

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT.SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.499/Ahd/2019
Assessment Year :2010-11

Shri Bipinchandra Purshotamdas Patel Shri Hari Complex Ambica Bus stand Highway Road, Kalol Dist. Gandhinagar 382 721. PAN AISPP 2620 B	Vs.	ITO, Ward-1 Mehsana.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
Assessee by :	Shri Sanjay Prajapati, CA
Revenue by :	Shri M. Anand Kumar, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **01/07/2022**
घोषणा की तारीख /**Date of Pronouncement**: **15/09/2022**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the ld. Commissioner of Income-Tax(Appeals), Gandhinagar [hereinafter referred to as "Ld.CIT(A) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) dated 16.11.2018 pertaining to the Asst.Year 2010-11.

2. The present appeal of the assessee is barred by limitation by 52 days. The assessee filed an application for condonation of delay stating that the delay in filing the appeal was caused on account of the fact that he was not in good health and had undergone medical treatment and on recovering from the medical treatment he immediately contacted his tax consultant and filed the appeal. The

assessee has stated that he had received order of the Id.CIT(A) on 5.12.2018 and the appeal was filed on 26.3.2019, and hence, there was delay of 52 days which was on account of medical treatment that he was undergoing. He also filed doctor's prescription dated 23.3.2019 under whom he had taken treatment, a copy of which was placed before us, wherein it was stated that the assessee was suffering from recurrent fever, infection because of DM and was being advised for rest from 25.1.2019 to 22.3.2019.

The Id.DR did not object to the condonation of delay.

3. Noting the facts and circumstances leading to the small delay in the filing of appeal by 52 days, which was satisfactorily demonstrated before us to have occurred on account of circumstances beyond the control of the assessee, in the interest of justice the delay was condoned and order pronounced in the open court itself. Thereafter the appeal was proceeded to be heard with.

4. Sole issue in the present appeal relates to the addition made to the income of the assessee on account of unexplained cash deposits of Rs.6.00 lakhs in bank account. The said cash deposit was made in the bank account of the assessee maintained with Bank of India. The fact being that the Assessing Officer (AO) had noted cash deposits in the bank account of the assessee to the tune of Rs.16,73,000/- and in the absence of satisfactory explanation, he added entire cash deposits to the income of the assessee. The Id.CIT(A) noted that the assessee had shown business receipts to the tune of Rs.11,69,500/- from his business in M/s.Krunal Motors and noted, from the details furnished by the assessee before him, that cash deposits to the said extent were attributable to the same. For the remaining, however, the Id.CIT(A) found that the assessee

had attributed the cash deposits to the sale consideration received from a sale of land jointly owned by the assessee with his family members, his share in the same being Rs.7.50 lakhs which was stated to have been deposited – Rs.1,50,000/- in Bank of India and Rs.6,00,000/- in Dena Bank account of his brother, Shri Anilkumar P. Patel, and this Rs.6.00 lakhs was withdrawn by his brother, and given to him in cash which in turn he deposited in his Bank of India account. The Id.CIT(A) had rejected this explanation of the assessee stating that the assessee had been unable to substantiate the same.

5. Before us, the Id.counsel for the assessee stated that sufficient documentary evidence in support of his explanation had been filed to the authorities below. He pointed out that sale agreement mentioning his share in the sale of property had been filed and our attention to the same was drawn to PB page no.36 and 37 (in Gujarati and translated copy of which were also filed before us and placed at PB Page No.13 to 15). He pointed out from the same that two cheques of Rs.6.00 lakhs each dated 25.5.2009 was received on account of the said sale of the land. He thereafter drew our attention to the copies of bank statement of his brother, Anilkumar Patel pointing out that the said Rs.12 lakhs was deposited in his bank account on 30.6.2009 which was subsequently withdrawn in cash in amount of Rs.4.00 lakhs, Rs.3.00 lakhs and two figures of Rs.1.00 lakhs by 18.7.2009 and it was out of this cash withdrawal upto 18.7.2009 that the assessee was given his share of six lakhs which in turn he deposited in his account in Bank of India from 2.7.2009 to 24.7.2009, copy of which was placed before us also at P.B. The Id.counsel therefore stated that the Revenue authorities had wrongly stated that the assessee had not duly substantiated his explanation of cash available of Rs.6.00 lakhs in his Bank of India, as being from sale receipts of land sold by him along with his other

family members, and attributable to his share in the same. The Id.DR, on the other hand, relied on the order of the Id.CIT(A).

6. We have heard both the parties. We have also gone through the documents placed and referred to before us, and we find that the assessee's explanation for source of cash deposits of Rs.6.00 lakhs in his Bank of India account, which is in dispute before us, as being out of his share in the sale of land, jointly owned along with members of his family, is duly and satisfactorily substantiated.

The sale deed of the land sold by the family of the assessee, English translated copy of which was placed before us at P.B 2-20, clearly mentions land sold by six persons including the assessee for Rs.45 lacs and assessee being paid Rs.7,50,000/- in all in two instalments (Rs.1,50,000 + Rs.6,00,000/-). This transaction took place on 11/05/2009 and the two post dated cheques dated 11/05/2009 & 30/06/2009 respectively were issued from Dena Bank, Bhayander (East) Thane Branch, Mumbai. The assessee's brother was also paid same amount by issuing identical post dated cheques. The joint bank account of the assessee and his brother, placed before us at P.B page No.5 on 27/06/2009, shows Rs. 12 lacs deposited on 30/06/2009, the narration in the bank statement mentioning "Bhayander East Mumbai". It is evident from the facts before us that the amount deposited pertained to two cheques of Rs. 6 lacs each received by the brothers on sale of land. The bank statement further reveals withdrawal in cash of Rs.8 lacs in three transactions of Rs, 4 lacs, Rs.3 lacs and Rs. 1 lac on 01st, 03rd, and 06th July 2009, i.e immediately after deposit of cheque received on sale of land. Considering that out of Rs. 12 lacs deposited, Rs. 6 lacs pertained to assessee's share, it is but reasonable to believe that the withdrawal in cash immediately thereafter was to pay off the

assesses share in the consideration received. The Rs.6 lacs deposited in cash in assesses bank account in Bank of India, which is in dispute before us as source of the same being unexplained, we find was primarily deposited from 06th July to 24th July, with Rs.5.35 lacs alone deposited on 24th July. Considering that the assessee had received his share in the land sold of Rs. 6 lacs in cash from his brother before the cash deposit in his account, the source of the cash so deposited can safely be attributed to this consideration received by him.

7. The entire evidences, as noted above by us reasonably and satisfactorily demonstrating the flow of money to the assessee in cash from the proceeds received of land sold we see no reason to disbelieve the assesses explanation of the source of cash deposit in bank of Rs. 6lacs being attributable to his share in land sold by family received in cash from his brother . Addition of Rs.6,00,000/- on account of unexplained cash deposits is accordingly directed to be deleted.

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

Order pronounced in the Court on 15th September, 2022 at Ahmedabad.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 15/09/2022

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