

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT ‘SMC’ BENCH,
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 243/SRT/2019 (Assessment Year: 2014-15)
(Virtual hearing)**

Nitaben Kiritbhai Patel, At & Post: Ariyana, Sadak Mohallo, Tal: Olpad, Surat – 395005. PAN : BJQPP0429N	Vs.	The ITO, Ward-2(2)((5), Surat.
APPELLANT		RESPONDEDNT

Appellant by	Shri Shaunak Zaveri, AR
Respondent by	Shri Vinod Kumar, Sr. DR
Date of hearing	09/03/2023
Date of pronouncement	09/03/2023

Order Under Section 254(1) of Income tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Learned Commissioner of Income Tax (Appeals)-1, Surat, dated 11.03.2019 for Assessment Year (AY) 2014-15. The assessee has raised the following grounds:

“1.0 That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the partly addition of the AO in confirming the order passed u/s. 143(3) of the I.T. Act, 1961 which is incomplete and also bad on facts.

2.0 That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred in confirming (partly addition) the action of the AO in by accepting the addition on account of undisclosed investments amounting to Rs.5,50,000/- on account of cash deposited in bank account.

3.0 That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated here-in-above, either before or at the time of hearing of this appeal.”

2. Brief facts of the case are that assessee is an individual, filed her return of income for assessment year (AY) 2013-14 on 31.03.2016 declaring total income of Rs.2,17,580/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that in the financial year related to the current assessment year, the assessee made cash deposits of Rs.11,00,000/- in her savings bank account. The Assessing Officer called for explanation about such cash deposits. The assessee in response to such show cause notice stated that cash deposit includes major portion of cash withdrawal from savings bank account which was accumulated cash capital till date of deposit. The assessee earned such income on sale of milk and gift from father-in-law during in earlier years prior to this financial year. The Assessing Officer noted that assessee could not provide any details in respect of gift from father-in-law, no gift deed was furnished, no detail of selling of price milk was furnished. The assessee has shown opening cash of Rs.3,61,200/- as on 01.04.2013, which cannot be considered as there is a risk to keep such cash in hand at home in Village. On the basis of such observation, the Assessing Officer again issued a detailed show cause notice dated 07.11.2015.

3. In response to such show cause notice, the assessee filed her reply dated 15.11.2016. In reply, the assessee stated that she is engaged in activities of sale of milk, which falls within the purview of "Agricultural Activity". The assessee has not sold such milk to co-operative societies and registered Mandli but sold various retailers and whole amount was generated from selling of milk, which was received in cash. The reply of assessee was not accepted by Assessing Officer by holding that no

agricultural income is offered in the return of income. The major portions of deposits were from withdrawal from savings bank account and that assessee could not prove any correlation with cash withdrawal and cash deposits. On cash balance of Rs.3,61,200/- as on 01.04.2013, the Assessing Officer concluded that such opening cash balance cannot be considered being risky to keep such cash in home and village. The Assessing Officer treated the entire of amount Rs.11,00,000/- as unexplained investment in the assessment order dated 15.12.2016 passed under section 143(3).

- 4.** Aggrieved by the additions in the assessment order, the assessee filed appeal before the Ld. CIT(A). Before Ld. CIT(A), the assessee filed her detailed written submission. Submission of assessee is recorded in para 6 of order of Ld. CIT(A). In the submission, the assessee stated that she is engaged in the activity of milk selling, which falls in the purview of “agricultural activity”. Before Assessing Officer, the assessee filed detailed written submissions with relevant details, supporting documents and evidences to support her claim. The Assessing Officer disregarded the submission and made addition of Rs.11,00,000/- while passing the assessment order. The assessee stated that she submitted documents to prove that cash deposits were from cash generated from selling of milk, gifts from father-in-law and earlier cash withdrawal from savings bank account. During the year, the assessee offered income under section 44AD of Rs.1,75,268/- on gross profit of Rs.6,51,320/- which is reflected in computation of income, copies of return of income, computation of income along with copy of accounts were filed. The

assessee stated that in the beginning of year, there was opening cash balance of Rs.3,61,200/-. The assessee deposited Rs.4,99,000/- on 29.04.2013, the net income during the year was Rs.1,75,268/- and assessee also received sundry receipt of Rs.1,00,269/- on 13.09.2013. The assessee made deposit of Rs.6,00,000/- which consists of income earned during the year and cash withdrawal during the year. The assessee made withdrawal of Rs. 9,000/- on 13.08.2013, Rs.4,00,000/- on 14.08.2013 and Rs. 50,000/- on 22.08.2013, thus by adding the opening cash balance and income offered by assessee. The assessee explained deposit of Rs.11,00,000/-. The assessee further explained that in assessment year 2013-14, the income of assessee was below taxable limit, so no return of income was filed. However, she had prepared last two years balance sheet and filed before Ld. CIT(A) along with bank passbook.

5. The Ld. CIT(A) after considering the submission of assessee noted that assessee tried to explain the source of deposit in the following manner:

(1)	Op. balance as on 01.04.2013	3,61,000
(2)	Net income during year	1,75,268
(3)	Sundry receipts	1,00,269
(4)	Cash withdrawal from Bank prior to 13.09.2013	4,59,000

6. After preparing the aforesaid submission, the Ld. CIT(A) granted partial relief to the assessee by passing the following order;

“I have carefully examined the claim of the AR and the evidence he has furnished to substantiate his claim. I find that, the AR has failed to establish his claim of opening balance of Rs.3,61,000/- and sundry receipts of Rs.1,00,269/-. Regarding claim of net income during year available for deposit, I feel the reasonable estimate of

Rs.1 lacs can be allowed. The cash withdrawals of Rs.4,59,000/- is documented in bank a/c. copy. The withdrawal of Rs.9,000/- appears to be made for some specific reason, so it cannot be said to be deposited back in bank a/c. The balance Rs.4.50 lacs may be presumed to be deposited in bank a/c. as the Ld. AO has not found any alternative application of the said withdrawals. In this way, credit or telescoping of Rs.1,00,000/- in form of net income for year & Rs.4,50,000/- in form of cash withdrawals from bank can be granted against the cash deposits of Rs.11,00,000/- in the absence of any contrary findings by Ld. AO. Hence, the addition is restricted to the extent of Rs.5,50,000/- only. This ground is partly allowed.”

- 7.** Further aggrieved, the assessee has filed present appeal before Tribunal.
- 8.** I have heard the submission of Learned Authorised Representative (Ld. AR) of the assessee and Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue. The Ld. AR of the assessee also filed his written submission which is also taken into consideration. The Ld. AR submits that an activity of selling of milk falls in the purview of agricultural activity, the assessee while filling return of income has shown income of Rs.2,17,580/-. During the assessment, the Assessing Officer raised the issue of cash deposit in savings bank account. To substantiate the cash deposit, the assessee furnished detailed submission with relevant details, supporting evidence, which were disregarded by the Assessing Officer and made addition of Rs.11,00,000/-. However, Ld. CIT(A) upheld the 50% addition and granted 50% relief thereby sustaining the addition to the extent of Rs.5,50,000/-. The assessee made cash deposit of Rs.11,00,000/- in her savings bank account and in Surat District Co-operative Bank. The assessee offered income under section 44AD of Rs.1,75,268/- on gross receipt of Rs.6,51,320/- which is duly reflected in

the computation of income. The assessee also offered Rs.1,00,269/- as a sundry receipt. The assessee made cash withdrawal from her savings bank account on 13.08.2013, 14.08.2013 and 22.08.2013 of Rs.9,000/-, Rs. 4,00,000/- and Rs. 50,000/- respectively. Copy of bank passbook of Surat District Co-operative Bank and Bank of Baroda are filed. The Assessing Officer made additions without considering the fact and the documentary evidence that cash deposited were from cash available with the assessee and the withdrawal from savings bank account. The Ld. CIT(A) granted partial relief without considering the opening cash balance at the beginning of assessment year. The assessee is earning income from selling of milk which falls in the category of "agricultural activity". The assessee has furnished the certificate from the Ariyana Women Milk Producing Co-operative Society and certificate issued by Sarpanch, Natvarbhai Khushalbhai Patel. From the certificate, it is clear that assessee is in the activity of selling of milk from 2011-12. There cannot be any doubt about the cash in hand with the assessee of Rs.3,61,200/-. The assessee has offered total income from milk trading of Rs.1,75,268/-, the assessee's selling milk on credited basis, this there were outstanding of sundry debtors to Rs.1,00,269/- which were realized. Thus, the aggregate cash deposit was from genuine sources. The assessee before Ld. CIT(A) furnished the balance sheet and capital account for two preceding years, copy of which is filed on record, which were not considered by Ld. CIT(A) while granting partial relief. To support his submission, the Ld. AR relied upon the decision of Jaipur Tribunal, in the case of Virender Kumar vs ITO, ITA No.1100/JP/2019 and Punjab

and Haryana High Court, in the case of CIT vs Surinder Pal Anand, in ITA No.156 of 2010, dated 29.06.2010.

9. On the other hand, the Ld. Sr. DR for the Revenue supported the order of Ld. CIT(A). The Ld. Sr. DR submits that Ld. CIT(A) has already granted substantial relief to the assessee by allowing reasonable available cash balance of Rs.1,00,000/- and cash withdrawal of Rs.4,59,000/- which is reflected in the bank account. Thus, the Ld. CIT(A) granted 50% relief which is more than sufficient. The assessee is not eligible for further relief.

10. I considered the submission of both the parties and have gone through the order of authorities below carefully. I find that Assessing Officer made addition under section 69A of Rs.11,00,000/- by taking view that no agricultural income has been offered in the return of income. The assessee could not prove correlation of cash withdrawal and cash deposit. The theory of opening cash balance of Rs.3,61,200/- as on 01.04.2013 was also rejected by holding that keeping such cash in home in village, is risk. I find it Ld. CIT(A) granted partial relief of 50% of the deposits as noted above. I find that Ld. CIT(A) upheld the action of Assessing Officer in not accepting the opening cash balance of Rs.3,61,200/- as well as sundry receipt of Rs.1,00,269/- by holding that the assessee failed to prove the same. However, the Ld. CIT(A) allowed the reasonable estimation of deposit of Rs. 1,00,000/- from net income during the year of Rs.1,00,000/-. Further, withdrawal of Rs.4,59,000/- was also accepted as withdrawal from bank account. Thus, the Ld. CIT(A)

clearly accepted the explanation of Rs.5,59,000/- (Rs.1,00,000 + 4,59,000).

11. I find that neither the assessee has given the figure of gift from father-in-law nor the Ld. CIT(A) gave clear finding on such submission. Further, the entire opening cash balance was rejected. In my view rejection of entire cash balance is not justified when the activity of selling of milk by assessee was not disputed. In such traditional work, milk is sold on credit. Thus, keeping in view, the peculiar facts of the present case, I am of the view that allowing relief of Rs.1,00,000/- as an opening cash balance in the beginning of year of Rs.1,50,000/- lacs on account of gift and others benefit of gift from father-in-law and other savings is also allowed. Therefore, assessee is allowed further relief of Rs.2,50,000/- and remaining addition of Rs.3,00,000/- is upheld.

12. The facts of case laws relied by Ld. AR is not applicable on the fact of present case. In case of Virender Kumar (supra), the bank deposits were less than gross receipt shown in the return of income. However, the fact of present case is just reverse. The assessee has shown income of Rs.2.75 lac and cash deposit was Rs.11.00 lacs. In view of the aforesaid discussion, the grounds of appeal raised by assessee are partly allowed.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in open court on 09/03/2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 09/03/2023
SAMANTA**
Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

// TRUE COPY //

Assistant Registrar/Sr.PS/PS, ITAT, Surat