

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH  
(Conducted Through Virtual Court)  
**Before: Ms. Annapurna Gupta, Accountant Member**  
**And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 932/Ahd/2019**  
**Assessment Year 2015-16**

Shri Maheshkumar Natvarbhai Patel, 5/78, Mukhi Vas, Isanpur Mota, Dahegam, Dist. Gandhinagar-382355 PAN: CIDPP7678A (Appellant)	Vs	ITO, Ward-3, Gandhinagar (Respondent)
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**Assessee by: Shri Rupesh Shah, A.R.**  
**Revenue by: Shri S.H. Solanki, Sr. D.R.**

Date of hearing : 03-03-2022  
Date of pronouncement : 01-06-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Gandhinagar, Ahmedabad in Appeal no. CIT(A)/GNR/28/2017-18 vide order dated 16/04/2019 passed for the assessment year 2015-16.

2. The assessee has taken the following grounds of appeal:-

*“1. That both the lower authorities have ITO Ward 3 Gandhinagar as well as Lrd CIT(A)-Gandhinagar has erred in law and on facts has not appreciated the facts that appellant is agriculturist and various documents in support of agricultural agriculturist and agricultural income on sale proceeds of potato direct from cold storage deposited in agricultural loan account with Kotak Mahindra Bank treated as undisclosed source of income and confirm addition under S.68 which otherwise not warranted and required to be deleted in the interest of justice.*

*2. That both the lower authorities have ITO Ward 3 Gandhinagar as well as Lrd CIT(A)-Gandhinagar has erred in law and on facts has not appreciated the additional evidence made under rule 46A and given stereo type remand report therefore one more opportunity may be given in the interest of justice by remanding the case before the lower authorities.*

*3. That both the lower authorities have ITO Ward 3 Gandhinagar as well as Lrd CIT(A)-Gandhinagar has erred in law and on facts has not given adjustment of cash withdrawn and deposited from Kotak Mahindra Agricultural loan account.*

*4. That your appellant reserve right to amend/ alter/ modify any ground or grounds during the pendency of the appeal.*

*That your appellant shall ever prays for justice*

3. The brief facts of the case are that the assessee is an individual earning income from agricultural activities. The Ld. Assessing Officer received information that the assessee had deposited a sum of ₹ 18,63,000/- in its bank account but had not filed return of income. Accordingly notice u/s 148 of the Income Tax Act, 1961 (Act) was issued requiring the assessee to file return of income. In response to notice issued by the Department, the

assessee submitted copy of abstract of 7/12 for proof of ownership of land and submitted that assessee had availed loan of ₹ 30,91,292/- against agricultural produce. However, Ld. Assessing Officer was not satisfied with the explanation regarding proof of agricultural income, expenses and details of crop grown in respect of assessee's claim for cash deposit from loan taken for agricultural activity and redeposit of the loan out of that cash. Accordingly, Ld. Assessing Officer made an addition of ₹ 33, 12,000/- being the cash deposited by the assessee in his bank account, to the total income of the assessee with the following observations:

*“6. In the absence of any proof of agricultural activity, crop grown, expenses related to agricultural activity and copy of sales bills for agricultural income and further the assessee vide letter dated 10/10/2017 has submitted agriculture land holding/ownership specimen 7/12 for the F.Y.2014-15. In the form No.7/12, in the column "Name of crop" it was mentioned "Kapas'Y'Marcha" and "Arenda" .whereas storage receipt of Shivganga Cold Storage Pvt. Ltd shows that assessee has stored Potato. In spite of ample opportunities, assessee has not justified agriculture activity in respect details of crop grown, expenses incurred for agriculture activity and amount of agriculture income, name and complete address of the buyer to whom he has sold the agriculture products, copy of agriculture" sales bills, date and mode of receipt of agriculture income and there by failed to prove the source of cash deposit. Since the assessee has not complied with the Notices issued and failed to prove agriculture income and agriculture activity, therefore, it is hereby held that the entire amount*

*of Rs.33,12,000/- is unexplained income of the assessee derived from undisclosed sources. In absence of details and supporting proof of all the details called for vide Final Show cause notice for assessment u/s. 144 of the Act dated 02/11/2017, the undersigned was left with no other alternative but to finalize the assessment on the basis of materials available on record. Accordingly, the amount of Rs.33,12,000/- is hereby added to the total Income. Penalty proceedings u/s. 271(l)(c) of the Act are initiated separately for concealment of income.*

***[Addition: Rs. 33,12,000/-]***

4. In appeal, Ld. CIT(A) confirmed the addition made by the Ld. Assessing Officer with the following remarks:

*“7.1 In view of the analysis of details as made available through written submissions and evidences now filed and admitted, it is clear that the appellant had taken loan from Kotak Mahindra Bank which has been immediately transferred to his bank account on 07.04.2014 for Rs.30,91,292/-. The appellant has deposited the cash of Rs.33,12,000/- and out of cash withdrawals 64,03,000/- which included the loan of Rs.30,91,292/- immediately withdrawn on the same date of credit in this bank account. The appellant has paid the loan amount of Rs.4,97,876.28 on 16.12.2014 and further amount of Rs.6,32,632.94 totaling to Rs. 11,30,509.22. Thus, the balance amount utilized for re-depositing is worked out to Rs.21,81,000/-(approx.). Thus, the source of re-depositing of the cash is the loan amount only.*

*All the agricultural expenses have been claimed in rounded figures and paid in cash only and no supporting vouchers or bills from the labourers had been raised. Thus, the loan amount taken from Kotak Mahindra Bank Ltd. and credited in the cash book has been mainly utilized in incurring the expenses, if believed to be true and in that situation, the cash claimed to have been re-deposited out of the loan from Kotak Mahindra Bank Ltd. which was withdrawn immediately and credited in the cash book will not be found to be matching one. Further, at the same time, it is noticed that the appellant had not deposited any cash sales of potatoes in this bank account and the same has been routed through the cash book only. Furthermore, the appellant has not filed any proof showing that he himself has carried out the agricultural operations and also did not file the supporting vouchers and bills for purchase of potato seeds during the course of assessment proceedings as well as in the present appellate proceedings. Still further, the stock register did not reflect inward of potato for which the closing stock of Rs.30,00,000/- has been shown in the profit & loss account. Thus, the entire set of accounts is prepared afterwards and on the basis of sale bills of potato to give the name of agricultural receipts. The appellant might have sold the potatoes but it cannot be conclusively proved that the potatoes so sold were his own agricultural produces which were shifted to the cold storage as and when the crop was taken. Further, the theory of taking potato crop is not supported by the abstracts of 7/12 forms which did not mention taking of such crop. Further, the cash balance shown at the year end is only of Rs.5,727/- and no sale proceeds of the potato has*

*been reflected in the bank account maintained with the Kotak Mahindra Bank Ltd. Thus the Assessing Officer has correctly made the addition of Rs.33,12,000/- on account of undisclosed sources of income. The addition of Rs.33,12,000/- being the amount of alleged cash sale of potatoes made by the A.O. is therefore confirmed. Thus, the ground nos.2 and 3 of the appeal are dismissed.”*

5. Before us, the counsel for the assessee has submitted that the assessee did not file return of income under the bona fide belief that since the assessee is an agriculturalist and deriving only income from sale of agricultural produce, it is not under an obligation to file return of income. Further, the counsel for the assessee submitted that the addition made in reassessment proceedings are not sustainable for the reason that the revenue authorities did not appreciate the detailed evidence placed on record to show that the assessee was in receipt of agricultural income. The counsel for the assessee submitted that he has substantial agricultural land holding and drew our attention to pages 48 to 82 of paper book containing details of land ownership account of the appellant of different agricultural land ownership 7/12 and 8A account. Counsel submitted that the assessee is in possession of 80 bighas of land on which agricultural cultivation is done and this fact has not been disputed either by the Ld. Assessing Officer or the Ld. CIT(A). The counsel for the assessee submitted that during the impugned assessment year, the assessee obtained agricultural loan from Kotak Mahindra Bank of a sum of ₹ 30,91,292/- against the agricultural produce, which was transferred to his aforesaid bank account on 07-04-2014. He drew attention to page 14 of the paper book being the “Kotak Mahindra Loan Sanction Letter” against

pledge of cold storage receipt. The counsel for the assessee submitted that Ld. Assessing Officer without application of mind treated the entire cash deposited with the bank as income of the assessee. The counsel for the assessee further drew our attention to pages 17-18 of paper book being the “Kotak Mahindra Agricultural Loan Account” and submitted that a perusal of the same would show that the sum of ₹ 30,91,000/- was withdrawn as cash to mitigate the agricultural expenses. He further submitted, that the assessee was mainly engaged in potato production which was kept with cold storage for obtaining better price at the time of sale. It was the cold storage (Shiv Ganga cold storage) in which the stock of potato was stored which was maintaining books of accounts on behalf of the assessee. The counsel for the assessee drew our attention to pages 15 to 16 of the paper book being the complete potato sale with quantity, value and sale receipt during the year under consideration. The counsel submitted that Shiv Ganga cold storage charged rent at the time of sale on the basis of days the goods are kept in the cold storage. He drew attention to pages 23 to 45 of the paper book as proof of cold storage Contra confirmation and copy of Contra ledger account of the agricultural crop purchase parties along with copies of purchase business of potato purchased from the assessee. The counsel for the assessee also submitted that during the impugned financial year, the assessee received sale proceeds in cash and deposited the same with his Kotak Mahindra agricultural loan account, Naranpura Branch, Ahmedabad and made cash withdrawals of ₹ 30,91,000/- from the same bank account to meet out the agricultural expenses and various purchases to be made. The counsel for the assessee also draw our attention to pages 46 to 47 of the paper book being the certificates issued by Sarpanch of Gram Panchayat regarding agricultural

produce of potato done by the assessee and regarding ownership of around 80 bighas of agricultural land held by the assessee. The counsel for the assessee submitted that in light of the above evidences placed on record, the addition of ₹ 33,12,000/- is not sustainable in law and on facts in the instant case. In response, the Ld. Assessing Officer relied upon the observations of Ld. CIT(A) in the appeal order.

6. We have heard the rival contentions and perused the material on record. On the basis of documents produced before us, we find considerable force in the argument of the assessee that in the instant set of facts, no addition is called for. The assessee has substantial landholdings (approximately to the tune of 80 bighas) and this fact has not been disputed by the revenue authorities at any stage. Also, the assessee on the basis of his potato produce has secured loan from Kotak Mahindra Bank which was deposited in the bank account. The assessee has also produced before us details of potato produce grown during the year under consideration and has also produced certificates from the Sarpanch of Gram Panchayat as proof of land holding of around 80 bighas of agricultural land and also as proof of the fact that the assessee is an agriculturalist and is cultivating potato in winter. Further, the assessee has also shown details of potato produced during the impugned year and also demonstrated that the same have been kept in cold storage and sold subsequently at later date when the selling price is appropriate. It is against this stock of potatoes kept in cold storage that the assessee secured a bank loan from Kotak Mahindra Bank and it is this loan obtained from Kotak Mahindra Bank which was deposited in the bank account on the basis of which reassessment proceedings were initiated. From

the above facts, we are of the view that the assessee has been able to substantiate the source of deposits made in the bank account. On the basis of the above evidence and submissions of the counsel for the assessee, we are of the considered view that the entire evidence placed on record by the assessee has not been given due consideration and in the instant facts, the Ld. CIT(A) has erred in facts and in law in sustaining addition of ₹ 33,12,000/- to the income of the assessee on account of alleged cash sale of potatoes.

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

Order pronounced in the open court on 01-06-2022

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 01/06/2022**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद