

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.27/Rjt/2022
(Assessment Year: 2011-12)

Shri Ramniklal D. Aghera, Ajab, Shri Krishna Nivas, Near High School, Keshod, Gujarat-362220	Vs.	Income Tax Officer, Ward-1, Junagadh
[PAN No.ASLPA4070F]		
(Appellant)	..	(Respondent)

Appellant by :	Written Submission
Respondent by:	Shri Abhimanyu Singh, Sr. DR

Date of Hearing	07.08.2023
Date of Pronouncement	23.08.2023

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax(Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”) in Order No. ITBA/NFAC/S/250/2021-22/1037387692(1) vide order dated 30.11.2021 passed for Assessment Year 2011-12.

2. The assessee has taken the following grounds of appeals:-

“1.1 On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming the action of assessing officer in confirming addition of Rs.5,00,000/- (since CIT(A) has confirmed on estimate basis) on

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account of unexplained cash deposit in savings bank account although all the documents were placed on record and none of the records were rejected or found concocted.

1.2 On the facts and in the circumstances of the case as well as law on the subject, learned Assessing Officer has erred in re-opening assessment u/s 147 by issuing notice u/s 148 of the ITA Act, 1961 merely on basis of AIR information that appellant had deposited cash in savings account of Rs.11,50,000/-.

1.3 That the order passed u/s 147/143(3) of the Income Tax Act, 1961 on 03.12.2018 upheld by the Ld. CIT(A) on 30.11.2021, was perverse to the law and to the facts of the case, because no notice if any was ever issued u/s 143(2) prior to complete the assessment proceedings, therefore, the assessment framed becomes barred by limitation.

1.4 That the order appealed against is contrary to the facts, law and principles of natural justice and in any view of the matter deserves to be quashed as AO overlooked the fact that cash withdrawal and deposit is regular feature and pattern in previous assessment years as well as in subsequent assessment years as like for any agriculturist.

Your appellant craves leave to allow addition, alteration, deletion and withdrawal of any of the grounds before the appeal is finally disposed off.”

3. At the outset, we observe that there is a delay of 18 days in filing of the present appeal. The assessee has filed an application for

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condonation of delay on the ground that the assessee is an illiterate farmer of 61 years of age and residing in village. According to the assessee, since he cannot speak/understand English language and hence was dependent on his advocate, there was a minor delay in filing of the present appeal. Accordingly, looking into the facts of the instant case and the minor period of 18 days delay in filing of the present appeal, we are hereby condoning the delay in filing of the present appeal. Without prejudice to the above, we also observe that the appeal of the assessee is falling within the extended time given for Corona Period (till 28 March 2022), and accordingly, looking into the facts of the instant case, we are hereby condoning the delay of 18 days in filing of the present appeal.

4. The brief facts of the case are that the assessee agriculturalist and holds 18.66 acres of land. For Assessment Year 2011-12, the Assessing Officer observed that the assessee had deposited cash aggregating to Rs. 11,50,000/- in his savings bank account maintained with the State Bank of India. In view of the above, the case was reopened under Section 147 of the Act. The assessee filed return of income declaring total income of Rs. 1,07,440/- and agricultural income of Rs. 4,17,133/- on 23.10.2018. During the course of assessment, the Assessing Officer asked the assessee to explain the source of above cash deposits. The assessee contended that the aforesaid cash was deposited out of earlier years and current year's agricultural income. However, the Assessing Officer observed that the assessee had not furnished details in respect of agricultural income, family members and their activity, borrowings for agricultural activities, cash flow statement, ownership of bank account

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etc. Accordingly, the Assessing Officer made an addition of Rs. 8,70,000/- to the returned income of the assessee, after giving credit of Rs. 4 lakhs as the source of deposit from agricultural income declared by the assessee in the return of income.

5. In appeal, Ld. CIT(Appeals) restricted addition to ₹ 5 lakhs, with the following observations:

“7.2 Finding on Ground of Appeal No.1- (Addition of Rs.8,70,000/-)

a) The gist of addition made is outlined in Paras 2(a) to 2(d) of this order. The undersigned has gone through the assessment order and written submissions filed. This Ground of Appeal is discussed and decided in following paras of this order.

b) Appellant is an Agriculturist aged about 51 years and holds 18.66 acres of Agricultural land. For the AY under consideration the Assessing Officer has allowed credit of Agricultural Income of Rs. 4,00,000/- approx, but no credit for Agricultural Income of earlier AY/AYs' or past savings has been allowed to the appellant. In support of Agricultural Income, the Appellant had filed proof of agricultural land holdings, Agricultural produce sale bills, vouchers for Agricultural expenses, PGVCL Bills etc.

c) While making addition of Rs. 8,70,000/-, the Assessing Officer has also taken into consideration the cash deposit of Rs.2,20,000/- in joint savings bank account held by the Appellant with his father namely

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Devrajbhai Manjibhai Aghera who expired on 19.03.2012 and copy of death certificate was filed by Appellant.

d) During the A.Y. the Appellant had declared net a Agricultural Income of Rs. 4,17,130/- which was accepted by the Assessing Officer and no adverse inference was drawn.

e) Once the Assessing Officer accepted the Agricultural Income for A.Y. under consideration, then there is no reason for the Assessing Officer to not to accept the Agricultural Income in earlier AY's and not to give the benefit of Past savings out of Agricultural Income. It is a fact that Agricultural land holding of the Appellant remained the same i.e. 18.66 acres over a period of last many FY's.

f) In support of Agricultural Income of earlier years the Appellant filed copies of sales bills of groundnut and Tuver (Pigeon Pea) pertaining to A.Y. 2009-10 and A.Y. 2008-09 to prove that Appellant had similar Agricultural Income in earlier years also.

g) In the present A.Y. the Assessing Officer did not doubt the sale of Agricultural produce of Appellant. It is not the Assessing Officer's case that Appellant was not having Agricultural land and did not cultivate the said land or crops grown and sold by Appellant were different in the earlier AY's. Once the Assessing Officer has accepted the facts in of Agricultural Income in present AY, then same cannot be reduced to NIL in earlier AY's in absence of ITR being filed/ concrete evidences. The Appellant being an Agriculturist is not required to maintain any books of account.

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h) *The Assessing Officer had to consider the Agricultural land holdings, past agricultural activity, savings from Agricultural Income etc. before making an addition. It cannot be a case that Assessing Officer has accepted current AY's agricultural income of Appellant as Rs.4,17,133/-and on other hand has given no credit for past savings out of Agricultural Income from earlier AY's.*

i) In view of the above mentioned facts it will be fair and reasonable to estimate that the Appellant had Rs. 3,70,000/- available from the past savings out of Agricultural Income of earlier AY's which was deposited in cash in his bank a/c. As a result, relief of Rs. 3,70,000/- is allowed to the Appellant and addition of Rs. 5,00,000/- made by the Assessing Officer is upheld. Ground of Appeal No. 1 is partly allowed.

7.3 *Grounds of Appeal Nos. 2 and 3 are routine and general in nature.*

8. *As a result, appeal is partly allowed.”*

6. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) sustaining the addition of Rs. 5 lakhs. On going through the facts of the case, we observe that Ld. CIT(Appeals) while partly allowing the appeal of the assessee, observed that the assessee had declared agricultural income of Rs. 4,17, 130/- which was accepted by the Assessing Officer and no adverse inference was drawn. Further, Ld. CIT(Appeals) observed that once the Assessing Officer

accepted the agricultural income for the assessment year under consideration, then there is no reason for the Assessing Officer to not to accept the agricultural income for earlier assessment years and not to give benefit of past savings out of aforesaid agricultural income. Further, we observe that the Department has also not disputed that the assessee is having agricultural land holdings amounting to 18.66 acres for past many financial years. Further, Ld. CIT(Appeals) also observed that the assessee filed copies of sales bills of groundnut and pigeon pea pertaining to Financial Years 2008-09 and 2007-08 to prove that the assessee had similar agricultural income in the earlier years as well. Accordingly, looking into the totality of facts of the instant case, we are of the considered view that Ld. CIT(Appeals), after having accepted the fact that assessee has been earning agricultural income for past many years has given no specific basis as to why the relief was restricted to Rs. 3.7 lakhs on ad-hoc basis, when the facts of assessee having agricultural income and being in possession of substantial holdings has not disputed by Ld. CIT(Appeals). Accordingly, given the facts of the instant case, we are of the considered view that Ld. CIT(Appeals) has erred in facts and in law in sustaining the addition of Rs. 5 lakhs on ad-hoc basis, when it has not been disputed that the assessee is having agricultural income for past many years and further, no rationale/basis has been given for confirming the addition of Rs. 5 lakhs on ad-hoc basis. The ITAT Ahmedabad in the case of **Samir Kishor Parekh Vs ACIT in ITA Nos. 265 and 266/Ahd/2020** held that that addition made on estimated basis, without rejecting books of accounts of the assessee, is unsustainable in law.

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Further, it is well-settled law that no addition could be made on estimated basis without rejecting books of account of assessee as held by various Courts in the case of **Asian Grantio India Ltd. [2020] 113 taxmann.com 445 (Ahmedabad - Trib.)**, **Shree Asutosh Transport Co. [1997] 90 Taxman 331 (Ahmedabad - ITAT)**, **Royal Marwar Tobacco Product (P.) Ltd. [2009] 29 SOT 53 (Ahmedabad) (URO)**, **Anil Kumar &Company [2016] 67 taxmann.com 278 (Karnataka)**, **Ercon Composites [2014] 49 taxmann.com 489 (Jodhpur - Trib.)**, etc. to name a few. Accordingly, the addition to the extent of Rs. 5 lakhs sustained by Ld. CIT(Appeals) is directed to be deleted, looking into the instant facts which has been done as on ad-hoc basis, especially when facts placed on record by the assessee have not been disputed.

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

This Order pronounced in Open Court on

23/08/2023

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 23/08/2023

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot