

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 247/Srt/2022 (Assessment Year 2017-18)

(Physical hearing)

Mukesh Parshottambhai Mangukiya, 58-59, Jalaram Society, Ved Road, Surat (Gujarat). <b>PAN No. ARXPM 7000 N</b>	Vs.	I.T.O., Ward-3(2)(5) Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Tinish Mody, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	29/03/2023
Date of pronouncement	15/06/2023

**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 learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 04/08/2022 for the Assessment Year (AY) 2017-18. The assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case, as well as law on the subject, the Id. CIT(A) NFAC, Delhi erred in confirming the addition made by the Id. AO amounting to Rs. 4,00,000/- treating the amount received from loans and advances parties as unexplained cash credit u/s 68 of the Act.*
- 2. On the facts and circumstances of the case, as well as law on the subject, the Id. CIT(A) NFAC, Delhi erred in confirming addition made by the Id. AO amounting to Rs. 4,43,781/- treating the agricultural income as unexplained cash credit u/s 68 of the Act.*
- 3. On the facts and circumstances of the case, as well as law on the subject, the Id. CIT(A) NFAC, Delhi erred in confirming addition amounting o Rs. 24,225/- out of Rs. 5,24,225/- made by the Id. AO u/s 68 of the Act treating the cash*

*deposited in bank account during demonetization period as unexplained income without appreciating the facts of the case.”*

2. Brief facts of the case are that the assessee is an individual, filed his return of income for A.Y. 2017-18 on 17/03/2018 declaring income of Rs. 3,12,910/- and agricultural income of Rs. 7,43,780/-. The case of assessee was selected for complete scrutiny. During the assessment, the Assessing Officer noted that the assessee has made cash deposit of Rs. 7,66,000/- during demonetization period on 09/11/2016 to 30/12/2016 in his bank account with Akhand Anand Cooperative Bank. On show cause, the assessee explained that in earlier financial year, he has paid advance to the labours of Rs. 4.00 lacs which was received back in the current financial year. The Assessing Officer on perusal of earlier years statement, find that in A.Y. 2016-17, the assessee declared income of Rs. 4,57,137/- and gross receipt of Rs. 8,76,500/-, thus the cash deposit and the explanation of assessee was not found favorable to the Assessing Officer. The Assessing Officer further noted that the assessee has cooked up story which is not acceptable thereby the Assessing Officer made addition of Rs. 4.00 lacs and taxed the same under Section 115BBE of the Income Tax Act, 1961 (in short, the Act).
3. The Assessing Officer further noted that the assessee has shown net agricultural income of Rs. 4,37,781/- and immediately preceding assessment year, the assessee has shown agriculture income of Rs. 2,17,100/-. The assessee is having agriculture holding of 6.13 hectare

at their native village in Dhangla, Taluka-Liliya, District- Amreli with his father and brother. In preceding years, the assessee and his family members had shown agricultural income of Rs. 11.26 lacs and net agricultural income of Rs. 6.75 lacs. The gross agricultural income for A.Y. 2017-18 was shown at Rs. 34.47 lacs and net agriculture income of Rs. 20.55 lacs. The assessee is having 1/3<sup>rd</sup> share in the agriculture holding and the assessee took 36% of net agricultural income. The Assessing Officer on the basis of report published by State Agriculture Department, published district wise and crop wise figure for the crop cultivated for the A.Y. 2011-12 to 2015-16 and particularly the details of cotton crops for Amreli district estimated average production of cost of 3581 kilogram per hectare. The assessee's share in holding is 2.20 hectare and average price of Rs. 55/- per kilogram thereby worked out the total estimated value of gross agriculture income at Rs. 4,34,680/- and after deducting agriculture expenses @ 40% net agriculture income of Rs. 2,60,808/- was worked out and ultimately by taking a liberal view, estimated agricultural income of Rs. 3.00 lacs and after granting set off of Rs. 3.00 lacs, remaining of Rs. 4,47,781/- (Rs. 7,43,781-3,00,000) was treated as unexplained cash credit under Section 68 and taxed under Section 115BBE of the Act.

4. The Assessing Officer further noted that the assessee also made cash deposit of Rs. 5,24,225/- in another bank account No. 0292 with Akhand

Anand Cooperative Bank during demonetization period. The Assessing Officer issued show cause notice to substantiate such deposit. The assessee vide his reply dated 28/12/2019 submitted that he has taken personal gold loan by mortgaging his wife's personal ornaments (Stridhan) to meet personal need of family. Such work was not materialized and the assessee has withdrawn such loan amount in cash and was deposited in piecemeal in loan account operated through Akhand Anand Cooperative Bank. The assessee furnished details of gold loan amount, savings bank account and explained that there is no unexplained cash nor income which is liable to be added. The explanation of assessee was not accepted by the Assessing Officer. The Assessing Officer was of the view that interest on loan is @ 12% and it is not plausible that any person who obtained loan, keep the money ideal with him for several months. The assessee could deposit the lying money in a single instance rather deposited in 11 instances. The Assessing Officer thereby made addition of Rs. 5,24,225/- and taxed the same under Section 115BBE of the Act.

5. 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 explained before the Assessing Officer. The Id. CIT(A) after considering the submission of assessee, upheld the addition of Rs. 4.00 lacs and disallowance of agricultural income of Rs. 4,43,781/-

. However, the assessee was given substantial relief on the third addition of Rs. 5,24,225/- by deleting the addition to the extent of Rs. 5.00 lacs by taking a view that Rs. 5.00 lacs was withdrawn by assessee from his savings bank account on 22/03/2016 is not doubted by Assessing Officer. Nothing is brought to suggest that the assessee incurred from this cash of Rs. 5.00 lacs as revenue or capital expenses from 22/03/2016 till 09/11/2016. Thus it can safely be presumed that cash withdrawn of Rs. 5.00 lacs was available with the assessee. On remaining two additions, the Id. CIT(A) concurred with the findings of Assessing Officer. Further aggrieved, the assessee has filed present appeal before this Tribunal.

6. I have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have perused the orders of lower authorities carefully. Ground No.1 of the appeal relates to addition of Rs. 4.00 lacs under Section 68 of the Act. The Id. AR of the assessee submits that in previous year, the assessee has given loan/advances to its labours. The assessee is maintaining complete books of account. The assessee was having sufficient cash balance of Rs. 25,17,310/- as on 31/03/2015 in his cash book. The assessee has furnished complete details including computation of income, balance sheet, profit and loss account and capital account of assessee for A.Y. 2015-16 and 2016-17.

In A.Y. 2016-17, the assessee has closing cash balance of Rs. 15,58,872/- as on 31/03/2016. The assessee furnished list of persons/labourers to whom the money was advanced. The amount paid in advance to labourers were from accumulation of income earned from year to year and it was not income of A.Y. 2016-17. The objection of Assessing Officer was that the advance was not commensurate to the total receipt of assessee. The assessee made cash deposit of Rs. 3.40 lacs on 07/07/2016 and Rs. 3.10 lacs on 08/07/2016 besides the cash deposit during demonetization period. Regular cash deposits by the assessee even prior to demonetization period clearly shows that the assessee was having sufficient cash balance in his hand, thus the allegation of Assessing Officer that cash receipt is totally on wrong footing is not correct. The books of assessee was not rejected. No defects in the books of account was pointed out. The Id. AR of the assessee submits that he has already filed copy of returns of income for A.Y. 2015-16 and 2016-17 reflecting cash balance of Rs. 15,58,873/- as on 31/03/2016 and Rs. 25,17,310/- as on 31/03/2015. The Id. AR of the assessee submits that even if amount received back from loans and advances are not accepted as genuine, the assessee was having sufficient cash balance in his cash book and no adverse inference can be drawn against the assessee. The Id. AR of the assessee submits that

Section 68 cannot be applied against the assessee in view of decision of Hon'ble Delhi High Court in Racman Spring 55 ITD 159 (Delhi).

7. On the other hand, the Id. Sr. DR for the revenue submits that explanation of assessee about the loan and advances is not sacrosanct. In the earlier years/preceding assessment years, the assessee has shown gross receipt of Rs. 7,17,940/- and offered taxable income of Rs. 4,57,317/- on gross receipt of Rs. 8,76,500/-. The advances are not commensurate with the income offered for taxation. The assessee has not shown receivables in his return of income.
8. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. As recorded above, both the authorities below rejected the contention of assessee about loan and advances to labourers by taking view that same are not commensurate with the return of income and total receipt. I find that before the Id. CIT(A), the assessee furnished cash book showing cash flow statement. The Id. CIT(A) neither commented on such cash flow statement nor sought any investigation of fact either himself or through Assessing Officer. The Id. CIT(A) impliedly rejected the cash flow statement. No adverse material was brought on record either by Assessing Officer or by Id. CIT(A) to discard the contention of assessee that he was having sufficient cash balance available in his cash book.

Thus, I do not find any justification in making addition to the extent of Rs. 4.00 lacs. In the result, this ground of appeal is allowed.

9. Ground No. 2 relates to addition on account of agriculture income. The Id. AR of the assessee submits that the Assessing Officer on considering 36% of ownership in the land adopted rate of cotton @ Rs. 55 per kilogram for average production of 3581 kilogram per hectare. On the basis of report of department of agriculture, Government of Gujarat. The Assessing Officer worked out the gross agriculture income at Rs. 4,34,680/- and after allowing expenses at the rate of 50%, the net agriculture income was worked out at Rs. 2,60,808/- and granted relief of Rs. 3.00 lacs by making addition of Rs. 4,43,781/-. The Id. CIT(A) concurred with the finding of Assessing Officer and also held that fluctuation in agriculture income cannot be 300% compared to earlier years. The Id. AR submits that he provided complete details of agriculture income earned alongwith copy of bills and land holdings. A comparative chart of three years including the year under consideration about the gross agriculture income and net agriculture income was provided to the Assessing Officer. The Assessing Officer only considered figure of last two years for comparison. The Assessing Officer deliberately compared the agriculture income with previous year only, though the assessee had given comparison of last three years. If comparison of three last years is considered, the average figure of net

agriculture income comes to Rs. 7.50 lacs and increased only by 33%. Thus, there is hardly excess agriculture income declared by assessee. The rate of cotton was increased by 33% during A.Y. 2017-18 and sale proceed was higher compared to earlier years. The assessee furnished one sale bill of Rs. 4,55,000/- dated 07/05/2016 pertaining to immediately preceeding year but it was sold in May, 2016 and thus was shown in the year under consideration. The assessee specifically stated that certain crops were destroyed in A.Y. 2016-17 and they could not get desired yield (production). No defects were pointed out by Assessing Officer. The Assessing Officer simply relied on the report of State Agriculture Department and worked out the average production. The assessee and his family members are holding several other agricultural lands and considering the same, agricultural income is required to be accepted. The Id. AR of the assessee further submits that provisions of Section 115BBE of the Act taxing the addition @ 60% cannot be applied for A.Y. 2017-18 as has been held by the Jabalpur Tribunal in ACIt Vs Sandesh Kumar Jain in ITA No. 41/Jab/2020 order dated 31/10/2022.

10. On the other hand, the Id. Sr. DR for the revenue submits that the lower authorities have already given sufficient concession to the assessee by taking the rate of crops based on State Government data.
11. I have considered the submissions of both the parties and perused the orders of lower authorities carefully. I find that there is no dispute about

the share of ownership of land. In the year under consideration, the assessee has shown net agricultural income of Rs. 7,43,781/-. The assessee has claimed that out of total receipt, one sale bill of Rs. 4,55,000/- dated 07/05/2016 was pertaining to immediately preceding year as the crop was sold in May, the same was shown in the year under consideration. Similar fact was brought to the notice of Id. CIT(A) by filing specific written submission and the receipt thereof. Copy of such receipt is available on page No. 108 of paper book. The Id. CIT(A) neither considered such receipt or get it verified or investigated either himself or through Assessing Officer, therefore, considering the gross receipt, the assessee may have spent some expenses for earning such income, however, the assessee has not clarified whether the expenses against such receipt was already debited in earlier years or not, therefore, I deem it appropriate to consider the net income from this receipt of Rs. 3.00 lacs and direct the Assessing Officer to further delete the addition of Rs. 3.00 lacs out of addition of Rs. 4,43,781/-. Thus, the addition to the extent of Rs. 1,43,781/- is sustained. In the result, this ground of appeal is partly allowed.

12. Considering the fact that the in addition relates to agriculture income, the amended provisions of Section 115BBE of the Act will not apply on could not apply. In the result, ground No. 2 of appeal is partly allowed.

13. Ground No. 3 of the appeal relates to addition of Rs. 24,225/- on account of part of cash deposit. The Id. AR of the assessee has not argued anything against this addition, therefore, no counter submission was given by Id. Sr. DR for the revenue. Considering the aforesaid fact, this ground of appeal is treated as not pressed and dismiss accordingly.

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

Order announced in open court on 15<sup>th</sup> June, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 15/06/2023

*\*Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat