

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR  
& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR**

आयकर अपील सं./I.T.A. No. 192/Rjt/2018

(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>Balkrushnabhai Parshottambhai Mangroliya</b> Prop. of Shriji Cold Storage, Stret No.1, Jesing Para, Nr. Post Office, Amreli	<b>बनाम/ Vs.</b>	<b>The I.T.O.</b> Ward – 3(1)(4), Amreli
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIHPM1679A		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Written Submission
प्रत्यर्थी की ओर से / Respondent by :	Shri B. D. Gupta, Sr. DR

सुनवाई की तारीख / Date of Hearing	31/05/2022
घोषणा की तारीख/Date of Pronouncement	24/08/2022

**ORDER**

**PER WASEEM AHMED - AM:**

The appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-3, Rajkot ('CIT(A)' in short) vide Appeal No. CIT(A)-3/0136/2015-16 dated 16.03.2018 arising in the assessment order dated 26.03.2015 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

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

- "1. *The Ld. CIT(A) has erred in law and facts in confirming income at Rs. 47,63,650/- thus confirming addition/disallowances of Rs. 44,54,970/-. The addition needs deletion.*
2. *The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 29,80,000/- based on position which he described erroneously, ignoring the details furnished before him and based on presumption and cermices. The addition needs deletion.*
3. *The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 9,15,2911- based on position which he described erroneously, ignoring the details furnished before him and based on presumption and cermices. The addition needs deletion.*
4. *The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 4,94,423/- based on position which he described erroneously, ignoring the details furnished before him and based on presumption and cermices. The addition needs deletion.*
5. *Taking into consideration the legal, statutory, factual and administrative aspects, no addition/disallowances of an amount of Rs. 29,80,000/-, Rs. 9,15,291/- & Rs. 4,94,423/- ought to have been confirmed. The additions need deletion.*
6. *The Ld CIT(A) to erred in law and facts in not considering that the assessment made is bad in law and deserves annulment.*
7. *The Ld. CIT(A) has erred in law and facts in not considering that, no adequate, sufficient and reasonable opportunity has been provided at the time of assessment stage. The assessment needs annulment.*
8. *Without prejudice, the Ld. CIT(A) has erred in law and facts in not providing adequate, sufficient and reasonable opportunity at the time of appellate stage. The assessment needs annulment"*

2. The interconnected issue raised by the assessee is that the Id. CIT-A erred in confirming the order of the AO by sustaining various additions.

3. The brief facts are that the assessee is an individual and engaged in the business of cold storage facility under the name and style of "Shriji Cold Storage" and also partner in a firm namely M/s "Sardar Dehydration". The assessee in the year under consideration declared income of Rs. 3,08,680/- besides the agricultural income of Rs. 4,94,423/- only.

3.1 The AO during the assessment proceedings found that the assessee has Received unsecured loan of Rs, 29,80,000/- from M/s "Sardar Dehydration" a partnership and simultaneously, the loan amounting to 80 Lakh was also taken

from Amereli Nagrik Sahkari Bank on which paying interest of Rs. 9,75,297/-. But the loan was utilized in making interest free advance to "Sardar Dehydration" for Rs. 59,50,000/- only. Thus, the AO show caused the assessee to explain the unsecured loan under the provision of 68 of the Act and also proposed to disallow the interest expenses.

3.2 The assessee in response submitted that the unsecured of Rs. 29.80 Lakh was credited through banking channel from the firm in which he is partner and has duly disclosed in the respective books of accounts. Likewise, there is business relation between the proprietary concern "Shriji Cold Storage" and firm "Sardar Dehydration". Therefore genuineness of loan credit cannot be doubted.

3.3 With regard to amount transferred to firm out of bank loan, it was submitted that the amount transferred was in the nature of capital investment for the business purpose. Accordingly interest expenses on bank loan was also genuine.

3.4 However, the AO found that on the one side the firm is accepting new capital from the assessee to tune of Rs. 61.5 lakh and on the other hand, the loan is given to the assessee. Further, the firm has also accepted unsecured loan of Rs. 21,01,500 and bank loan of Rs. 2,41,90,204/- meaning thereby that firm "Sardar Dehydration" is already under the debt. Therefore, the creditworthiness of firm is not proved. Therefore, the AO treated unsecured loan as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

3.5 Likewise, the AO held that on one hand, the assessee accepted interest bearing borrowing from bank and on the other hand transferred the same to the firm without charging interest on capital. Beside the amount transferred to the firm the assessee provided interest free advances to other person namely Shri Ratilal Shantilal and M/s Bhikahalal & bros for Rs. 10.25 lakh only. The assessee was also showing cash in hand for Rs. 14,80,240/- which was not required for the cold storage business. Therefore, the AO disallowed the interest income.

3.6 The AO further found that the assessee during the year disclosed gross agricultural income of Rs. 9,02,569/- and expenses of Rs. 4,08,146/- and thereby declared net agricultural income of Rs. 4,94,423/-. However no supporting evidences were furnished to justify the expenses incurred except the copy of 7/12 extract and form 8A. Further, from the extract of 7/12 it was found that the assessee is the owner for 3.34 bighas of agricultural land which is not capable for production of agricultural goods valuing to Rs. 9,02,569/-. Thus the AO treated the agricultural income by treating the same as income from other sources.

4. On appeal by the assessee, the learned CIT(A) also confirmed the order of the AO by observing as under:

*"5.2 Ground 2 is regarding addition u/s 68 being unsecured loan of Rs. 29.80 lac which were added u/s 68 by the AO on account of non-furnishing of documents and evidences establishing identity, creditworthiness and genuineness of the depositor. It is apparent from the assessment order that the AO has specifically asked for copy of return filed by the depositor and his bank statement which were not submitted. It was claimed by the appellant in his written submission that copies of audited accounts of M/s Sardar Dehydration will be submitted before me by 10.02.2018 but the same has not been submitted. The appellant has also claimed before me that this loan was made through account payee cheque and except copy of Income Tax Return for AY 2012-13, all necessary evidences were submitted during the assessment proceedings. Obviously this claim of the appellant is abject contrast to the AO's observation. A Xerox copy of so-called letter submitted to the AO has been enclosed with the submission. First of all this document is an unmarked, unsigned, unstamped and undated and hence having zero evidentiary value. Further in this letter no evidence establishing identity especially tax identity of the depositor has been mentioned except stating that the depositor is a related party with whom the appellant is having frequent business transaction and the loan has been given through cheque. This so called evidence not submitted before the AO cannot now be admitted in violation of Rule 46A. Moresoever, it has got no evidentiary value. Further in absence of any documents like ITR, bank statement, copy of Profit & Loss account and balance-sheet of depositor showing source of such loan in the hands of the depositor, this so-called additional evidence will not help the appellant. The obligation of establishing creditworthiness and identity of the depositor remains unfulfilled. It is a trite law that onus is on the appellant who is making a claim of unsecured loan to establish to the satisfaction of the AO the identity and capacity of the depositor to advance such loan. The appellant has miserably failed in doing so and hence the addition made of Rs. 29.80 lac is confirmed. Ground no. 2 is dismissed.*

*5.3 Ground 3 is regarding disallowance of bank loan interest of Rs. 9,75,297/- paid to Amreli Nagrik Sahkari Bank Ltd. on credit facility availed of Rs. 80.00 lac. The AO has made this disallowance after observing that this credit facility of Rs. 80.00 lac was utilized mainly to advance interest free loan of i) Rs. 64,90,000/- to Shri B.P. Mangroliya ii) Rs. 10,00,000/- to Shri Ratilal Shantilal and iii) Rs. 25,000/- to Shri Bhikalal & Bros. obviously for non-business purposes. The AO also wrote a letter to Amreli Nagarik Sahakari Bank Ltd. which stated in its reply that the loan had been sanctioned for the purpose of development of business of Shriji Cold Storage only. It has been claimed by the appellant that transfer of money from credit facility account to*

*the account of Shri B.P. Mangroliya where appellant is a partner was not for diverting the interest bearing fund for personal use of appellant because appellant is owner of both the businesses and charging of interest by one concern from another concern will amount to charging interest from self. There is a contradiction in this submission. Being a partner of concern does not mean the appellant is owner of that concern. That concern is obviously a separate entity and providing interest free fund will definitely call for explanation of such diversion to examine whether such diversion was for the business purposes. In present case, the appellant has failed to show the business expediency in granting such interest free loan to another entity in which the appellant is only a partner. Therefore, no fault is found in AO's order. Ground 3 is dismissed.*

*5.4 Ground 4 is in respect of treating the declared net agricultural income of Rs. 4,94,423/- as bogus and taxing the same as income from other sources (unspecified sources). The appellant has filed ledger copy of agricultural income in his books i.e. showing gross receipts of Rs. 9,02,569/-, Expenses of Rs. 4,08,146/- and net agricultural income of Rs. 4,94,423/- The appellant has also filed form 7/12 and 8A regarding 3.20 hectare of land but AO has noted that appellant is one of the six co-owners only having his share of 0.53 hectare i.e. around 3.34 Bighas of land. No sale bill or purchase bill showing agricultural activity was submitted before the AO. Even during the appellate proceedings, vouchers regarding sale and purchase could not be submitted. In such circumstance, AO's observation that claim of huge agricultural receipts of Rs. 9 lac from 3,4 Bigha of land is absolutely unbelievable, is totally correct. No interference is called for against this addition. This ground is dismissed."*

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

5.1 The learned AR before us filed the written submission wherein it was contended that the amount of loan of ₹29.80 lakhs was received from the partnership firm in which he is a partner. The amount of loan was received through banking channel. The assessee on the earlier occasion has advanced loan to the firm as capital contribution for ₹80 lakhs. Thus, the question of doubting the loan taken by the assessee under the provisions of section 68 of the Act does not arise.

5.2 The learned AR with respect to the interest expenses submitted that the entire amount of loan taken by him was utilized for the commercial purposes. As such the assessee has advanced the money to the firm as capital contribution which was ultimately used for the purpose of business. As such the AO has made the disallowance on some presumption basis without pointing out any cogent material that the borrowed fund was diverted for nonbusiness purposes.

5.3 The learned AR with respect to agricultural income submitted that fact of holding the land by the assessee was nowhere doubted. The assessee was one of the co-owner of the agricultural land. As such all other co-owners have disclosed the agriculture income but the AO has not made any cross verification from them.

5.4 The learned AR without prejudice to the above also made a request to restore the issue to the file of the AO for necessary verification as per the provisions of law.

5.5 On the other hand the learned DR before us vehemently supported the order of the authorities below but raised no objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law.

6. We have heard the learned DR and perused the materials available on record. From the preceding discussion, we note that the AO has made the addition on 3 counts which were subsequently confirmed by the learned CIT-A as detailed below:

- i. Loan taken from the partnership firm of ₹ 29.80 lakhs only
- ii. Diversion of interest-bearing fund on which interest was paid for ₹ 9,75,297.00 only.
- iii. Agriculture income was treated as income from other sources.

As regards the loan taken from the partnership firm, we note that there was no financial statements furnished by the assessee to justify the creditworthiness of the partnership firm. Likewise, there was no nexus established that the money advanced by the assessee to the firm as loan was taken by the assessee out of such fund.

6.1 As regards the interest disallowance, we note that there is no information arising from the order of the authorities below whether the amount was utilized for the purpose of the business.

6.2 With respect to the treatment of agricultural income as income from other sources, we note that there is no information available on record whether the other co-owners have disclosed the agriculture income in their respective returns. Likewise, there was no information whether there was the agriculture income declared by the assessee in the earlier and later years.

6.3 In view of the above and in the interest of justice and fair play we are inclined to provide one more opportunity to the assessee to place his points of contention along with the supporting evidence. The AO shall frame the assessment de novo. Hence, the grounds of appeal of the assessee are allowed for the statistical purposes.

7. In the result, the appeal of the assessee is allowed for the statistical purposes.

**This Order pronounced in Open Court on 24/08/2022**

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER  
Ahmedabad: Dated 24/08/2022

Sd/-  
(WASEEM AHMED)  
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,

Deputy/Asstt. Registrar  
ITAT, Rajkot