

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.298/SRT/2023

Assessment Year: (2017-18)

(Virtual Hearing)

The ACIT, Central Circle-3, Surat.	Vs.	Hasmukhbhai Ravjibhai Ahir, U/3, Amrutdhara Apartment, Ghod Dod Road, Opp. St. Xeviers School, Surat – 395007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABKPA5575D		
(Appellant)		(Respondent)

Appellant by	Shri Vinod Kumar, Sr. DR
Respondent by	Shri Ankur Shah, CA
Date of Hearing	08/08/2023
Date of Pronouncement	16/10/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the ld. CIT(A)”], in Appeal No.CIT(A),Surat-4/10923/2019-20, dated 01.02.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 18.12.2019.

2. The grounds of appeal raised by the Revenue are as follows:

“1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.1,00,00,000/- made u/s 68 of the I.T. Act by the AO on account of unexplained cash credit simply relying upon the submission of the assessee and despite the facts that during the assessment proceedings, the assessee was failed to prove the unsecured loan taken from Mr. Ishwarbhai D. Patel, Magob, Surat is a genuine transactions.

2. In addition to the ground no.1 on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.1,00,00,000/- made u/s 68 of the I.T. Act without appreciating the fact that during the course of the assessment proceedings, to prove the transaction of loan, the assessee has simply stated that the loan giver has expired and uploaded a scanned copy claimed as confirmation from the son of the deceased lender without name, PAN No., address etc. of the so-called confirming party and also not attended in pursuance to summons issued u/s 131 to the son of the so called lender to verify the genuineness of the transaction/confirmation.

3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition to Rs.16,02,000/- made on account of agriculture income simply relying upon the submission of the assessee and without appreciating the facts that during the assessment proceedings, the assessee has failed to submit, any sales bill and any other evidences to prove genuineness of the transactions.

4. In addition to the ground no.3, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition to Rs.16,02,000/- made on account of agriculture income claiming that the sums have been received from some ad hoc wholesaler who have not raised any sale bills and the assessee has failed to prove the genuineness and creditworthiness of the wholesaler.

5. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-4, ought to have upheld the order of the Assessing Officer.

6. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that the AO may be restored to the above extent.”

3. Ground Nos. 1 and 2 raised by the Revenue, relates to deleting the addition of Rs.1,00,00,000/- made by Assessing Officer under section 68 of the Act.

4. Brief facts, as discernible from the orders of lower authorities are that assessee before us is an Individual and has filed his return of income for the year under consideration on 20.07.2017, declaring total income of Rs.4,13,42,220/-. The notice u/s 143(2) of the Income-Tax Act, dated 30.08.2018, was issued and duly served upon the assessee. The assessee's case was selected under complete scrutiny with various flagged parameters. As per Instruction No. 01/2018, dated.

12.02.2018, assessment proceedings in cases selected for scrutiny would be conducted electronically in 'e-filing' facility through assessee's account in e-filing website of Income-tax Department. In the course of scrutiny assessment proceedings, the assessee has submitted and uploaded response to the notices. Accordingly, a show cause notice was issued to the assessee based on specific findings and calling for specific and to the point details and explanation from the assessee. The show cause so issued by the assessing officer is reproduced below:

“Huge loan of Rs.1,00,00,000/- has been shown from certain Sh. Ishwarbhai Dayarambhai Patel. There is no evidence of the creditworthiness of the party. The cheque of Rs.1,00,00,000/- has been passed on to you the very day the so-called loan giver has received entry through cheque clearing. Clearly, the lender has no creditworthiness. Any sum which was accepted as a loan/ credit is liable to be explained in the light of section 68 of the Income Tax Act. The Loan stood as an outstanding at the year-end also. Mere repayment in future is not a valid argument for absence of adverse inference if the genuineness of the transaction and the creditworthiness of the party has not been satisfactorily established. You are requested to show cause why the sums of Rs.1,00,000/- should not be assessed as your unexplained income.”

5. The assessee has submitted and uploaded response to the notice. However, assessing officer observed that the assessee had claimed to have accepted unsecured loan of Rs.1,00,00,000/- from Mr. Ishwarbhai D. Patel, Magob, Surat, which was through banking channels and necessary bank statements and confirmation of the person who had given the loan was produced. As the person who had given the loan had expired when the matter came up before the assessing officer, in assessment proceedings and hence, no one could appear before the assessing officer, except to file written submission before the assessing officer. Accordingly, the assessing officer treated Rs. 1,00,00,000/- , as cash credit u/s 68 of the Act, as the assessee had

not satisfactorily explained the genuineness and creditworthiness of the person who had given the loan.

6. Aggrieved by the order of Id. CIT(A), the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by the Assessing Officer. The Id. CIT(A) observed that assessee has repaid the loan in subsequent year and department has accepted this fact. Therefore, genuineness of the loan should not be doubted. Apart from this, the Commissioner of income Tax(Appeals) also noted that during the assessment proceedings, the assessee submitted PAN number of the creditor, confirmation of the creditor, bank statement of the creditor and other required documents and written submission before the assessing officer and the assessing officer did not find any fault in these documents and evidences. Therefore, Ld. CIT(A) has deleted the addition.

7. Aggrieved by the order of Id CIT(A), the Revenue is in appeal before us.

8. The Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue submitted that assessee has taken unsecured loan of Rs.1,00,00,000/- from one Mr. Ishwarbhai D Patel, Magob, Surat. The assessee was failed to prove the identity, creditworthiness and genuineness of the said loan provider. Therefore, the same had been treated as unexplained cash credit u/s 68 of the Act by the assessing officer. During the assessment proceedings, the assessee was failed to prove the unsecured loan taken from Mr. Ishwarbhai D. Patel, Magob, Surat of Rs.1,00,00,000/-, that it is a genuine transaction. The assessee was simply said that the loan giver has expired and uploaded a scanned copy which has been claimed as confirmation from the son of

the deceased lender. However, when summons u/s 131 was issued to the so called son of the deceased lender, never appeared or validate the so called confirmation. Therefore, ld DR prays the Bench that addition made by the assessing officer may be sustained.

9. On the other hand, Learned Counsel for the assessee defended the order passed by the ld. CIT(A) and argued that assessee has submitted the following supporting documentary evidences before assessing officer:

- (1) Confirmation of account of the loan giver signed by his son as the loan giver has deceased.
- (2) Bank statement of the loan giver reflecting the entries of loan given to the assessee as well as entry for repayment of loan.
- (3) Copy of Computation of Income and acknowledgement of return of income of A.Y. 2016-17 duly reflecting the proof of receipt of sale consideration from sale of property of Rs.3,32,63,600/- during the period to prove the credit worthiness.
- (4) Copy of PAN card of the loan giver.
- (5) Copy of death certificate of the loan giver.

The assessing officer has stated in the order that the assessee has nothing to say in reply to the show cause notice but assessing officer has completely failed to consider the computation of income, acknowledgement of Return of Income and Copy of PAN card of loan giver filed in response to show cause notice. However, ld CIT(A) has considered these documents and deleted the addition therefore ld Counsel contended that order passed by the ld CIT(A) may be upheld.

10. We have heard the Learned Counsels appearing on behalf of the respective parties, at length. We note that during the appellate proceedings the assessee submitted the sale document of land executed between Kesubhai and Shri Ishwarbhai, duly mentioning that the sum of Rs.1,42,72,860/- which was paid to Shri Ishwarbhai by Kesubhai towards the purchase of property. Thus, the allegation of the assessing officer that Shri Kesubhai has acted as a conduit for transfer of amount of Rs.1,42,72,860/- and has no credit worthiness does not hold good. The payment is made by Kesubhai Varotariya for purchase of property and not as a conduit to transfer funds. This justifies source of source of income/receipt from which the subject unsecured loan was given to the assessee. The AO could have very well reviewed Form 26AS of the loan giver for A.Y. 2017-18, which also contained said transaction, but AO has not examined the same. We note that documents and papers submitted by the assessee during the course of assessment proceedings, justifies the identity, genuineness of transaction and credit worthiness of loan giver. Reliance is placed on the following judgments:

- (a) *CIT-I v. Patel Ramniklal Hirji [2014] 41 taxmann.com 493*
- (b) *PCIT v. D & H Enterprises [2016] 72 taxmann.com 91 (Gujarat)*
- (c) *CIT v. Dharamdev Finance (P.) Ltd. [2014] 43 taxmaan.com 395 (Gujarat)*
- (d) *CIT v. Orchid Industries (P.) Ltd. [2020] 116 taxmann.com 113 (SC)*
- (e) *Gujarat High Court in the case of DCIT vs. Rohini Builders (2002) 256 ITR 360 (Guj).*

11. The Id CIT(A) noted that assessee had produced the confirmation before the AO which was signed by the son of the assessee and the bank statement evidencing the debit in the account of the giver of the loan Mr. Ishwarbhai D Patel. The Ishwarbhai D Patel (PAN AWFPP2743L) had expired on 20.11.2017 as per the death certificate filed and hence, nobody attended to the summons issued by the AO during the assessment proceedings. During the Appellate Proceedings, even the copy of the return of Late Ishwarbhai D Patel for AY 2016-17, who had given the loan was produced as per the said return, the total income returned by Mr. Ishwarbhai D Patel was Rs.3,14,44,900/- which shows that he had the capacity and creditworthiness to give the loan of Rs. 1,00,00,000/- to the assessee. The said loan was debited to the account of Mr. Ishwarbhai D Patel with Baroda Gujarat Gramin Bank (A/c No.31830100000981) on 18.04.2016. The said loan was repaid by the assessee during the FY 2017-18 in 3 installments on 01.02.2018 (Rs.50,00,000/-) and 23.03.2018 (Rs.25,00,000/- and Rs.25,00,000/-) as evident from the bank account of the assessee with Sarvodaya Sehkari Bank Ltd., Athwalines Branch, Surat (A/c No. 1004006000350) and Bank of Baroda, PFS Branch, Surat (A/c No.26470100005269). During the appellate proceedings, the assessee relied upon the decision of the Hon'ble Gujarat High Court in the case of CIT Vs Patel Ramniklal Hirji 41 Taxmann.com 493 (Guj.) 2014. In the said decision, the High Court held that where the assessee received loan through account Payee Cheques and in support of loan transaction if he submits copy of books of accounts, bank statement, ITR of the lender, transaction in question was to be regarded as genuine and loan amount could not be added to assessee's taxable income u/s 68 of the IT Act. The Id CIT(A) noted that from the above facts, the creditworthiness of the

loan giver Late Ishwarbhai D. Patel has been established. The transactions in question are through banking channels wherein the loan has been received by the assessee through banking channels and even repaid subsequently through banking channels which proves the genuineness of the transaction. Hence, the Id CIT(A) therefore deleted the addition made by the AO u/s 68 of the Act. On a careful reading of the Ld.CIT(A) order and the findings thereon, we do not find any valid reason to interfere with the decision and findings of the Ld.CIT(A) therefore we dismiss ground No.1 and 2 raised by the Revenue.

12. In the result, ground No.1 and 2 raised by the revenue are dismissed.

13. Coming to ground Nos. 3 and 4 raised by the Revenue, which relate to deleting the addition of Rs.16,02,000/- made by Assessing Officer on account of agriculture income.

14. Brief facts qua the issue are that these grounds raised by the Revenue, relate to treating part of agricultural income unexplained cash credit amounting to Rs.16,02,000/-. Facts as per the order of authorities below are that assessing officer during the assessment proceedings observed that the assessee had claimed agricultural income of Rs.26,28,436/-. Before the AO, the assessee had submitted the receipts for having given the 400 Mango and 900 Chickoo trees to the wholesalers for harvesting the produce for which the receipts were also produced, which the AO has reproduced on page 14 to 17 of the assessment order. The AO rejected the sale bills as they were not on stamp paper and without any agreement and without the description of number of trees etc. The AO concluded that the explanation filed by

the assessee was not satisfactory as no evidences of land records showing ownership of such land were produced and ad hoc wholesaler arrangement was not verifiable. Accordingly, Rs.16,02,000/- was treated as unexplained cash credit and brought to tax u/s 68 of the Act.

15. On appeal, Id CIT(A) deleted the addition, therefore, Revenue is in appeal before us.

16. The Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue, argued that during the assessment proceedings, the assessee was failed to produce the bill/vouchers in respect of agricultural income claimed of Mangoes and Chikoo crops. The assessee simply said that these sums were received from some ad hoc wholesaler. Therefore, the amount of Rs.16,02,000/- deleted by the Id. CIT(A) is not acceptable.

17. On the other hand, Learned Counsel for the assessee defended the order passed by the Id. CIT(A).

18. We have heard both the parties. We note that during the Appellate Proceedings, the assessee submitted that he is in possession of approximately 30.51 acres of agricultural land on which various types of agriculture activity is carried out. Statement providing detail of land and area in acres with crop/ produce grown was submitted. The assessee received income from growing sugarcane, vegetables, mangoes, chikoo etc. The assessee had approximately 900 chikoo trees and 400 mango trees and agriculture income shown by assessee was duly supported with documents and the fact has been verified and accepted in the assessment of earlier years also. The assessee also submitted the copy of 7/12 and 8A showing detail of agriculture

activity carried out. The Id CIT(A) observed that assessee has been regularly offering agricultural income in his return of income. The agricultural income offered for last five years by the assessee are as under:

<i>Sr No</i>	<i>Assessment Year</i>	<i>Net Agriculture Income shown in COI (Amt In Rs.)</i>
1	2017-2018	26,28,436
2	2016-2017	18,41,788
3	2015-2016	30,08,012
4	2014-2015	27,68,456
5	2013-2014	22,23,522

The Id CIT(A) noted that the assessee is regularly offering agricultural income since last 5 assessment years. The assessee has also given the details of agricultural land with 7/12 extracts before the AO and during the Appellate Proceedings. The total agricultural land holding is 30.52 acres having sugarcane, mango, Chickoo and vegetable cultivation in 5 different blocks. The agricultural income offered by the assessee was accepted in scrutiny assessment of AY 2015-16 as evident from the copy of assessment order produced during the Appellate Proceedings. All these facts go to show that the assessee has agricultural land and is having agricultural income since several years which has been accepted by the Department. Having an agricultural income of Rs.26,28,436/- for an agricultural land of about 30 acres seems to be quite reasonable and possible. Therefore, Id CIT(A) deleted the addition made by the AO of Rs.16,02,000/-. We do not find any infirmity in the above findings of Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

19. In the result, the ground Nos. 3 and 4 raised by the Revenue, are dismissed.

20. In the combined result, appeal filed by the Revenue is dismissed.

Order is pronounced on 16/10/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 16/10/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat