

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.28/Ind/2021
Assessment Year: 2010-11

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| Shri Nagulal Ujjain | <u>बनाम/</u> Vs. | ITO, Agar |
| (Appellant / Assessee) | | (Respondent / Revenue) |
| PAN: BILPN 4629 Q | | |
| Assessee by | Shri Pankaj Shah, AR | |
| Revenue by | Shri Ashish Porwal, Sr. DR | |
| Date of Hearing | 28.09.2022 | |
| Date of Pronouncement | 14.10.2022 | |

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 11.02.2020 passed by learned Commissioner of Income-Tax (Appeals), Ujjain [**Ld. CIT(A)**], which in turn arises out of assessment-order dated 17.11.2017 passed by learned ITO, Agar [**Ld. AO**] u/s 144 of the Income-tax Act, 1961 [**the Act**] for Assessment-Year [**AY**] 2010-11, the assessee has filed this appeal on following grounds:

“1. On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) (“CIT(A)”) erred in confirming the action of Assessing Officer in making addition of Rs. 12,07,000/- under section 69A of the Act. The appellant prays that the said addition be directed to be deleted.”

2. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in not appreciating that the appellant is an agriculturist and has no other source of income and confirmed the addition made by the AO which is prayed to be quashed.*

3. *On the facts and circumstances of the case and in law the Learned CIT(A) erred in not appreciating that only real income can be considered as income and not the credit in account in isolation. The appellant prays that the real income be considered including the withdrawals and deposits together and prays that the impugned addition be directed to be deleted.*

4. *The appellant craves leave to add to, alter and/or amend all or any of the foregoing grounds of appeal.”*

2. The registry has informed that that the present appeal is filed after a delay of 10 days and therefore time-barred. The Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. The Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted the Ld. DR who agreed to the submission of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay.

3. The assessee-individual is claiming to be an agriculturist and earning income solely from agriculture. The assessee did not have any PAN under Income-tax act, 1961. The revenue received an information from AIR-Non-PAN category that the assessee has made total cash deposits of Rs. 12,07,000/- in account with Bank of India, Village Kheda Khajuria branch. Therefore, believing that the said deposits represented income of assessee which had escaped assessment, Ld. AO issued notice u/s 148. In response, the assessee submitted a reply-letter dated 29.08.2017 wherein it was submitted to Ld. AO that the assessee was having a joint family consisting of 6 members; that the entire family was engaged in agricultural activity; that the total land owned by family was about 56 bighas; that the impugned bank account was a joint account of assessee and family members; and that the deposits in account were made out of sale of agricultural crop. The

assessee also submitted copy of a document called “Rin putsika” in support of land-holding and bank pass-book to Ld. AO. These submissions made by assessee are clearly mentioned by Ld. AO in assessment-order. However, Ld. AO further observed that the assessee neither filed return in response to the notice u/s 148 nor replied to some more notices issued by Ld. AO u/s 142(1). Therefore, the Ld. AO completed ex-parte assessment u/s 144 and treated the entire cash-deposits of Rs. 12,07,000/- as income from undisclosed sources u/s 69A. Being aggrieved, the assessee filed appeal to Ld. CIT(A).

4. During proceeding of first-appeal before Ld. CIT(A), the assessee made written-submission which is reproduced in the order of Ld. CIT(A), the main contention of assessee being that the deposits were made in piecemeal on various dates and out of the sale of agricultural produce. The assessee re-submitted copy of Rin-Pustika and bank statement to Ld. CIT(A). However, Ld. CIT(A) did not grant any relief for the following reason mentioned in appeal-order:

“4. I have gone through the facts of the case as well as arguments taken on behalf of the appellant. The appellant has made cash deposit of Rs. 12,07,000/- in his saving bank account, which is claimed out of sale of agricultural produce. The same argument has been re-iterated during the appellate proceeding. However the appellant failed to furnish any evidence for purchase of seed, fertilizer, irrigation, labour charges and sale of crop was filed either before the AO or before the undersigned. In the case of exempt income, the onus is always on the assessee to prove the source which he failed to do so.”

Relying upon certain rulings on section 69A, Ld. CIT(A) upheld the addition.

5. Before us, Ld. AR filed a Paper-Book containing 19 pages, a Written-Synopsis and also made oral submissions at length. The contentions raised by Ld. AR can be summed up as under:

- (i) The assessee and his family is engaged solely in agricultural activity in a small village called “Nalakheda” in Ujjain District. The assessee does not have any other source of income except agriculture. The proof of

land-holding in the form of "Rin pustika" issued by Nayab Tahsildar, Mahidpur is placed at Paper-Book Page No. 1 to 2.

- (ii) Copy of bank pass-book is filed at Paper-Book Page No. 3 to 4, which is re-produced below:

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Transactions Inquiry

| | | | |
|-----------------|---|--------------------|-------------------|
| A/c No | 910410100003099 | CCY / SOL ID | INR / 91040 |
| Names | NAGULAL MANGILAL JAYSWAL | | |
| Gl. Sub Head | 12050 | Balance | 559.56 Cr |
| Opening Bal. | 54,542.50 Cr | Closing Bal. | 1,769.50 Cr |
| Float Balance | 0.00 Cr | Funds In Clearing | 0.00 |
| Available Amt. | 559.56 Cr | Eff. Available Amt | 559.56 Cr |
| Cust. Status | 00 Not Applicable | A/c. Open Date | 23-04-1997 |
| A/c. Status | A Active | A/c. Status Date | 24-01-2017 |
| Lašt Purge Date | 20-02-2009 | | |
| Address | AT ALAKHEDA PO KASON TEH MAHIDPUR DIST-JJAIN | | |
| City | KHEDA KHEDA KHAJURIA (DIST. UJJAIN) | State | MP MADHYA PRADESH |
| Country | IN INDIA | Postal Code | 456443 |
| Phone No. | +919575553545 / 9752970192 | Telex No. | |
| Email ID | na | | |

| Tran. Date | Value Date | Chq. No. | Withdrawl | Deposit | Balance | Narration |
|------------|------------|----------|----------------|----------------|----------------|--|
| 08-03-2010 | 08-03-2010 | | 62,500.00 Dr | | 1,769.50 Cr | TO CASH |
| 08-03-2010 | 08-03-2010 | | | 62,500.00 Cr | 64,269.50 Cr | 910476110000142 Disbursement Credit |
| 08-02-2010 | 08-02-2010 | | | 564.00 Cr | 1,769.50 Cr | int:01-08-2009/31-01-2010 |
| 31-12-2009 | 31-12-2009 | | 1,00,000.00 Dr | | 1,205.50 Cr | TO CASH |
| 18-12-2009 | 18-12-2009 | | | 1,00,000.00 Cr | 1,01,205.50 Cr | BY CASH |
| 11-12-2009 | 11-12-2009 | | 20,000.00 Dr | | 1,205.50 Cr | TO CASH |
| 26-11-2009 | 26-11-2009 | | | 10,000.00 Cr | 21,205.50 Cr | BY CASH |
| 25-11-2009 | 25-11-2009 | | 10,000.00 Dr | | 11,205.50 Cr | TO CASH |
| 17-11-2009 | 17-11-2009 | | | 21,000.00 Cr | 21,205.50 Cr | BY CASH |
| 16-11-2009 | 16-11-2009 | | 21,000.00 Dr | | 205.50 Cr | TO CASH |
| 14-11-2009 | 14-11-2009 | | | 20,000.00 Cr | 21,205.50 Cr | BY CASH |
| 10-11-2009 | 10-11-2009 | | 20,000.00 Dr | | 1,205.50 Cr | TO CASH |
| 09-11-2009 | 09-11-2009 | | 50,000.00 Dr | | 21,205.50 Cr | TO CASH |
| 07-11-2009 | 07-11-2009 | | | 10,000.00 Cr | 71,205.50 Cr | BY CASH |
| 07-11-2009 | 07-11-2009 | | 10,000.00 Dr | | 61,205.50 Cr | TO CASH |
| 31-10-2009 | 31-10-2009 | | 50,000.00 Dr | | 71,205.50 Cr | TO CASH |
| 26-10-2009 | 26-10-2009 | | | 24,500.00 Cr | 1,21,205.50 Cr | BY CASH |
| 22-10-2009 | 22-10-2009 | | 24,500.00 Dr | | 96,705.50 Cr | TO CASH |
| 14-10-2009 | 14-10-2009 | | 20,000.00 Dr | | 1,21,205.50 Cr | TO CASH |
| 14-10-2009 | 14-10-2009 | | 10,000.00 Dr | | 1,41,205.50 Cr | TO CASH |
| 06-10-2009 | 06-10-2009 | | | 14,000.00 Cr | 1,51,205.50 Cr | BY CASH |
| 06-10-2009 | 06-10-2009 | | 14,000.00 Dr | | 1,37,205.50 Cr | TO CASH |
| 06-10-2009 | 06-10-2009 | | | 72,000.00 Cr | 1,51,205.50 Cr | BY CASH |
| 05-10-2009 | 05-10-2009 | | 72,000.00 Dr | | 79,205.50 Cr | TO CASH |
| 12-09-2009 | 12-09-2009 | | | 1,00,000.00 Cr | 1,51,205.50 Cr | BY CASH |
| 11-09-2009 | 11-09-2009 | | 1,00,000.00 Dr | | 51,205.50 Cr | TO CASH |
| 05-09-2009 | 05-09-2009 | | | 1,08,000.00 Cr | 1,51,205.50 Cr | BY CASH |
| 04-09-2009 | 04-09-2009 | | 1,08,000.00 Dr | | 43,205.50 Cr | TO CASH |

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| 27-08-2009 | 27-08-2009 | | | 53,000.00 Cr | 1,51,205.50 Cr | BY CASH |
| 26-08-2009 | 26-08-2009 | | | 61,000.00 Cr | 68,205.50 Cr | BY CASH |
| 26-08-2009 | 26-08-2009 | | 83,000.00 Dr | | 7,205.50 Cr | TO CASH |
| 24-08-2009 | 24-08-2009 | | 26,000.00 Dr | | 90,205.50 Cr | TO CASH |
| 24-08-2009 | 24-08-2009 | | 35,200.00 Dr | | 1,16,205.50 Cr | TO CASH |
| 20-08-2009 | 20-08-2009 | | 12,000.00 Dr | | 1,51,405.50 Cr | TO CASH |
| 19-08-2009 | 19-08-2009 | | | 40,000.00 Cr | 1,63,405.50 Cr | BY CASH |
| 18-08-2009 | 18-08-2009 | | 39,000.00 Dr | | 1,23,405.50 Cr | TO CASH |
| 14-08-2009 | 14-08-2009 | | | 11,000.00 Cr | 1,62,405.50 Cr | BY CASH |
| 07-08-2009 | 07-08-2009 | | | 863.00 Cr | 1,51,405.50 Cr | Int:01-02-2009/31-07-2009 |
| 21-07-2009 | 21-07-2009 | | | 15,000.00 Cr | 1,50,542.50 Cr | BY CASH |
| 20-07-2009 | 20-07-2009 | | 1,15,000.00 Dr | | 35,542.50 Cr | TO CASH |
| 14-07-2009 | 14-07-2009 | | | 50,000.00 Cr | 1,50,542.50 Cr | BY CASH |
| 02-06-2009 | 02-06-2009 | | | 1,00,000.00 Cr | 1,00,542.50 Cr | BY CASH |
| 01-06-2009 | 01-06-2009 | | 1,00,000.00 Dr | | 542.50 Cr | TO CASH |
| 29-05-2009 | 29-05-2009 | | | 4,000.00 Cr | 1,00,542.50 Cr | BY CASH |
| 28-05-2009 | 28-05-2009 | | | 46,000.00 Cr | 96,542.50 Cr | BY CASH |
| 27-05-2009 | 27-05-2009 | | 48,000.00 Dr | | 50,542.50 Cr | TO CASH |
| 26-05-2009 | 26-05-2009 | | | 30,000.00 Cr | 98,542.50 Cr | BY CASH |
| 25-05-2009 | 25-05-2009 | | 30,000.00 Dr | | 68,542.50 Cr | TO CASH |
| 21-05-2009 | 21-05-2009 | | | 94,500.00 Cr | 98,542.50 Cr | BY CASH |
| 20-05-2009 | 20-05-2009 | | 93,500.00 Dr | | 4,042.50 Cr | TO CASH |
| 24-04-2009 | 24-04-2009 | | | 13,000.00 Cr | 97,542.50 Cr | BY CASH |
| 21-04-2009 | 21-04-2009 | | | 50,000.00 Cr | 54,542.50 Cr | BY CASH |
| 16-04-2009 | 16-04-2009 | | 50,000.00 Dr | | 4,542.50 Cr | TO CASH |

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Analysing this pass-book, Ld. AR strongly mentioned that the assessee being agriculturist, could not make adequate submissions before the lower authorities. But a bare perusal of Pass-Book demonstrates that (i) the total deposits of Rs. 12,07,000/- were made in piecemeal, in smaller amounts from time to time on different dates throughout the year and not in lump-sum on a few days; (ii) the assessee has deposited sale proceed of crop in the bank but the entire deposits of Rs. 12,07,000/- are not therefrom only, the assessee has also made cash-withdrawals throughout the year and the same was also re-deposited in the bank account which is very much clear from the entries in pass-book itself. Ld. AR also pointed out that a deposit of Rs. 62,500/- made on 08.03.2010 is not a cash-deposit in fact, it is

a disbursement of crop-loan taken from bank which is very much evident not only from the "Narration" column in the Pass-Book but also from a copy of loan account issued by the bank which is placed at Page No. 5 of the Paper-Book. Ld. AR, thus, submitted that the deposits of Rs. 12,07,000/- consists of three sources, (i) sale proceed of agricultural crop, (ii) re-deposit of cash-withdrawals, and (iii) disbursement of crop loan taken by assessee. At that stage, the Bench raised a query to Ld. AR as to why these submissions were not made to lower authorities, Ld. AR very humbly submitted that the assessee is a pure agriculturist and he is neither well-versed with the laws of income-tax nor with procedures and systems, therefore he simply made an overall submission that the deposits were made out of sale of agricultural crop, which submission is quite valid. But, however, on verification of Pass-Book, the revenue authorities could easily discern the factual aspects.

6. Regarding agricultural income, Ld. AR submitted that the assessee and his family is having about 56 bhigas of agricultural land. Referring to "Rin Pustika" at Page No. 2 of the Paper-Book, Ld. AR submitted that the land is fully irrigated. Ld. AR submitted that the full time occupation of assessee's family is agricultural activities and nothing else. Ld. AR agreed that the assessee has not maintained Bills / Vouchers in support of agricultural income, but the assessee had clearly submitted before lower authorities that he is engaged in agriculture only. Ld. AR submitted that the agricultural sector in our country is not fully organized and the smaller agriculturist are not able to keep documents and records. Ld. AR submitted that once the factum of exclusive engagement in agricultural activity is proved and the revenue has not found any other source of income available to the assessee, section 69A cannot be applied at all. Ld. AR invited our attention to a recent decision in **Shri Madhusudhan Dhakad Vs. ITO-1, Harda, ITA No. 9/Ind/2022, order dated 28.06.2022** wherein the Hon'ble Co-ordinate Bench of ITAT, Indore (in which the Accountant Member was author of the Order) has also granted relief to the assessee in similar facts.

7. Ld. DR strongly supported the orders of lower authorities and contested that the lower authorities have made / confirmed addition because the assessee never produced documentary evidences in support of agricultural income. Ld. DR claimed that when the assessee claims that he has earned agricultural income, it is his duty to prove the same. Since the assessee has failed in discharging his duty, the lower authorities have rightly made addition and the action of lower authorities must be confirmed.

8. We have considered rival submission of both sides, perused the material held on record and considered the legal precedents cited before us. At the outset we observe that the Ld. AO has not made addition of Rs. 12,07,000/- on account of unproved agricultural income, the addition is on account of unexplained cash-deposits in bank account. Therefore we have to see whether the assessee had sufficient sources to prove cash-deposits made in the bank account or not. In this regard, *firstly* we observe that the assessee is an agriculturist and engaged in agricultural activities, which is clearly evident from the documents placed in the record. *Secondly*, we observe that the assessee has made so much of cash-withdrawal from the same bank account from time to time and therefore moneys were available to him for re-depositing. On perusal of the Bank Pass-Book, we find that the "Peak Balance" in Pass-book was only just Rs. 1,63,405/-. We observe that the cash-withdrawals and cash-deposits have been made in piecemeal on various dates during the year and the pattern is such that re-deposits out of cash-withdrawals is possible. *Thirdly*, we also find that the assessee is having agriculture as sole source of income and there is no other source of income brought on record by Ld. AO. Since agricultural income is fully exempt, the assessee does not have any taxable income and therefore the addition u/s 69A cannot be made. On perusal of concluding paragraph No. 11 in the order of ITAT in **Shri Madhusudhan Dhakad Vs. ITO-1 (supra)** cited by Ld. AR, we observe that the facts are almost similar and there is no major difference. Ld. DR could not distinguish the applicability of decision. Hence, we respectfully follow the decision of Hon'ble Co-ordinate Bench and accept the claim of assessee. In view of this, we are of the considered

opinion that the addition of Rs. 12,07,000/- made by Ld. AO is not sustainable. We, therefore, delete this addition.

9. Before parting we would like to mention as a matter of abundant caution, which though is a known aspect, that every case has its own set of facts and evidences. This decision is confined to its own set of facts and it should not be carried to derive a dangerous conclusion in every case that no documents are required in case of agriculture or agriculturists.

10. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 14/10/2022.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 14.10.2022

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

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| 1. | Date of taking dictation | |
| 2. | Date of typing & draft order placed before the Dictating Member | |
| 3. | Date on which the approved draft comes to the Sr. P.S./P.S. | |
| 4. | Date on which the fair order is placed before the Dictating Member for pronouncement | |
| 5. | Date on which the file goes to the Bench Clerk | |
| 6. | Date on which the file goes to the Head Clerk | |
| 7. | Date on which the file goes to the Assistant Registrar for signature on the order | |
| 8. | Date of dispatch of the Order | |