

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 701/Ahd/2019
Assessment Year 2010-11**

Rajeshkumar Baldevbhai Patel 93, Tejendra Nagar, At & Post: Ramnagar- 382721 Tal. Kalol, Dist. Gandhinagar PAN: ARCPP3952F (Appellant)	Vs	The ITO, Ward-4, Mehsana (Respondent)
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**Appellant by : Shri Vivek Chavda, A.R.
Respondent by : Shri V.K. Singh, Sr.D.R.**

Date of hearing : 02-08-2022
Date of pronouncement : 19-10-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee against the order dated 07.02.2019 passed by the Commissioner of Income Tax (Appeals), Gandhinagar, as against the Assessment order passed under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2010-11.

2. The brief facts of the case is that the assessee is an individual and engaged in agricultural activities and not filed the Return of Income. It is noticed by the Assessing Officer from the AIR information, the assessee has made cash deposits of Rs. 14,50,500/- in the saving bank account with Bank of India. In order to verify the above transaction, a letter dated 01.03.2017 was issued. However, no response from the assessee.

2.1. Therefore the assessment was reopened by issuing a notice u/s. 148 of the Act on 27.03.2017 and duly served upon the assessee by affixture. The Assessing Officer issued further notices u/s. 142(1) calling upon the details from the assessee however, as there is no response to the above notices. The Assessing Officer collected the bank account details u/s. 133(6) of the Act from Bank of India and made the cash deposit of Rs. 14,50,500/- as addition u/s. 68 of the Act. The A.O. also added the interest from the saving bank account of Rs. 4,840/- and determined the total income as Rs. 14,55,340/- and demanded taxes thereon and also initiated penalty proceedings.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals), Gandhinagar. During the appellate proceedings, the assessee produced the details of unsecured loans from 27 persons and confirmations from the parties who are mainly engaged in agricultural activities. The assessee further claimed the above loans are genuine and availed for the purpose of buying a residential property. However as the

property deal could not be finalized, the loans so taken have been returned back to the creditors. The Ld. CIT(A) called for a Remand Report from the Assessing Officer. Based on the above Remand Report, the Ld. CIT(A) treated the cash credit of Rs. 7,74,000/- as properly explained and the remaining cash credit of Rs. 6,75,500/- are not explained properly as follows:

(2) Amount of Rs.3,00,000/- is claimed to have been taken from the appellant's wife i.e. Smt. Kiranben R. Patel whose source of income is stated to be sale of homemade namkeen & dairy items and garment job work. In support of the business activity, the appellant has submitted some random vouchers of purchases. These total four vouchers are in the range of Rs.2100/- to Rs.1890/- which do not bear the signatures of recipients even. These vouchers are dated 01/11/2009, 01/12/2009, 01/03/2010 & 01/07/2009. Such kind of self-serving evidence does not prove the creditworthiness of the creditor. Further, the AO as well as the appellant has not furnished any further details in this regard so as to explain as to whether the source of cash loan given is receipts of one year or the past savings of the said creditor. However, the appellant has relied on the decisions in the case of ACIT vs. Vardaan Fashion & others and in other five cases. Ongoing through these decisions, it is noticed that all these decisions are with regard to penalty proceedings u/s.271D whereas in the instant case, the issue is of genuineness of transaction alongwith creditworthiness of the creditor and not that of taking cash loan. Therefore, the facts of this case are clearly distinguishable. It has also not been clarified since when the appellant's wife is carrying out these activities. In absence of such vital details, cash amount of Rs,3,00,000/- as savings in her hand cannot be believed to this extent. Therefore, after considering the totality of the facts and circumstances, Rs.1,00,000/- is treated as explained and Rs.2,00,000/- is held to be unexplained.

(3) Rs.3,25,000/- is claimed to have been taken from the appellant's father i.e. Shri Baldevbhai Ramdas Patel who in turn has taken loan from five persons, all agriculturists. It is not clear that what kind of further enquiries have been conducted by the AO with regard to these five lenders. Nevertheless, copies of confirmation on stamp paper, aadhar card and 7/12 extract have been obtained as available on pages 42 to 59 of the remand report. On perusal of these details following facts are noticed:-

(i) All the five persons have purchased the stamp paper in sr. nos. 72840 to 72844 on 18th July, 2018 at 15.45 pm which suggest that these confirmations were not given by the lenders but obtained by the appellant to present as connected evidences.

(ii) Except in the case of Pate! Shri Shankarbhai Narottamdas, in other cases, the co-owners are more than five persons and the land holding is also not commensurating to their creditworthiness. All the land co-owners must be having their respective families and considering their land holding, it can't be believed that each one of them must be having such creditworthiness.

(iii) In none of the case, any evidence of sale of agriculture produce has been submitted. Mere holding of land does not prove that there was agricultural produce which remitted in sufficient cash which in turn could be lent further.

Thus, the AO as well as the appellant both have failed to submit cogent evidences to prove the creditworthiness of these persons. In fact, the appellant appears to have created these manufactured evidence to explain the source of deposits made in cash. In view of these facts, the entire amount of cash claimed to have been taken from the appellant's father is treated as unexplained and the addition made on this count is upheld.

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(6) Rs.18,000/- is claimed to have been taken from Shri Vishnubhai Chandulal Patel. He has submitted the contra confirmation. His source of income is business of wholesale trading. He too has not maintained any bank account and no return of income has also been filed by him. However, the AO has not mentioned what kind of whole sale trading this person is doing. He has also failed to give a finding with regard to his creditworthiness. Mere filing of contra confirmation will not prove the creditworthiness of the creditor. Considering the fact, this credit of Rs. 18,000/- is treated as unexplained.

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(16) Rs.19,500/- is claimed to have been taken from Shri Vishnubhai Ramdas Patel. He has filed contra confirmation. His source of income is business of services. He has not maintained any bank account and no return of income has also been filed by him. However, the AO has not mentioned what kind of services this person is rendering and he has also failed to give a finding with regard to his creditworthiness. Mere filing of contra confirmation will not prove the creditworthiness of the creditor. Considering this fact, this credit of Rs.19,500/- treated as unexplained.

(17) Rs. 19,000/- is claimed to have been taken from Ms. Shobhanaben Ramanbhai Patel. She has filed contra confirmation. She had not been engaged in any business activities during the year under consideration. She has not maintained any bank account and no return of income has also been filed by her. The AO has not made any further enquiries about the source of her income and he has also failed to give a finding with

regard to her creditworthiness. Mere filing of contra confirmation will not prove the creditworthiness of the creditor. Considering this fact, this credit of Rs.19,000/- is treated as unexplained.

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(19) Rs.17,500/- is claimed to have been taken from Shri Vikrambhai Bholabhai Patel. He has filed contra confirmation. His source of income is from business. He has not maintained any bank account and no return of income has also been filed by him. However, the AO has not mentioned what kind of business this person is doing and he has also failed to give a finding with regard to his creditworthiness. Considering this fact, this credit of Rs.17,500/- is treated as unexplained.

(20) Rs.18,000/- is claimed to have been taken from Shri Shaileshkumar Shankarlal Patel. He has filed contra confirmation. His source of income is income from business of wholesale trading. He has not maintained any bank account and no return of income has also been filed by him. However, the AO has not mentioned what kind of business this person is doing and he has also failed to give a finding with regard to his creditworthiness. Mere filing of contra confirmation will not prove the creditworthiness of the creditor. Considering this fact, this credit of Rs.18,000/- is treated as unexplained.

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(24) Rs.20,000/- is claimed to have been taken from Shri Sureshbhai Keshavlal Patel. He has filed contra confirmation. His source of income is business activities. He has not maintained any bank account and no return of income has also been filed by him. However, the AO has not mentioned what kind of business this person is doing and he has also failed to give a finding with regard to his creditworthiness. Mere filing of contra confirmation will not prove the creditworthiness of the creditor. Considering this fact, this credit of Rs.18,000/- is treated as unexplained.

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b. Rs.18,500/- is claimed to have been taken from Shri Ghanshyambhai Gandadal Patel. His statement on oath was recorded wherein the source of income is claimed to be as agricultural income. He has not filed any return of income. No supporting evidences like copy of 7/12 in support of agricultural income earned by him has been produced. The AO has failed to give a finding with regard to his creditworthiness. Mere filing of contra confirmation will not prove the creditworthiness of the creditor. Considering this fact, this credit of Rs.18,500/- is treated as unexplained.

c. Rs.20,000/- is claimed to have been taken from Shri Jayantibhai Chandulal Patel. His statement on oath was recorded wherein the source of income is shown as labour work, Pashupalan work. He has not filed any return of income. However, the AO has not mentioned what kind of labour work this person is doing and he has also failed to give a finding with regard to his creditworthiness. Mere filing of contra confirmation will not prove the creditworthiness of the creditor. Considering this fact, this credit of Rs.20,000/- is treated as unexplained.

3.1. Thus the Ld. CIT(A) partly allowed the assessee's appeal.

4. Aggrieved against the same, the assessee is in appeal before us. The Ld. Counsel for the assessee submitted before us a Paper Book containing the account statement of assessee's wife Smt. Kiraben Rajeshkumar Patel for the Financial Year 2008-09 and 2009-10 wherein income generated from Stitching of Garment, Jobwork on Leather Material and Sales of Namkeen, Athana and Confirmation letters along with Photo Identity Proof and Ledger of Agricultural land holding by various creditors from page nos. 19 to 94. Thus the Ld. A.R. submitted that the Ld. CIT(A) erred in confirming the addition of Rs. 2,00,000/- received from assessee's wife as the Vouchers are self-serving evidences and does not prove the creditworthiness of the creditor. Similarly, in the case of assessee's father, who in turn borrowed money from five other persons amounting to Rs. 3,25,000/- for the purchase of property by his son, the A.O. held that the same as not genuine. Similarly, in the case of other eight creditors when the sum is less than Rs. 2,000/- who are happened to be friends and relatives who offered above credit for purchase of property.

4.2. In support of the same, the Confirmation Letter from the concerned creditors were produced with their Aadhar Card, since many of them are not Income Tax assesseees. The Assessing Officer during the Remand Proceedings, partially accepted the some of the creditor's loan transactions and remaining creditor's loan transactions are not accepted by the A.O. and added as the unexplained income of the assessee. As the assessee having repaid the above loans, since the purchase of property was not materialized, the additions made by the Assessing Officer is liable to be deleted.

5. Per contra, Ld. D.R. appearing for the Revenue strongly supported the order of the Ld. CIT(A) and pleaded that the additions made by the CIT(A) does not require any interference and thereby dismissed the assessee's appeal.

6. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. It is seen from record, the Assessing Officer during the Remand proceedings has taken much pain in verifying the genuineness of the loans by the various creditors by issuing them summons and notices u/s. 133(6) of the Act. The Assessing Officer disbelieved the loan amount of Rs. 3,00,000/- given by assessee's wife who is said to be engaged in the sale of homemade namkeen & dairy items and garment job work. It is further claimed that the cash deposits made in the bank account is the joint account with the assessee's wife only. Similarly in the case of loan received from

assessee's father of Rs. 3,25,000/- in turn assessee's father borrowed loans from his five friends who are also engaged in agricultural activities. Similarly the other creditors wherein loan received by the assessee are less than Rs. 20,000/- each. The assessee's contention that the loan has been repaid as he could not buy the residential property due to some unavoidable reasons is found to be genuine and reasonable cause. However the A.O. has not made any verification of the repayment of loan. In our considered view, the A.O. has made huge verification on small time assesseees, many of them are seen to be agriculturists in a small village.

6.1. In support of its claim the assessee has filed confirmation from all the parties. The assessee also produced land ledger account of the various creditors to prove that they are engaged in agricultural activities. In the above circumstances, we do not find that the addition made by the Assessing Officer is correct in law. For the above reasons, the addition confirmed by the Ld. CIT(A) is of Rs. 6,75,500/- are hereby deleted.

7. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 19-10-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 19/10/2022

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