

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 328/SRT/2022 (AY: 2015-16)
(Hearing in Physical Court)

Mathurabhai P Viradiya HUF, Plot No. 101, Swati Society, Nana Varachha, Chikuwadi, Surat. PAN: AALHM 9645 Q	Vs.	I.T.O., Ward 3(1)(5), Surat.
APPELLANT		RESPONDEDNT

Assessee by	Shri Mukesh Mandowara, A.R.
Department by	Shri Vinod Kumar, Sr. DR
Date of hearing	01/03/2023
Date of pronouncement	24/05/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, (NFAC), Delhi/ learned Commissioner of Income Tax (Appeals) [in short the Id. CIT(A)] dated 13/09/2022 for the Assessment Year (AY) 2015-16. The assessee has raised following grounds of appeal:-

- “1. The Id. CIT(A) erred on facts and in law in sustaining addition of unexplained cash credit amounting to Rs. 24,80,000/- by invoking provisions of Income Tax Act, 1961 as unexplained income.*
- 2. The Id. CIT(A) erred in fact and in law in sustaining addition of Rs. 24,80,000/- as unexplained cash credit and decided the appeal without giving the opportunity, where the appellant requested at the time of submission on dated 01/09/2022 that it is a partial submission but Id. CIT(A) decided the appeal which is breach of principle of natural justice.*

3. *Appellant craves leave to add, alter and/or amount all or any of the ground before the final hearing of the appeal."*

2. Brief facts of the case are that the assessee is Hindu Undivided Family (HUF), filed its return of income for A.Y. 2015-16 on 29/03/2016 declaring total income of Rs. 3,21,069/-. The case of assessee was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee made cash deposit of Rs. 24.80 lacs in his savings bank account with Allahabad Bank. The assessee was asked to furnish the source of cash deposit with documentary evidence. The Assessing Officer recorded that the assessee failed to furnish any detail, therefore, a final show cause notice was issued to the assessee on 16/11/2017. The assessee filed its reply on 22/11/2017. In the reply, the assessee stated that during the financial year, they deposited a cash of Rs. 24.80 lacs in their bank account. The assessee submitted that they have withdrawn Rs. 37.22 lacs from bank account and was having sufficient cash balance or deposit in bank. In addition to this, the assessee also received cash of sale of agricultural product of Rs. 4,93,952/-. On the basis of such submission, the assessee stated that they were having sufficient cash balance for making deposit. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer prepared the summary of cash deposit/transactions in the following manner:

Sr. No.	Date	Description	Deposit	Withdrawal
1.	28/08/2014	Cash deposited	10,00,000	
	28/08/2014	Cheque issued to Shree Hari Kirshna		10,00,056
2.	22/01/2015	Cash deposited	5,00,000	
	22/01/2015	Cheque transfer		5,00,000
3.	31/03/2015	Cash deposited	9,80,000	
	02/04/2015	Cheque transfer		9,80,000

The assessee also made withdrawals in the following manner:

Sr. No.	Date	Description	Withdrawal
1.	30/08/2014	Cash withdrawal	10,00,000
2	30/09/2014	Self-withdrawal	9,52,000
3.	24/12/2014	Self-withdrawal	12,80,000
4.	10/02/2015	Self-withdrawal	5,00,000

On the basis of aforesaid summary, the Assessing officer was of the view that there was no cash withdrawal prior to deposit of Rs. 10.00 lacs on 28/08/2014. Further the details shown in the above tables clearly establishes that the cash was deposited from withdrawal is baseless. Thus, the assessee has no cash in hand for deposit as claimed. Therefore, the contention of assessee that cash deposit was out of cash withdrawal is baseless. Further the pattern of cash withdrawal shows that it was for specific purpose and not for deposit. On the availability of cash which was claimed as a withdrawal, the Assessing Officer prepaid the summary about cheque deposit and withdrawal of equal amount on the same date in para 3.4 of the assessment order in the following manner;

Sr no.	Date	Details	Deposits	Withdrawal
1	30.09.2014	Cheque deposit	9,52,000	
	30.09.2014	Self-withdrawal		9,52,000

2	24.12.2014	Cheque deposit	12,80,000	
	24.12.2014	Self-withdrawal		12,60,000
3	10.02.2015	Cheque deposit	5,00,000	
		Self-withdrawal		5,00,000

The assessing officer on the basis of the above details was of the view that on receipt of cheque the whole of the amount was withdrawn. On the contention that the assessee has agriculture income of Rs. 4,93,952/- in cash was also not accepted. In the return of income, the assessee has shown source of income as agriculture income only and assessee has shown agricultural income of Rs. 3,21,069/- and no other income except agricultural income which may have been used for household purpose. Thus, the contention of assessee was not accepted and entire cash deposit was added to the income of assessee.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee made similar submission as made before the Assessing Officer. The assessee reiterated that the cash withdrawal was more than the cash deposit. The Id. CIT(A) confirmed the action of Assessing Officer by taking a view that the assessee has not furnished the bank statement nor the source of details of cash deposit. In absence of such evidence, summary prepaid by assessee about cash flow statement cannot be

relied and confirmed the action of Assessing Officer. Further aggrieved, the assessee has filed present appeal before this Tribunal.

4. I have heard the submissions of learned Authorised Representative (Id. AR) for the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have also perused the orders of the lower authorities carefully. The Id. AR of the assessee submits that the assessee has sufficient cash balance in his hand for making deposits, the assessee had cash withdrawal of Rs. 37.22 lacs from bank account. The assessee also received cash of sale of agricultural product of Rs. 4,93,952/-. The assessee has agriculture holding of 7.25 hectare of land at his native place. The assessee is growing cotton and cotton seeds and other crops. On the basis of such submission, the assessee stated that they were having sufficient cash balance for making deposit.
5. On the other hand, the Id Sr DR for the revenue submits that he supports the order of lower authorities. The Id Sr DR for the revenue submits that assessing officer in para 3.2 and 3.4 has made summary of all the transactions of the assessee and on the basis of such summary it is clear that the assessee has no cash balance. Before, Id CIT(A) the assessee filed cash flow statement but failed to substantiate such statement as he has not filed corroborative evidence e.g. bank details etc. The Id Sr DR for the revenue submits

that assessing officer as well as Id CIT(A) gave full opportunity to the assessee to file complete details but the assessee failed to substantiate the source of cash deposit, the assessee failed to substantiate such huge cash deposits.

6. I have considered the submissions of both the parties and perused the material available on record. The assessing officer made addition of Rs. 24.80 lacs by taking view that the only source of income shown by the assessee is agriculture income , which may have been used for house hold purpose. The assessee failed to give any satisfactory explanation and evidence of cash deposit, so cash deposit of Rs. 24.80 lacs was treated as unexplained income. The Id CIT(A) confirmed the addition by holding that source of cash deposit is not explained. Further cash flow summary cannot be relied as the assessee has not furnished the source of cash and cheque deposits. Before me, the Id AR for the assessee except contending that the assessee has sufficient cash balance for making deposit in bank, has not explained the real source of cash and cheque deposits. I find that the assessing officer in his summary has clearly demonstrated the cheque deposits and immediate withdrawal or on deposits of money in cash immediately transferred by way of cheque, the assessee has failed to give any satisfactory reply against the finding of the assessing officer. I am in full agreement with the observation of the

assessing officer that the assessee has only shown source of income from agriculture activities. However, keeping in view the general practice in society that ordinarily peoples keep certain money in cash, therefore, by giving such benefits the assessee is granted benefit of Rs. 2,80,000/- and remaining addition of Rs. 22,00,000/- is upheld.

7. In the result, this appeal of assessee is partly allowed.

Order pronounced on 24/05/2023 in open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 24/05/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT
4. DR
5. Guard File

By Order

Sr. Private Secretary, ITAT Surat