

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No.1167/Ahd/2018  
(Assessment Year: 2014-15)

Ishwarbhai Somnath Patel 57/2, CH-Type, Sector-28 Gandhinagar-382021	Vs.	ITO Ward-2, Gandhinagar
[PAN No.AHHPP5128J]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	None
<b>Respondent by:</b>	Dr. Mukesh Jain, Sr. DR

<b>Date of Hearing</b>	14.09.2022
<b>Date of Pronouncement</b>	28.10.2022

**ORDER**

This appeal is filed by the assessee against the order dated 16.03.2018 passed by the Ld. CIT(Appeals), Gandhinagar, Ahmedabad for A.Y. 2014-15.

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

*“The grounds of appeal mentioned hereunder are without prejudice to one another*

1. Section 68

*Addition made treating cash deposits in to bank account as unexplained cash credits The Learned AO erred in making addition of Rs, 4,05,000/- treating explained cash deposits as unexplained deposits. The said deposits were made out of income earned and offered to tax in return of income and withdrawals from bank account during the year. The learned AO grievously erred on facts as also in law in making addition of Income of Rs.1,19,31,000/- which is equal to amount of cash deposited in bank account The addition is in total disregards to the facts of the appellant's case and merely on suspicion, conjectures and surmises and is totally unjustified and deserves to be deleted and may kindly be deleted.*

*On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in holding that AO is correct and justified.*

2. Section 56

*Addition on account to undisclosed interest of saving bank account*

- 2 -

*RSPL Limited (company which was purchasing lands in the name of the appellant) has opened bank account in the name of appellant and the said account was operated by the company only. Amount deposited including interest thereon belongs to the company.*

*On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in holding that AO is correct and justified.*

3. *The learned AO erred in charging interest u/s 234A, 234B and u/s 234C of the Act when demand of Income Tax itself is not sustainable.*

4. *The learned AO erred in initiating penalty proceedings u/s 271(1)(c) of the Act.*

*Your Honour's appellant craves leave to add, amend, alter or withdraw any or more grounds of appeal on / or before the hearing of appeal.”*

3. The assessee e-filed his return of income for A.Y. 2014-15 on 07.07.2014 declaring total income at Rs. 2,51,290/-. The same was processed u/s 143(1) by CPC, Bangalore and refund of Rs. 21,220/- including interest u/s 244A of Rs. 914/- was granted. The case was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued on 28.08.2015 and served on the assessee on 01.09.2015. In response to the notice, the assessee through Authorised Representative furnished the details. The Assessing Officer observed that the assessee derives income from pension, interest and commission. During the Financial Year 2013-14 as per AIR information the assessee purchased four agricultural lands at Dwarka, Gujarat. Thereafter, the assessee sold the properties bearing survey no. 255 for a sale consideration of Rs. 68,83,640/- and survey no. 247 and survey no. 250 for Rs. 1,34,19,885/- respectively. The sale price was worked out on the basis of purchase price plus stamp duty and Registration fees. The assessee explained that the one RSPL Ltd. had financed the investment in properties through him as he was an agriculturist and the land could be

- 3 -

purchased by an agriculturist only as per the Government Rules. So he lend his name and entire finance was made by the said RSPL Ltd. by opening a separate bank account with State Bank of India, Jamnagar Branch. The assessee also explained that for the said purpose a Memorandum of Understanding was executed on 27.12.2013 between himself and the RSPL Ltd. giving all the powers to the assessee in respect of buying and selling of the said properties. According to said MOU, the assessee would be paid Commission @ 1% on the value of the property as and when the properties are transferred in the name of the company RSPL Ltd. and accordingly, he had been shown as paid Commission of Rs. 2,03,035/- on transfer of the land at Survey No. 255, 247 and 250 for a consideration of Rs. 2,03,03,500/-. The Assessing officer further observed that on verification of the statement of bank account with The Kalupur Commercial Co-op. Bank Ltd., the assessee has made total deposits of Rs.13,41,888/- during the relevant assessment year including the cash deposits from 21.08.2013 to 25.02.2014. The Assessing Officer made addition of Rs. 4,07,000/- as unexplained cash credits u/s 68 of the Act. The Assessing Officer also made addition of Rs. 38,616/- as undisclosed income towards receipt of interest from SBI account.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. At the time of hearing none appeared on behalf of the assessee despite giving notice at the address given in Form No. 36 of the appeal memo. No new address was intimated to the registry by the Assessee. Hence, we are proceeding on the basis of the submissions of the assessee

reproduced by the CIT(A) in the order and the submissions made before the Assessing Officer reproduced in the assessment order as submissions before us.

6. The Ld. DR submitted that huge amount more than the amount involved in the purchase and sale of land was involved in the said transactions, which was deposited in bank account of the assessee and withdrawals were also made accordingly. Thus, the assessee benefited monetarily in indirect way and the so called MOU executed after all the transactions were over. Thus, the Assessing Officer rightly made addition of Rs. 4,07,000/-. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. Heard the Ld. DR and perused all the relevant material available on record. It is pertinent to note that the MOU was dated 27.12.2013 which is after the transaction of purchase of the said agricultural lands i.e. from 20.04.2013, 03.07.2013 and 10.12.2013. The MOU was not doubted by the Assessing Officer to the extent that the assessee received commission of 1% in the said sale and purchase of the land. In fact, the assessee has explained the details of the cash book deposited in the Kalupur Commercial Co-op Bank Ltd. The assessee has explained the amount of Rs. 04,07,000/- through cash books which is in respect of agricultural produce sold on 21.08.2013 as well as earning the commission of 1% paid by the RSPL Ltd. Company therefore, the same was properly explained and cannot be termed as unexplained cash credits u/s 68. Therefore, CIT(A) as well as the Assessing Officer was not right in making this addition as the assessee

- 5 -

herein has explained the details before the authorities regarding the amount of Rs. 4,07,000/-. Therefore, appeal of the assessee is allowed.

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

<b>This Order pronounced in Open Court on</b>	<b>28/10/2022</b>
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Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 28/10/2022

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad