

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 847/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2017-2018

Kiranbhai Ranchhodhbhai Patel, Door No.67, Village Bhatara Anano Pol, PO Bhatara, Ta. Kathlal Kheda-387630. PAN: AVPPP2903H	Vs.	Income Tax Officer, Ward-3, Now Ward-1 Nadiad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Parin S Shah, A.R
Revenue by :	Shri Sushil Kumar Katiar, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **01/02/2024**

घोषणा की तारीख /**Date of Pronouncement**: **15/03/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Vadodara arising in the matter of assessment order passed under s. 144 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-2018.

2. The issue raised by the assessee in ground number 4 is that the Ld. CIT(A), erred in confirming the addition made by the AO for Rs. 10,00,000/- on account of unexplained money by invoking the provisions of section 69A of the Act.
3. The assessee in the present case is an individual and claim to be engaged in the activity of agricultural activities. The AO during the assessment proceedings found that there is a cash deposit of Rs. 10,00,000/- in the bank of the assessee, the source of which was not explained. Therefore, the AO treated the same as unexplained money u/s 69A of the Act and added to the total income of the assessee.
4. Aggrieved assessee preferred an appeal to the Ld. CIT(A) and submitted that the cash has been deposited in the bank account from two sources firstly, out of agricultural operation and secondly, out of withdrawal made on previous dates. The submission was made by the assessee before the Ld. CIT(A) in the grounds of appeal and statement of facts.
5. However, the Ld. CIT(A) disposed of the appeal of the assessee by observing that there is no compliance made by the assessee to the notices issued upon him. As such, the Ld. CIT(A), observed that the assessee has not explained based on the documents about the source of cash deposits. Therefore, the Ld. CIT(A), was pleased to uphold the findings of the AO.
6. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.
7. The Ld. AR before us filed a paper book running from pages 1 to 44 and contended that the assessee has made compliance vide letter dated 11/10/2019, in response to the notice issued u/s 142(1) of the Act, dated 23/08/2019. As per the Ld. AR, the assessee vide letter dated 11/10/2019 has submitted that the cash

was deposited through the agricultural operation. Further, the assessee to buttress his argument has also submitted that the assessee along with family members was owing 42 vigha of land. Likewise, the assessee has borrowed crop loan as evident from the bank statement of Bank of India. Thus, it was pleased by the Ld. AR that the agricultural activities carried out by the assessee cannot be doubted.

8. The Ld. AR further submitted that the copy of the bank statement was also filed before the AO wherein the cash withdrawal from the bank was very much reflected. As such the Ld. AR contended that the revenue authorities have considered the cash deposits as income without taking a note of cash withdrawal which was used for such cash deposits during demonetization period. The Ld. AR to this effect has filed a brief note running into 2 pages justifying the source of cash deposits in the bank account. Accordingly, the Ld. AR contended that there cannot be any addition u/s 69A of the Act, on account of unexplained money.

8.1 The Ld. AR has also filed the additional evidence representing the sale of agricultural produce with the prayer to admit the same.

9. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the pages 3 to 40 of the paper book we note that the assessee has submitted the details of land holding and bank statement vide letter dated 11/10/2019 to the AO to justify the source of cash deposit in the bank from agricultural operation and out of cash withdrawal in the earlier year. However, we note that none of the authorities below has considered the reply of the assessee dated 11/10/2019 whereas the assessment was framed dated 30/11/2019. As there is no fault on the part of the assessee, having not

considered the submission filed by the assessee, accordingly, we are not inclined to set aside the issue to the file of the AO to avoid multiple proceedings.

10.1 Furthermore, the assessee in the ground of appeal has submitted the source of cash deposits out of the agricultural operation and out the cash withdrawal which was noted by the Ld. CIT(A), in his order. Yet the Ld. CIT(A), dismissed the appeal filed by the assessee merely by observing that the assessee has not furnish any plausible reason that the cash was deposited out of cash withdrawal.

10.2 Be that as it may be, the Ld. CIT(A), has not considered the submission filed by the assessee vide letter dated 11/10/2019, during the assessment proceedings. Admittedly, the power of the Ld. CIT(A) is co-terminus with that of the AO, meaning thereby, the Ld. CIT(A), has the power to enhance the income declared by the assessee. Thus, it is implied that the Ld. CIT(A) is under the obligation to frame the order after considering the assessment record. But in the present case he has not done so. However, on perusal of the bank statement, we note that there were sufficient cash withdrawal on the earlier occasion as reproduced as under:

Source of cash deposit into bank account is as under:

552500	Cash withdrawal from saving account no 280310100008622 with BOI on 02/07/2016
45000	Cash withdrawal from saving account no 280310100008622 with BOI on 01/09/2016
75000	Cash withdrawal from saving account no 280310100008622 with BOI on 17/09/2016
140000	Cash withdrawal from saving account no 280310100008622 with BOI on 26/09/2016
65000	Cash withdrawal from saving account no

	<i>280310100008622 with BOI on 26/09/2016</i>
<i>308103</i>	<i>Sale of Agricultural product wheat to Krunalkumar Prahaladbhai Thakkar bill no.86 dated 03/11/2016.</i>
<i>28217</i>	<i>Sale of Agricultural product Bajari to Krunalkumar Prahaladbhi Thakkar bill no 91 dated 07/11/2016</i>
<i>1413820</i>	<i>ToTAL</i>

10.3 It is also beyond doubt that there was a crop loan obtained by the assessee which evidences that assessee was engaged in agricultural operation and therefore the possibility of cash deposits out of agricultural produce can also not be ruled out. Accordingly, we hold that the benefit of doubt about the source of cash deposits from the agricultural operation goes in favour of the assessee. Thus, in view of the above, and after considering the fact in totality we hereby set-aside the findings of the Ld. CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 15/03/2024 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

**(True Copy)
15/03/2024**