

IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" BENCH, SURAT  
BEFORE DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.466/SRT/2023

(निर्धारण वर्ष / Assessment Year: (2011-12)

(Physical Court Hearing)

Gagjibhai Jivabhai Bharwad 452.453 Avadh Vice-Roy Sarhana Jakatnaka, Surat- 395006	Vs.	Income Tax Officer, Ward 1, Bardoli
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJYPB 8766 H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	Shri P.M. Jagasheth, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख/Date of Hearing	07/12/2023
घोषणा की तारीख/Date of Pronouncement	13/12/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2011-12, is directed against the order passed by the National Faceless Appeal Centre, Delhi [in short, "NFAC/Ld. CIT(A)"] dated 12.05.2023, which in turn arises out of an assessment order passed by the Income Tax Officer Ward-1 Bardoli, under section 144 r.w.s 147 of the Income Tax Act, 1961 (in short 'the Act'), dated 12.12.2018.

2. Grounds of appeal raised by the assessee are as follows:

*"1. That, the learned CIT(A) has grossly erred in confirming addition u/s 69 of Income Tax Act, 1961 as unexplained investment.*

*2. That, the learned CIT(A) has grossly erred in charging interest u/s 234A and 234B of the Income Tax Act, 1961.*

*3. That, the findings of the learned CIT(A) are not justified and required to be deleted."*

3. Succinct facts *qua* the issue are that the assessee is an individual and has not filed his return of income for the assessment year (A.Y.) 2011-12 under consideration. The assessee has purchased an immovable property of Rs.8,90,400/- by paying stamp duty of Rs.43,700/- on 10.02.2011. To examine the above transaction, the case of assessee was reopened u/s 147 of the Act after recording reasons and obtaining the necessary approval from the Authority. Accordingly, notice u/s 148 of the Act dated 27.03.2012 was issued and served upon the assessee. In response thereto, nobody appeared or made any submission asked for. During the course of assessment proceedings, it is noticed that the assessee purchased an immovable property of Rs.8,90,400/- by paying stamp duty of Rs.43,700/- on 10.02.2011, which is situated at Village Bhadiyad, Taluka Dholera, Dist. Ahmedabad during the year under consideration. The assessee was requested by issuing various notices, to furnish the details in respect of source of above investment.

4. In response thereof, the assessee has submitted the details comprising copy of Form 7A or 7 *etc.*, on 11.12.2018 through postal, *wherein* he has stated that assessee is a farmer and doing business of animal husbandry and engaged in agricultural activities. The Assessee has also stated that he is earning an average range of Rs.10,000-15,000 per month by selling milk. Further, the land in question was purchased out of assessee's past savings from agricultural income and milk producing business. However, no documentary evidence has been provided by assessee in respect of source of payment towards the purchase of subject land. Without providing any corroborative evidence merely stating that payment made for land in question was out of past saving agricultural income was not acceptable by Assessing Officer. Therefore, the source of above investment of Rs.9,34,100/- (Rs.8,90,400 + Rs.43,700) remained

unexplained and treated as unexplained investment u/s 69 of the Act and same was added by Assessing Officer to the income of assessee for the year under consideration.

5. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before NFAC/Ld.CIT(A), who has confirmed the action of Assessing Officer observing as follows:

*“6. I have carefully considered the grounds of appeal, statement of facts and the contents of assessment order filed by the appellant. No submission was filed by the appellant in spite of allowing sufficient opportunities of being heard during the appellate proceedings.*

*6.1 There is no dispute on the fact that the assessee had purchased an immovable property for Rs.8,90,400/- by paying stamp duty of Rs.43,700/- on 10.02.2011. The AO has asked the assessee to explain the source of aforesaid investment. The assessee claimed that he is a farmer and doing business of animal husbandry. Copy of Form 7A or 7 was also filed. The assessee explained that the payments for purchase of property was made out of past savings, agricultural income and milk business.*

*6.2 On the other hand, the AO held that no corroborative evidence was filed other than making the general claim as stated above.*

*6.3 During the appellate proceedings also, no evidence whatsoever was filed to explain the source of payment for purchase of property. The mode of payment is also not explained. In view of above, I have no material against the conclusion drawn by the AO that the above investment of Rs.9,34,100/- remained unexplained investment u/s 69. Therefore, the addition of Rs.9,34,100/- made u/s 69 for unexplained investment is hereby confirmed. The grounds of appeal are dismissed.”*

6. Aggrieved by the order of NFAC/Ld. CIT(A), the assessee is in further appeal before this Tribunal.

7. At the outset, Learned Counsel for the assessee vehemently argued that assessee is an agriculturist and engaged in agricultural activities and assessee is also engaged in producing and selling milk. The assessee has earned income below threshold limit *i.e.*, maximum amount which is not chargeable to tax therefore assessee did not file his return of income. However, Assessing Officer issued a notice on the assessee u/s 148 of the

Act stating that assessee purchased an immovable property amounting to Rs.8,90,400/- by paying stamp duty of Rs.43,700/- on 10.02.2011. In this regard, the Ld. Counsel submitted that assessee is an agriculturist and purchased an immovable property out of his agricultural income from past saving. The assessee has submitted before the Assessing Officer the details of extracted Form 7A or 7 which contain the details of land held by the assessee. The Assessing Officer stated that there is no agricultural income and assessee has purchased the property out of income from other sources, which is not acceptable. The Ld. Counsel pointed out that assessee has not engaged in any other activities other than agricultural and selling milk and therefore Assessing Officer has failed to prove that assessee has engaged in any other activities other than agricultural activities, therefore the allegation of Assessing Officer is not tenable in law. The Ld. Counsel also stated that assessee being an agriculturist is getting subsidy from the Government and also getting crop loan and cash loan under Pradhan Mantry Gramin Yojana. The assessee need not to maintain books of account because assessee's income is below the threshold limit which is not chargeable to tax. Therefore no addition should be made in the hands of assessee.

8. On the other hand, Learned Sr.DR for the Revenue supported the order passed by the Assessing Officer and argued that assessee has failed to prove his source of income. The Ld. DR pointed out that no doubt assessee is an agriculturist and engaged in producing and selling milk and doing agricultural activities, however the assessee has to submit the summary of agricultural land such as Form-7A and 7 and details of income earned by way of doing agricultural activities. The assessee, no doubt submitted some evidences of having agricultural land but did not submit proof of earning agricultural income and income earned by producing and

selling milk. Therefore, addition made by Assessing Officer should be confirmed.

9. I have heard both the sides and gone through the relevant material on record. It is seen that it is an undisputed fact that assessee is an agriculturist and aged 47 years, who actively engaged in agricultural activities and milk selling activities since from the beginning. The assessee does not have any other source of income other than agricultural income. The assessee is also engaged in producing and selling animals such cow and buffalo etc., and in these activities cash transaction are involved. Thus, in such business, that is, to sale and purchase cow and buffalo and producing milk, the cash transaction are involved. The assessee has not filed his return of income because he has no taxable income. The assessee had only agricultural income which are entirely exempted from tax. The assessee being an agriculturist and all the activities like selling crop and milk etc., are in the cash, therefore, I note that Assessing Officer has failed to prove the other source of income other than agricultural income of assessee and income by way of selling milk. The assessee has animals on his agricultural land and used the milk for himself and unused milk is sold by him in the market, therefore assessee stated that milk selling activities are also part of agricultural activities. I note that assessee filed details of agricultural land such as Form-7A/7 etc. and other details of agricultural activities. Since assessee does not maintain books of accounts and does not file return of income, hence assessee is not liable to produce books of accounts. I find that assessee submitted documents and evidences to prove his agricultural activities, such as Form No.7A, Form No.7 and other details of agricultural activities. The assessee, as stated above, argued that he is engaged in selling milk which is also part of agricultural activities. I also find that assessee's entire income pertains to and coming from

agricultural activities. Therefore, I find that Assessing Officer has not refuted or discredited these evidences and documents. The Assessing Officer did not mention in his assessment order that why he is not accepting these evidences. On the contrary, the Assessing Officer has just brushed aside these evidences without even a word on why they are not acceptable. It is a well settled law that when an assessee has all the possible evidences in support of his claim, they cannot be brushed aside based on surmises. Hence, I am not inclined to accept the contention of the Assessing Officer in any manner and hence the addition so made should be deleted. Accordingly, I delete the addition of Rs.9,34,100/- made by the Assessing Officer. This ground of assessee's appeal is allowed.

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

Order is pronounced in the open court on 13/12/2023.

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

सूरत / Surat दिनांक/ Date: 13/12/2023

**DKP (Sr. PS Outsourcing)**

**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