stated that he has gifted Rs.17,27,000/- in instalments during August 1999 to March, 2012 out of sale proceeds received from the sale of agriculture land. The ld.AO has observed that the gift-deed was executed on a stamp-paper which was produced by the assessee, and the assessee could not able to produce neither the donor viz. Shri Narendra Maganbhai Pancholi or the witnesses as stated in the gift deed. Further, the gift deed is not a registered deed, and not even notarized by Notary Public. The assessee was requested to produce break-up of details of gift received in instalments from August, 2011 till March, 2012. The same was also not produced before the AO. Therefore, the AO treated this receipt as unexplained cash credit, an added to the total come of the assessee. Further, the assessee has also received total rent of Rs.1,56,000/- from M/s.Swadhar Finser P.Ltd. during the financial year 2011-012. However, the assessee has shown rent of Rs.1,39,100/- only in the computation of income. Therefore, the balance rent amount of Rs.16,900/- after making stand deduction of Rs.5,070/- remaining amount of Rs.11,830/- was added to the income of the assessee. The AO also initiated penalty proceedings under section 271(1)(c) of the Act for the above disallowance.

Aggrieved against the same, the assessee went in appeal before the ld.CIT(A).

3. The ld.CIT(A) after hearing the case in detail, dismissed the appeal filed by the assessee as follows:

*“4.3. First line of argument is addition u/s 68 of the Act is invalid as bank statement is not a books of account. I reminded the Ld. AR that this is a technical fault which can be cured by CIT(A) having coterminous power u/s 251 of the Act. The appellate authority has power to rectify such defects in order to protect loss of revenue. As a first appellate authority, my duty is to find fact and render justice to the appellant and also equally important to represent my own department on its own. [The Hon'ble Tribunal in ACIT vs. Roop ITA 3794 & 3795/Del/2009 dated 01/07/2011 held that whenever money is credited to the bank account of the assessee by way of gifts, onus is on the assessee to establish the identity of the donor, his capacity to make the gift and also to establish that amount so received was in fact a gift. The genuineness of the gift transaction cannot be determined without looking into the aspects of gift and existence of reciprocity and if the assessee fails to establish any of these facts, can be treated as assessee's income from undisclosed sources representing the assessee's own money, introduced in the garb of gifts received - addition made by the tax authority under a wrong provision of the IT Act cannot absolve the assessee from being taxed under the correct provisions of the Act.*

*4.4. Taking guidelines from this order, I consider it if fit to rectify the technical defect observed in assessment order. The addition u/s 68 made by the AO is hereby considered to be made u/s 69A of the Act being cash deposit as an 'unexplained money". The Ld. AR's argument is hereby extinguished and addition u/s.69A amounting to Rs.17,27,000/- is sustained accordingly.*

*4.5. Second argument of the Ld. AR is gift deed was valid as it was made on 31.3.2012. The AO has rightly pointed out that the gift deed is unregistered. Donor has failed to appear before the AO. Even during the appellate proceedings, the Ld. AR was asked to produce the donor before me. However, no response was received. Name, current address, contact, email ID, ITR for AY 2012-13 of the donor was also asked for. However, the Ld. AR hesitatingly bypassed the issue. Hence, genuineness of gift is still in doubt.*

*4.6. The third argument is source of cash from sale of agricultural land. First of all sale deed is unregistered and secondly, all the sale transactions pertain to FY 1999-2000 and FY 2008-09. Gift deed is dated 17/11/2011. Admittedly, cash was deposited in FY 2011-12.*

Clearly, time gap between date of sale and date of deposit happens to be more than 1000 days. The Ld. AR could not submit any reason as to what made the MAMA i.e. donor to keep cash in his hand for almost 3 years and later changed his mind to donate almost entire sale consideration of his agricultural land to his nephew i.e. the appellant. Further, the donor was 66 years old at the time of gift deed. If it so, he must have some resistance from his own son/daughter/immediate relatives to object such gift. In my considered view, gift deed is nothing but a make believe document to give a colour of genuineness, hence, cannot be relied upon. This cannot be an evidence to explain source of cash deposit in the appellant's bank account. The Ld. AR's argument that time gap in sale deed and gift deed hardly matters is not acceptable. One more thing to note is that all the unregistered sale deed pertaining to FYs 1999-2000 & 2008-09, the alleged sale proceeds were by A/c payee cheque, then there is no bank statement of donor produced by the appellant before the AO or before me to prove withdrawal of cash to gift to the appellant. There is no rational or logic to consider the appellant theory as palatable. In my considered view, the argument is quite spacious.

4.7. Donor has also not shown agriculture income in his ITR. From 7/12 extract filed before me, it suggests that the agricultural land bearing Survey No. 402, 765, 789, 869, 735, 709, 842, 877, 723, 749 bear loan from The Bharan Co-operative Multi Purpose Society Limited. Once the donor himself is debt ridden then issue of gift deed on sale of these lands becomes more suspicious. The Ld. AR could not controvert my findings. Hence, Ground No.2 is dismissed.”

4. Aggrieved against the CIT(A)'s order, the assessee is before the Tribunal raising the following grounds of appeal:

“1. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts of the appellant's case in confirming the action of the Ld. A.O. in making an addition of Rs.17,27,000/- U/s 68 of the Act on the erroneous plea that sources of cash deposited in the bank is unexplained.

2. Both the lower authorities have erred in law and on facts of the appellant's case in not appreciating the fact that no part of the cash deposited in the bank is unexplained.

3. The initiation of penalty proceedings U/s 271(1) (c) of the Act is not justified.”

5. The ld.counsel for the assessee submitted that the lower authorities are erred in making addition of Rs.17,27,000/- being the gift received from his uncle out of sale of agriculture land. The ld.AR also filed paper book wherein copy of the gift deed dated 31.3.2012 and also a fresh English translation of Declaration of Gift deed at page no.10 to 12 of the paper book. The ld.AR also placed in the paper book (i) copy of form 7/12 indicating the land holding by the donor, (ii) registered sale deed of the land sold by the partners, and (iii) latest 7/12 of the land record of the agriculture land sold by the donor. All the above documents are in Gujarat language only. Relying upon the gift deed, the ld.AR submitted that out of love and affection, Shri Narendra Maganbhai Pancholi gifted Rs.17,27,000/- between August, 2011 to March, 2012. The AO is not correct in treating this as unexplained cash, and therefore, the addition liable to be deleted.

6. Per contra, the ld.DR appearing for the Revenue supported the order of the lower authorities, and pleaded that the assessee has not come up with any new material and evidence, and therefore, the additions are to be upheld.

7. We have given our thoughtful consideration and perused material available on record including that of the paper book filed by the assessee. The Declaration of Gift (English translation copy) reads as follows:

*“Today, I Shri Narendrakumar Maganlal Pancholi aged 69 years, Caste: Hindu Business: Agriculturist residing At & PO Bharan, Tal.Ankleshwar, Dist. Bharuch makes this declaration of gift.*

*I am residing at above mentioned address since many years and am engaged in agricultural activities and owns agricultural lands in village Bharan. I had sold some agricultural lands which was either self-occupied or inherited. Details of the same is as under:*

Sr. No.	Sale Date	R.S.No.-At & Po Bharan	Sale Value
1	26.07.1999	430	2,52,000/-
2	30.03.2008	402, 465, 797, 867	2,12,999/-
3	28.03.2008	735	2,12,000/-
4	30.03.2008	709, 842, 887	1,99,999/-
5	28.03.2008	723	2,42,000/-
6	28.03.2008	748	1,25,000/-

*Till date, I have sold land aggregating to Rs.11,64,698/-. The said amount I had invested in private bank, shroff and money lenders, etc. This amount till August 2011 became around Rs. 18,00,000/- (Rupees Eighteen Lakh only). Out of this amount, I have gifted to my nephew Shri Sanjeev Gajendra Pancholi son of my real sister Induben Pancholi who is presently residing at Vadodara, during August 2011 to March 2012 in instalments aggregate amount Rs.17,27,000/- (Rupees Seventeen Lakh Twenty-Seven Thousand only). The said gift is given out of love and affection towards his family.*

*I and my family still owns agricultural lands and doing agricultural activities.*

*The aforesaid Declaration of gift is made with consent of my family & legal heirs for gift to my nephew Shri Sanjeev Pancholi, which is known to all and is binding to us.*

*Dated 31.03.2012*

*Declaration of Gift Executor:  
Shri Narendra Maganlal Pancholi  
Sd/-*

*Witnesses:  
1. Sd/-(K.Pancholi)  
2. Sd/-(S.Pancholi)*

8. Perusal of the above gift deed shows that the donor viz. Shri Narendra Maganbhai Pancholi has sold piece of agriculture land from 28.3.2008 to 30.3.2008 and one agriculture land on 26.7.1999 aggregating to Rs.11,64,698/-. The donor claimed that this amount has been invested in private bank, shroff and money lenders etc. and this amount till August 2011 accumulated around Rs.18.00 lakhs;

out of this Rs.18.00 lakhs, the donor gifted to the assessee during August, 2011 to March 2012 a sum of Rs.17,27,000/-. The assessee has not proved or explained before the lower authorities the instalments of amount of gift given by the donor and mode of payment. When the AO has requested to produce the donor as well as witnesses, the assessee failed to do so. However, it is noticed that the gift deed executed in the non-judicial stamp paper is dated as 17.11.2011, however, the same was executed on 31.3.2012, i.e. almost after 100 days. Similarly, the Id.CIT(A) has held that sale of agriculture land by the donor pertained to the financial year 1999-2000 and 2008-09, but the assessee claimed that the copies were given during the financial year 2011-12, and there is a clear cut time gap of more than thousand days from the date of sale and the date of alleged donation made to the assessee. The same has not been explained by the assessee before the lower authorities. Further, it is seen from the gift deed that the donor stated to have deposited the sale proceeds in private banks, but no bank passbook or income from agriculture activity has been produced before the lower authorities. The assessee has also failed to produce the donor or the witnesses before the authorities. Even before us, except gift deed, the other three documents viz. 7/12 extracts, registered sale deed and latest 7/12 of the land record, which are in Gujarat language are only produced and English translation was not furnished. Hence, based on these unexplained documents from pages no.13 to 19 we are not in a position to adjudicate the issue on hand. The Id.DR also repeated the same arguments as were made before the lower authorities, and no new documents could be furnished to establish genuineness of the gift received from Shri Narendra Maganbhai Pancholi. In the absence of the same, ground raised by

the assessee for deletion of impugned addition of Rs.17,27,000/- is hereby rejected.

9. Similar is the issue relating to addition of rental income of Rs.11,830/-. In support of the claim of the addition made by the AO, the assessee has not produced any details before us, hence, this ground is also rejected.

10. Ground No.4 is relating to initiation of penalty proceedings under section 271(1)(c) of the Act, which is consequential in nature. Hence, this ground of appeal is also rejected.

11. In the result appeal filed by the assessee is dismissed.

**Order pronounced in the Court on 3<sup>rd</sup> June, 2022 at Ahmedabad.**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, dated 3/06/2022