

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

ITA No. 188/Srt/2023 (Assessment Year 2011-12)
(Virtual hearing)

Raju Maganlal Patel, C/o-Dinkarbai T. Patel, Shankar Talao, Via-Dungri, Valsad. PAN No. AUSPP 1436 F	Vs.	I.T.O. (International Taxation), Surat.
Appellant/ assessee		Respondent/ revenue

ITA No. 195/Srt/2023 (Assessment Year 2012-13)

Tara Raju Patel, C/o-Dinkarbai T. Patel, Shankar Talao, Via-Dungri, Valsad. PAN No. AVDPP 6714 G	Vs.	I.T.O. (International Taxation), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Rajesh Upadhyay, A.R.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	20/03/2023 & 22/03/2023
Date of hearing	18/04/2023
Date of pronouncement	26/06/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by the two different assessee(s) are directed against the separate orders of learned Commissioner of Income Tax (Appeals)-13, Ahmedabad (in short, the Id. CIT(A)) both dated 23/01/2023 for the Assessment Year (AY) 2011-12 and 2012-13 respectively. In both these appeals, the assessee(s) has raised certain common grounds of appeal, except variation of addition under Section 69 of the Income Tax Act, 1961 (in short, the Act). Appellants are husband and wife, who

are non-resident Indian. Facts in both these years are similar, therefore, both these appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For appreciation of facts, the appeal of Raju Maganlal Patel in ITA No. 188/Srt/2023 for A.Y. 2011-12 is treated as a "lead case". In this appeal, the assessee has raised following grounds of appeal:

- "1. The Id. CIT(A) has erred in law and on facts to uphold AO's action of reopening of appellant's assessment u/s 147 and issue of a notice u/s 148 of the Act.*
- 2. The Id. CIT(A) has erred in law and on facts to uphold AO's addition u/s 69 of the Act for Rs. 10,50,500/- being unexplained investment in form of cash deposits in saving bank account No. 31/0602920 with the Central Bank of India during F.Y. 2010-11 relevant A.Y. 2011-12."*

2. Brief facts of the case are that no return of income was filed by assessee for the A.Y. 2011-12. The Assessing Officer was having information from their system that there was cash deposit of Rs. 10,50,500/- in the savings bank account of assessee maintained with Central Bank of India. No return of income was filed, thus, the cash deposits in the bank remained unexplained. The Assessing Officer after recording reasons, reopened the case after obtaining proper approval from Commissioner of Income Tax (International Taxation) & (Transfer Pricing), Ahmedabad on 27/03/2018. Notice under Section 148 dated 28/03/2018 was served upon the assessee through speed post. The Assessing Officer recorded that in response to notice under Section 148, no return of income was filed. The Assessing Officer further recorded that despite serving several notices, which was allegedly served, no justification of cash deposit was

made by the assessee. The Assessing Officer presumed that the assessee has nothing to submit in respect of cash deposit. The Assessing Officer obtained information from bankers of the assessee under Section 133(6) of the Act about such cash deposit. As no response was made by assessee, the Assessing officer made addition of Rs. 10,50,500/- while passing assessment order dated 24/12/2018 under Section 144 r.w.s. 147 of the Act.

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 submitted that he is a Non-resident Indian (NRI), residing in United States of America (USA) from last 32 years and no return of income was filed for A.Y. 2011-12. The assessee was served show cause notice on penalty and demand notice in USA somewhere in December, 2018/January, 2019, no other letter/ notice was communicated to him. The case of assessee was reopened on the basis of information of cash deposit. On coming to know about passing the assessment order, the assessee filed appeal with prayer to condone the delay in filing appeal before the Id. CIT(A). The assessee objected against the validity of reopening which was passed on mere cash deposit. The assessee submitted that he is having agricultural land at his native village Shankartalao, Valsad. Such land was given for farming and cultivation to his relative and such proceeds of rental income of agricultural land

was deposited by such person in his bank account. His case was reopened only for verification of cash deposit, such reopening is not valid as the case was reopened for verification of fact. The assessee relied on certain case laws. On merit, the assessee submitted that the assessee is having land in various survey numbers at his native place which is very fertile and part of land is used for orchard of Mangoes and Chikko. His family is living abroad, therefore, the land is given to Shri Dinkarbhai Patel, who is his cousin and friend, managing and looking after land of assessee. The assessee also filed affidavit of Shri Dinkarbhai Patel as well as details of land holding. The assessee also submitted that agricultural income is exempt from Income Tax Act. The assessee has no other source of income in India. Section 68/69 or 69A to 69C cannot prevail over Section 5(2)(b) of the Act. The assessee submitted that in absence of any income by NRI, no addition can be made. The agriculture income is exempt from taxation. To support his case, on validity of reopening as well as on merit on addition, the assessee relied on certain case laws.

4. On the submission of assessee, the Id. CIT(A), obtained remand report from the Assessing Officer. In the first remand report, the Assessing Officer objected against the admission of additional evidence filed before the Id. CIT(A), however, in the second remand report, the Assessing Office reported that the assessee produced record of agricultural land

and source of deposit in his bank account of Rs. 10,50,500/-, deposited by his cousin who is residing in India and taking care of agricultural land which is given to him for farming. The assessee also furnished affidavit of Shri Dinkarbai Patel. Though, the Assessing Officer again reported that during assessment proceedings, ample opportunities were given to the assessee but the assessee has not filed any reply, it means that the assessee has created above reply and self-serving document after receiving assessment order. No rent agreement or confirmation of farmer of cash received is filed. In the revenue record apart from the name of assessee, there are several names as co-owner. There is no reference of cultivation of crop in the revenue record and reported that the cash deposited in the savings bank account is not acceptable and the additional evidence may not be accepted.

5. The Id. CIT(A) after considering the submission of assessee, condoned the delay in filing appeal. The Id. CIT(A) upheld the validity of reopening by referring the decision of Hon'ble Apex Court in Raymond Woolen Mills Ltd. Vs ITO (1999) 236 ITR 34 (SC) wherein it was held that the sufficiency or correctness of the material is not to be considered at the stage of reopening and that the Court cannot be strike down the reopening for insufficiency of reason. Prima facie view of Assessing Officer was based on unexplained nature of cash deposit in bank account.

6. On the addition, the Id. CIT(A) held that the assessee claimed that he is residing out of India for 32 years and is USA Passport holder. The assessee also stated that he has not earned any income in India. The assessee claimed that he owns huge piece of agricultural land which is look after by his brother Shri Dinkarbhai Patel. On the submission of assessee, remand report was called from the Assessing Officer. In the remand report, the Assessing Officer reported that Rs. 8.00 lacs and Rs. 2.50 lacs were deposited on 12/-2/2011 and 24/03/2011 and Rs. 500/- on 26/02/20211. The Assessing officer on the affidavit, commented that such affidavit of Shri Dinkarbhai Patel is self-serving document. The Assessing Officer also pointed out/objected that no agreement with Shri Dinkarbhai Patel is furnished and no satisfactory explanation was provided about the nature and source of deposit. On the basis of such observation, the Id. CIT(A) upheld the addition on merit as well. Further aggrieved, the assessee has filed present appeal before the Tribunal.
7. I have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Sr. DR) for the revenue. The Id. AR of the assessee submits that reopening under Section 147 of the Act is not valid. The reasons recorded are not valid reasons. The assessment was reopened for verification of bank deposit which is not sufficient basis for reopening. In the reasons recorded, names, account number and name

of branch was not available. The Assessing Officer was not having any bank statement at the stage of reopening. The bank statement was obtained during the course of assessment proceedings while issuing notice under Section 133(6) as evident from the contents of para 3.1 of assessment order. Thus, the reopening was based merely on AIR information. Reasons were recorded without due application of mind. The assessee is residing in USA from several decades and no notice under Section 148 was served upon the assessee. The case of assessee was reopened only for verification of source of cash deposit. It is settled position under law that reopening under Section 147/148 of the Act cannot be resorted for verification of facts. To support such submission, the Id. AR of the assessee relied upon the decision of Hon'ble Bombay High Court in the case of Nivi Trading Ltd. Vs Union of India (2015) 375 ITR 308 (Bom) and Hon'ble Gujarat High Court in J.V. Agarwal Vs ITO (2013) 257 CTR 112 (Guj). The Id. AR of the assessee reiterated that mere verification of cash deposit cannot be reasons of reopening. The Assessing Officer claimed about service of notice under Section 148 of the Act in India on 05/04/2018 is disputed on the ground that the assessee is not residing in India in the month of April, 2018. The assessee has not authorized anybody in his tax matter. So notice issued on local address was not received by the assessee. Service of notice at

foreign address is also disputed as PIN number i.e. "999999" is totally incorrect. There is no such PIN (Postal Index Number) in USA.

8. On the merit of additions, the assessee stated that the assessee holds huge piece of agriculture land in various survey numbers at native place in Navsari (Gujarat) which is very fertile. Monsoon is very good in this part of country; thus the land is more productive for growing good crops. The Id. AR of the assessee submitted that he alongwith his family is staying at USA, therefore, he has given the land to his cousin brother Dinkarbhai Patel for looking after and managing day to day affair. The land was given on rent for farming. Dinkarbhai Patel collected the share of assessee from farmers and deposited in his bank account. Affidavit of Dinkarbhai Patel was filed. The Id. CIT (A) straightway rejected the submission of assessee without bringing any contrary material on record. The Id. AR of the assessee submitted that when subsequent cash deposit in bank is started by way of earlier withdrawal, no addition can be made with regard to cash deposit in bank. In assessee's case, Rs. 8.00 lacs was withdrawn on 24/03/2011 and Rs. 2.50 lacs was deposited on the same day which is apparent in the bank statement. The Id. CIT(A) has not considered the facts and taxed the credited amount of Rs. 10,50,500/-. The Id. AR of the assessee submitted that Section 69, 69A to 69C of the Act cannot be made applicable on the assessee when assessee has reasonably explained the genuineness of transaction. The

assessee has reasonably explained that he has no other source of income in India and therefore, he was not liable to filed return of income.

To support his submission, the Id. AR of the assessee has relied upon the following case laws:

- (i) ITO Vs Lakhmal Mewal Das 103 ITR 0437 (SC)
- (ii) Smt. Charanjit Kaur Vs ITO 88 ITR 414 (Chd. Trib)
- (iii) DCIT Vs Dharmndrabhai M. Sutaria (HUF) ITA No. 795/Ahd/2019 with CO No. 169/Ahd/2019 order dated 27/04/2022
- (iv) Ashish Natvarlal Vashi Vs ITO ITA No. 3522/Srt/2016 dated 19/04/2021.
- (v) Mehta Parikh & Co. Vs ITO (1956) 30 ITR 181 and Daulat Ram Rawatmal Vs CIT (1973) 87 ITR 349 (SC).
- (vi) Brijindrapal Singh Bhullar Vs ITO (2022) 188 TER(A) 648 (Asr Trib).

9. On the other hand, the Id. Sr. DR for the revenue supported the order of Id. CIT(A). The Id. Sr. DR for the revenue submits that all the arguments and submissions as made before the Bench was considered by the Id. CIT(A). The Id. Sr. DR for revenue submits that notice under Section 148 was issued at the last known address of assessee. The Sr. DR for the revenue submits that sufficiency of reasons recorded is not to be seen at the time of recording the reasons. The assessee has neither replied nor objected against reopening nor filed any return of income all these objections are factually and not legally. The validity cannot be challenged without filing return of income in time and in absence of any objection before assessing officer. On the addition in the

bank account on account of cash deposit, the Id. Sr. DR for the revenue submits that the ownership of the impugned land is in the joint ownership and the assessee has not proved with cogent evidence that the deposit reflected in the bank account are on account of agriculture income.

10. I have considered the submissions of both the parties and perused the record carefully. I have also gone through the orders of the lower authorities carefully. The Assessing Officer made addition of cash deposits in bank of Rs. 10,50,500/- by holding that despite giving sufficient opportunity, the assessee neither filed return of income nor filed any response to various notices. It is matter of fact that assessment was completed under Section 144 of the Act. Before the Id. CIT(A), the assessee during the first appellate stage, filed detailed written submission. In the submissions, the assessee stated that deposits in the bank account relates to income from agriculture holding which is in the name of assessee with joint ownership of various other family members. To support such contention, the assessee filed affidavit of his cousin brother Dinkarbhai Patel, who is taking care of agriculture land of assessee. I find that on filing such evidences, the Id. CIT(A) obtained remand report from the Assessing Officer. The Assessing Officer while filing his remand report, instead of bringing any adverse material on record, suspected the evidences furnished by assessee. The Assessing

Officer neither examined Dinkarbai Patel nor brought any adverse material against the assessee to discard the contention of assessee that the deposits in the bank account were other than the sources explained by assessee. It is admitted that that the assessee is an NRI and residing in California, USA. Such fact is accepted by Assessing Officer in assessment order itself. Even otherwise, the period of stay out of India and status of assessee is not disputed by the Assessing officer in his remand report. Before the Tribunal, the assessee has filed details of revenue record in the Form-8 showing various survey numbers, share of assessee and nature of land. The assessee alongwith other family members owned agricultural land of 3-52-21 i.e. more than three hectares. All survey numbers are of agricultural use (Kheti Layak Upyog). Considering the fact that the assessee has shown source of cash deposit from agriculture holding, which is duly supported with evidences, which is not discarded by the Assessing Officer by bringing any adverse material on record except doubting the veracity of such evidences. Moreover, the assessing officer in his report second remand report, the Assessing Office reported that the assessee produced record of agricultural land and source of deposit in his bank account of Rs. 10,50,500/-, deposited by his cousin who is residing in India and taking care of agricultural land which is given to him for farming. Therefore, I do not find any justification of such addition when the assessee has

substantiated the source of cash deposit. Hence, I direct the Assessing officer to delete the addition. In the result, ground No. 2 of the appeal is allowed.

11. Considering the fact that I have allowed ground No. 2 and deleted the addition on merit, therefore, adjudication of ground No. 1 which relates to validity of reopening under Section 147 is become academic and need no adjudication.

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

ITA No. 195/Srt/2023 for the A.Y. 2012-13.

13. The case of present assessee is almost similar. The case of assessee was also reopened on the basis of information that certain cash deposits in her saving bank account. Assessment was completed under section 144 dated 14.12.2019. Before Id CIT(A) the assessee explained that the assessee and her family helped Shri Kamal Dinesh Bhai Patel for his study as well as to settle in USA. When Kamal Dinesh Bhai Patel started earning, he alongwith his family members decided to return the money. However, the assessee was not ready to accept such money from Kamal Dinesh Bhai Patel and his family and suggested to use such money for the help of some needy person. Such proposal was not accepted and Kamal Dineshbhai Patel directly deposited Rs. 15,60,000/- in joint account of family member of assessee. In confirmation of such transaction, Kamal Dinesh Bhai Patel filed his

affidavit, passport and pay in slip of State Bank of India. On such evidences, the Id CIT(A) obtained remand report of assessing officer. On verification of such additional evidence, the Assessing Officer accepted that during the appellate proceedings, the assessee filed affidavit of Kamal Dinesh Bhai Patel and his passport with savings bank account and Pay in Slip for depositing cash by him. The Assessing Officer after verification of such evidence, gave his finding in the following manner:

"These additional evidences, submitted by the assessee have been verified and kept placed on records. On verification of the additional evidences, it is found that the source of credit deposit of Rs. 15,63,648/- in question appears as explained."

14. The Id. CIT(A) despite accepting the explanation about the credit entry, upheld the addition. In my view, in absence of any adverse material on record, the Id. CIT(A) was not justified in upholding the addition when the Assessing Officer himself accepted that source of cash deposit is explained. Accordingly, I direct to delete the entire addition of Rs. 15,63,650/-. In the result, the appeal of assessee is allowed.

15. In the result, both these appeals of assessee(s) are allowed.

Order announced in open court on 26th June, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 26/06/2023
*Ranjan

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat