

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, “SMC” BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

**आ.अ.सं./ITA No.486/SRT/2023** (AY 2016-17)

(Hearing in Physical Court)

Harishbhai G Chovatiya 18, Bapa Sitaram Row House, Kamrej Road, Sarhana, Surat- 394101 <b>PAN No: AGDPC 6539 M</b>	Vs	Income Tax Officer, Ward-3(3)(1), Surat, Aayakar Bhavan, Majura Gate, Surat-395001
<b>अपीलार्थी</b> /Appellant		<b>प्रत्यर्थी</b> /Respondent

निर्धारिती की ओर से /Assessee by	Shri Mehul Shah, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	17.07.2023
सुनवाई की तारीख/Date of hearing	07.11.2023
उद्घोषणा की तारीख/Date of pronouncement	13.11.2023

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld.CIT(A)”] dated 29.05.2023 for assessment year 2016-17, which in turn arises from the addition made by the Assessing Officer in assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 12.12.2018. The assessee has raised the following ground of appeal: -

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in making an addition of Rs.38,61,083/- u/s 69A of Income Tax Act 1961.

2. It is therefore prayed that above addition made by the Assessing Office and confirmed by CIT(A) may please be deleted.

3. The appellant craves leave to add or alter or delete any of the ground or grounds of appeal at the time of the hearing before Your Honour.”

2. Facts in brief are that assessee is an individual, filed his return of income for assessment year 2016-17 on 17.01.2017 declaring income of Rs.3,61,610/- and agricultural income for rate purpose of Rs.1,06,978/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that assessee has shown closing cash balance of Rs.6,77,106/- on 31.03.2015 and huge cash-in-hand of Rs.45,38,189/- as on 31.03.2016. The Assessing Office asked the assessee to furnish copy of cash book, cash-flow statement and source of such cash available. The Assessing Officer required such details in show cause notice dated 02.12.2018 regarding as to why the cash-in-hand of Rs.45,38,189/- should not be added as “income” under section 68 of the Act. The assessee was asked to submit reply on or before 08.12.2018. The Assessing Officer recorded that assessee filed his reply on 08.12.2018. The Assessing Officer noted that contents of reply reproduced in para-5.5 of assessment order. (However, no such contents are recorded by Assessing Officer, copy of reply by assessee is available at page-2 of paper book file by assessee). In the reply, the assessee submitted that he was supplying diamond cutting labour and due to downfall of diamond market he wanted to shift from diamond labour supply contract to agriculture activities and intends to buy agricultural land nearby to his native place. The assessee has taken loan from bank which was withdrawn in cash. Due to some reasons, he could not complete the deal of purchasing agricultural land and the cash balance was available with him. The reply of assessee was not accepted by Assessing Officer. The

Assessing Officer noted that assessee furnished withdrawal of Rs.42,42,700/- from his bank but no day-to-day details of expenses were furnished. The assessee has shown loan statement as a home loan of Rs.36.00 lakh from Bank of Baroda. The assessee has made withdrawal of Rs. 1.00 to Rs. 3.00 lakhs which shows that cash balance of Rs. 25.00 lakh was not available with the assessee. In the balance-sheet, the asset in the property was increased, though assessee himself disclosed that loan taken to buy agricultural land in cash. Thus, the withdrawal of Rs.25.00 lakh on 27.04.2015 was not available as cash-in-hand. The assessee has shown cash deposit of Rs.4,67,000/- in his bank account maintained in Bank of Baroda but details source is not furnished. The assessing officer held that details working of cash balance of Rs.42,42,700/- on account of withdrawal from 27.04.2015 to 10.04.2015 from his different bank accounts are not acceptable as that it remains in cash-in-hand till the end of the year. The Assessing Officer treated the cash of Rs.38,61,083/- (Rs.45,38,189 - Rs.6,77,106/-) as unexplained cash credit under section 68 in the assessment order passed under section 143(3) dated 12.12.2018.

3. Aggrieved by the addition made by Assessing Officer in assessment order, the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee filed detailed statement of fact along with Form-35 as well as detailed written submission. The written submission of assessee is recorded in para-6.2 of the order of Ld. CIT(A). In his submission, assessee submitted that section 68 is not applicable on impugned

addition, as the conditions required for application of section 68. Section 68 is applied when the assessee maintained books of account, which contains the credit amount and that assessee offered no explanation about source and nature of such credit, or the explanation offered by assessee in the opinion of Assessing Officer is not satisfactory. Undisputedly opening cash balance of Rs.6,77,106/- was cash-in-hand. Further, there is a cash withdrawal from the bank during the year and there is correspondence debit entry in the cash book as per books of account resulting in the closing cash balance of Rs.45,38,189/-. No amount in cash or cheque was credited in the books of account represented in the addition. Thus, the conditions of Section 68 are not fulfilled and addition are liable to be deleted. In the show cause notice dated 02.12.2018, the Assessing Officer accepted that assessee made withdrawal from bank of Rs.42,42,700/-, however, assessing officer stated in his show cause as to why the cash-in-hand of Rs.45,38,189/- should not be added in the income of assessee under section 68 of the Act. It is absurdity of Assessing Officer in treating disclosed cash-in-hand of Rs. 45,38,189/- which is reflected as asset of cash credit under section 68. The assessee further submitted that cash-in-hand was generated out of loan availed from bank accounts and the source was established. The assessee has obtained a loan of Rs.36.00 lakh which was disbursed in bank account No. 34670600000548 and Rs.8,85,000/-from bank account No.5429010001295 respectively. The said loan amount was transferred to saving bank account

No.34670100008105 and account No.5429010001295 and cash withdrawal was made after making some personal and business expenses. The cash balance of Rs.45,38,189/- is supported by cash book and there is no element of unaccounted income and complete statement of accounts in pass book and statement to prove of cash-in-hand. The Assessing Officer accepted the opening cash balance of Rs.6,77,106/- out of cash-in-hand of Rs.45,38,189/- and rest of the amount was explained as loan availed from Bank of Baroda. The assessee has shown the nexus of loan amount and withdrawal. The cash was withdrawn in anticipation of purchase of agricultural land but deal was not materialized and said cash remained in hand. The assessee further stated that cash book was not rejected by Assessing Officer by invoking of provision of 145(3). There was no finding of Assessing Officer that cash withdrawal was utilized into any unaccounted expense or unaccounted investment. To support assessee's submission, assessee relied on various case laws.

4. The Id. CIT(A) after considering the contents of assessment order and submission made by assessee noted that primary issue for his consideration is whether the assessee was able to justify the source of closing cash balance available with him. The assessee explained the source of closing balance with the help of cash withdrawal out of loan received by assessee that he has made sufficient withdrawals from his bank accounts. The Assessing Officer noted that assessee has cash withdrawal of Rs.42,42,700/- during the period from 27.04.2015 to 10.07.2015 out of which Rs.25.00 lakh was withdrawn

by assessee on 27.04.2015. The entire cash-in-hand for long period was not accepted by Assessing Officer and added to Rs.38,61,083/-. The Id. CIT(A) concurred with the finding of Assessing Officer that long time gap between withdrawal and showing it in the closing balance as on 31.03.2016 remained unexplained. The theory of human probability as has been laid down by the Hon'ble Apex Court in the case of CIT Vs Durga Prasad More (1971) 82 ITR 540 (SC) and Sumati Dayal Vs CIT (1995) 214 ITR 8801/ 125 CTR 124/80 Taxman 89 (SC) clearly justifies the consideration of surrounding facts and circumstances to determine the genuineness of the transaction. The Id. CIT(A) by applying such rational and not accepted the explanation made by assessee and confirmed the action of Assessing Officer. However, Ld.CIT(A) accepted the objection raised by assessee that addition cannot be made under section 68 of the Act. The Ld.CIT(A) treated the said addition under section 69A instead of Section 68 thereby upheld the addition of Rs.38,61,083/-. Further aggrieved the assessee has filed present appeal before the Tribunal.

5. I have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue and have gone through the order of lower authorities carefully. The Ld. AR of the assessee submits that once the Assessing Officer accepted that assessee has made withdrawal from his bank accounts and has not brought any evidence that withdrawal of amount was invested elsewhere or incurred on any expense, the cash balance available with the assessee was to be

believed. The Ld.AR of the assessee submits that he has filed cash book and bank pass books. The source of cash withdrawal is mainly from the loan availed by assessee. The lower authorities have not disputed such loan, which is otherwise clearly reflected in the bank accounts of assessee. Further there is clear withdrawal from the bank accounts in cash, the assessee right from the beginning has taken a plea that he intended to purchase some agricultural land at his native place and cash was withdrawn for making payment to seller. However, the deal was not materialized and cash was clearly available with the assessee. The only reason for lower authorities to disbelieve the theory of cash flow as to why the cash remained in hand for long period. There is no restriction or limit for keeping cash at home (hand). The Assessing Officer has not brought any adverse material or evidence that such cash was invested anywhere else. The Ld.AR of the assessee submits that once the closing balance cash of Rs.6,77,106/- was accepted and the assessee has clearly proved withdrawal from his bank account, then the lower authorities were not justified in treating the cash available with the assessee as unexplained. The Ld. AR of the assessee submits that he has filed copy of cash-flow statement, cash book and copy of pass-book. To support his submission, Ld. AR for the assessee relied upon following case law:

- Nand Kumar Taneja Vs ITO [2019] 105 taxmann.com 390 (Delhi-Trib.),
- Sunny Kapoor Vs ITO [2022] 142 taxmann.com 577 (Luck-Trib.),
- S.R. Ventakaratnam Vs CIT, (1981) 6 Taxman 263(Kar)

6. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. The Ld. Sr. DR for the Revenue submits that as per theory of human probability as has been held by Hon'ble Apex Court in the case of Durga Prasad More (supra) and Sumati Dayal (supra) that nobody will keep such huge amount of cash-in-hand when they are maintaining bank accounts. The assessee has availed the loan and he was bound to pay some interest to lender and keeping the cash-in-hand in idle for is not convincing. The Ld. Sr-DR for the Revenue submits that case law relied on by Ld. AR for the assessee is not applicable in the facts of the present case as fact of present case is different. In case of Nand Kumar Taneja (supra), the source was not explained by that assessee. In case of Sunny Kapoor (supra) the assessee has made deposit in bank and it was not available. Similarly, in the case of S. R. Ventakaratnam (supra) the source was not explained.
7. I have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. I have also gone through various documents filed by the assessee and deliberated on various case laws. The assessing officer made addition of Rs. 38,61,083/- by taking view that details working of cash balance of Rs.42,42,700/- on account of withdrawal from 27.04.2015 to 10.04.2015 from his different bank accounts are not acceptable as that it remains in cash-in-hand till the end of the year. Though, the assessing officer added cash in hand under section 68, however, the Ld CIT(A) while confirming such addition treated it under section 69A.

The Id. CIT(A) while confirming the impugned additions held that though, the assessee has cash withdrawal of Rs.42,42,700/- during the period from 27.04.2015 to 10.07.2015 and out of which Rs.25.00 lakh was withdrawn by assessee on 27.04.2015. The entire cash-in-hand for long period remained unexplained. I find that the cash in hand at the beginning of the financial year is accepted by the assessing officer, as the assessing officer while making addition reduced the closing cash balance from cash in hand shown by the assessee. I further find that the availing of loan from bank is also not in dispute. From the documents filed before the lower authorities as well as before me the assessee has also proved the cash withdrawal, even such fact is accepted by assessing officer. The only reason for making addition is as to why such cash was kept by the assessee for a longer period. The Id Sr DR for revenue also opposed the submissions of the assessee that despite having bank account, as to why the assessee kept such huge cash in hand. Before me, the Id AR for the assessee argued that there is no limit or restriction of keeping the cash at home, I find merit in his submissions that there is no such restriction in law. I find that the cash in hand shown by the assessee is duly explained and recorded in his cash book and source of which is known, which is clearly seen from the withdrawal from the bank on various dates. The assessing officer has not brought any adverse material or evidence on record that the cash in hand was beyond the withdrawal from bank. In my view, once the assessee explained the source of cash in hand, the assessing officer was not

justified in doubting the availability of such cash in hand for the sole ground of long period of holding, without brining rebutting such contention. Thus, the grounds of appeal raised by the assessee are allowed.

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

Order pronounced on 13<sup>th</sup> November 2023 in open court.

**Sd/-**  
**(PAWAN SINGH)**  
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 13/11/2023

*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Senior Private Secretary/ Private  
Secretary/Assistant Registrar, ITAT,  
Surat