

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 1814/Ahd/2019

निर्धारण वर्ष/Assessment Year: 2016-17

Mahendrakumar H. Adhvaryu, A-8, Classic Palace, Talav Gate, Bodakdev, Ahmedabad-380054 PAN : AEZPA 8877 Q	Vs.	Income Tax Officer, Ward-3(3)(3), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, AR	
Revenue by :	Shri Anurag Chandra, Sr DR	

सुनवाई की तारीख/Date of Hearing : 01.02.2024
घोषणा की तारीख /Date of Pronouncement: 26.04.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

Present appeal has been filed by the assessee against the order passed by the Id. Commissioner of Income Tax (Appeals)-3, Ahmedabad [hereinafter referred to as "Ld. CIT(A)" for short] dated 28.08.2019, under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], pertaining to the Assessment Year (AY) 2016-17.

2. The grounds raised are as under:-

"1. The learned CIT(A) has erred in law and on facts in not giving a reasonable opportunity of hearing to the appellant which is in violation of the principles of natural justice.

2. The learned CIT(A) has erred in law and on facts in stepping into the shoes of the appellant to confirm the additions.

3. The learned CIT(A) has erred in law and on facts in confirming addition of cash in hand of Rs.62,76,216/- u/s 68 of the Act.

4. *The learned CTT(A) has erred in law and on facts in not appreciating that s.68 of the Act is not at all applicable.*

5. *In any case, the learned CIT(A) has erred in not appreciating that when the books have not been rejected, no addition of cash in hand recorded in balance sheet can be made.*

6. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

7. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A/B/C of the Act.*

8. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(1)(c) of the Act."*

3. As is evident from the above, the solitary issue and grievance of the assessee in the present appeal is against the confirmation of addition made to the income of the assessee of the outstanding cash balance as at the end of the year amounting to Rs.62,76,216/-, treating it as income of the assessee from undisclosed sources. The addition being made u/s 68 of the Act.

4. We have heard both the parties, and we have also gone through the orders of the authorities below, as also the documents placed in the paper-book filed before us which were relied upon during the course of hearing by both the parties. Carefully considering all of the above, we hold that the addition made in the present case has no legs to stand upon, that the Revenue has failed miserably in making out a case for treating the outstanding cash balance in the hands of the assessee as at the end of the year as representing its undisclosed income and subjecting it to tax in terms of Section 68 of the Act. The reasons for the same follow.

5. Before proceeding, a brief profile of the assessee, as emanates from the orders of the authorities below, is necessary. The assessment order notes the assessee to be running a proprietary concern in the name and style of M.N.G.P. Fruits, carrying on the business of trading of semi-wholesale of fruits. During the impugned year, the assessee had filed return of income declaring total income of Rs.3,83,930/- and agricultural income of Rs.3,65,155/-. The case of the assessee was selected for scrutiny under the scope of limited scrutiny in order to examine (i) **“whether sales turnover/receipts had been correctly offered to tax and (ii) whether cash in hand shown in return of income was correct”**. The emphasis on examining the correctness of the cash in hands was, as transpires from the orders of the authorities below, due to the fact that the assessee had filed the return of income for the impugned year after the period of demonetization on 14.02.2017 reflecting huge cash balance many times as that reflected in the preceding two years. Therefore, on the premise that the assessee may have utilized this closing cash balance of the impugned year to justify the cash deposited during demonetization period in the succeeding year, the genuineness of this cash balance was required to be examined in the scrutiny proceedings.

6. Having said so, we have noted that, during assessment proceedings, the Assessing Officer asked the assessee to offer his explanation with respect to both the above issues, i.e. correctness of sales turnover and cash balance, but he found that the assessee was unable to justify the sales turnover/receipts with proper documents. He noted the assessee to be dealing mainly in mango fruit. He found discrepancy in the recording of purchase and sale of mangoes in the books of the assessee. He found that while they were bought and sold,

as per purchase and sales register maintained, during the mango season, the cash book recorded these transactions throughout the year. He noted various other anomalies relating to the business of sale of fruits finding that no bills were maintained by the assessee with respect to the same, nor produced before him; no confirmations of the parties from whom purchases were made or for that matter to whom sales were made of the fruits was filed by the assessee. No evidences of expenses incurred were filed. And he also noted that no godown/shop for storing fruits was maintained by the assessee. Similarly, with respect to the agricultural income earned by the assessee, the Assessing Officer found that the assessee was unable to establish the genuineness of the same; thus, with respect to both the business of the assessee and the agricultural activities carried out by him, the Assessing Officer held that the assessee had failed to prove the genuineness of the activities and that it was only a colourable device for generating cash or entering his unaccounted income. Therefore, based on this finding, he treated the cash balance outstanding as at the end of the year of Rs.62,76,216/- as the unaccounted income of the assessee earned through undisclosed sources and introduced as cash balance in his books, and subjected the same to tax. The crux of his findings in this regard are at paragraph No. 9.2 of his order as under:-

“9.2 In view of the above discussion, the plea of the assessee taken in response of show cause is not tenable. The assessee has not submitted true or real facts during the assessment proceedings. He has totally failed to prove the genuineness of business and agriculture activities carried by him during the year. The assessee has submitted only forged and colorful devices during the assessment, those have no any meaning. The assessee is doing his business on paper only for generating cash or entering his unaccounted income. Therefore, under the above circumstances and facts as discussed above, it is cleared that the cash in hands of Rs. 62,76,216/- shown by the assessee in his return of income filed for the AY 2016-17 is nothing but introduction of his unaccounted income which was earned through undisclosed sources. Accordingly, cash in

hands of Rs. 62,76,216/- shown by the assessee in his balance sheet for the AY 2016-17 remains unexplained. Hence, the same is added back to the total income of the assessee as per provisions u/s. 68 of the Income Tax Act during the year under consideration. A penalty proceeding is also initiated separately for furnishing inaccurate particulars of income on the said addition."

7. The Id. CIT(A) found no merit in the appeal of the assessee and confirmed the order of the Assessing Officer, and his findings are at paragraph No. 2.6 of the order as under:-

"2.6 I have gone through the facts of the case. The assessee is in the business of semi-wholesale of fruits. However, the assessee has not submitted any details of Godown/shop etc where the fruits were stored. From the Trading and P&L account it has been observed that he has debited the amount toward the various expenses i.e. Box expenses, labour expenses, transportation expenses, electricity expenses, stationary expense etc. The assessee has not submitted any documentary evidences, which proves the said expenses debited in P&L account are genuine. He has submitted only ledger account in support of expenses claimed in Profit & Loss account. It is important to mention here that the ledgers are not basic evidences which prove the genuineness of business activity carried out by the assessee. On perusal of written confirmations as well as purchase register filed by the assessee in response of show cause notice, it is noticed that the assessee has purchased only mangoes amounting to Rs. 51,11,661/-, which was the total purchase made by him during the year. As per the purchase register, mango was purchased between the periods of 20.04.2015 to 29.05.2015, which is the actual season of mangoes.

However, on perusal of cash book submitted by the assessee during assessment proceedings, it has been found out that he has debited purchases in his cash book in every month of the FY 2015-16. It is seen from the confirmation of all parties from whom the assessee has made purchase during the year and that all confirmation has been written in similar letter form and also in same format and the dates are between 14.12.2018 to 15.12.2018. Hence, it is clear that the said confirmation parties has been manipulated by the assessee. From the above discussion, it is evident that in order to explain the credits appearing in the appellant books of accounts; the appellant has to prove the genuineness of the transaction, capacity and creditworthiness of the lender and the source of the deposit in the bank account of the creditor. In the instant appeal, the appellant has miserably failed to explain the source of the deposit in the bank accounts. In view of the above mentioned facts which clearly held that for source of credit u/s.68 of the IT Act it is the primary duty of the assessee to establish the

genuineness. The assessee has not submitted true or real facts during the assessment proceedings and failed to prove the genuineness of business and agriculture activities carried by him during the year. Under the above circumstances and facts as discussed above, it is very clear that the cash in hands of Rs. 62,76,216/- shown by the assessee in his return of income filed for the AY 2016-17 is nothing but introduction of his unaccounted income which was earned through undisclosed sources. Therefore, the addition made by the AO of Rs. 62,76,216/- on account of unaccounted income u/s.68 is hereby confirmed. The grounds of appeal are dismissed."

8. The reasons for not agreeing with the revenue authorities is multifold:-

- (i) The amount of Rs.62,76,216/- which was added to the income of the assessee admittedly represented closing cash balance. The admitted fact on record is also that there was an opening cash balance of Rs.31,28,490/- disclosed in the return of income filed of the immediately preceding year, i.e. AY 2016-17. This fact is noted by the Assessing Officer at paragraph No.6.2 of his order also as under:-

"6.2 On verification of return of income filed by the assessee for the AY 2014-15, 2015-16 and 2016-17, it is observed that the assessee has shown high Cash in hands in balance sheet as compared to the preceding years, which is tabulated as under:

<i>Cash in hands as on</i>	<i>Amount in Rs.</i>	<i>% increase</i>
31.03.2014	1810851	
31.03.2015	3128490	72.76
31.03.2016	6276216	100.61

On perusal of the above table, it is observed that the growth in cash in hands is approximately 100% compared to the preceding years.

....."

In view of the above fact, the entire closing balance of cash of the year cannot be treated as income of the assessee earned during the year. No reasoning has been given in the entire order of the

Assessing Officer or Id. CIT(A) for treating the entire closing balance of cash as the income of the assessee of the impugned year in the face of the admitted fact that there was an opening balance of cash to the tune of Rs.31,28,490/-.

- (ii) The entire case of the Revenue for treating the closing balance of cash as income of the assessee is that its activities of carrying out the wholesale business of fruits and earning income from agricultural activities was found to be bogus and colourable device; but the fact of the matter is that the closing balance of the cash was explained by the assessee as attributable not only to its business activities and agricultural income but also to the increase in capital of the proprietor and withdrawal from bank OD account and bank account besides from cash sales and other activities.

9. The assessee had proffered his explanation to the Assessing Officer which is reproduced at page Nos. 7 & 8 of the order as under:-

“

On analysis of my balance-sheet as on 31.03.2014, 31.03.2015 & 31.03.2016, you will find following facts in respect of my capital and liabilities and the assets reflected which are as under:-

<i>Particulars</i>	<i>31-03-2014</i>	<i>31-03-2015</i>	<i>31-03-2016</i>
<i>Unsecured loan</i>	<i>1309900</i>	<i>2209900</i>	<i>3942218</i>
<i>Secured loan</i>	<i>1375283</i>	<i>1223585</i>	<i>2836747</i>
<i>Capital</i>	<i>7105851</i>	<i>8359657</i>	<i>9252679</i>
<i>Application of Fund</i>			
<i>Fixed Assets</i>	<i>3358498</i>	<i>3890218</i>	<i>3783879</i>
<i>Investment</i>	<i>312692</i>	<i>489550</i>	<i>602020</i>
<i>Current Assets</i>	<i>4011170</i>	<i>3539173</i>	<i>5179060</i>
<i>Cash in hand</i>	<i>1810851</i>	<i>3128450</i>	<i>6276215</i>

*From the above analysis you can see that there is increase in capital and liabilities of the assessee as well as fixed assets investment, and current assets also increased including cash balance. My capital increased by Rs.2146828 and my liabilities increased by Rs.4093782 during the period april-2015 to march-2016. Against this my cash on increased by Rs.4465364 during the said period. The reason for increase in cash account of increase in capital and cash withdrawal from my Bank OD- accounts regular bank account and cash sales (net withdrawal) from my Indian overseas account no.01250100003188 is Rs.615000 and from 10 B.s/b account is Rs.750000 during F.Y.2015-16 This fact reveilles that, the does not, in any manner, represents my hand is on and bank no.012501000013276 cash balance as on 31.03.2016 unaccounted income (Not offered to Income-Tax), It is genuine cash balance.
*

10. The Assessing Officer, we find, has examined only one source of the cash balance, i.e. the business activities and agricultural income earned by the assessee. While he has carried out no examination vis-à-vis the source of cash balance attributable to capital introduced by the assessee and amount withdrawn from bank, there is not a whisper of any examination done by the Revenue Authorities on this score at all. The entire focus of the Revenue Authorities has been on the genuineness of the business activities carried out by the assessee. Admittedly the assessee had submitted his cash book during assessment proceedings. The Revenue has chosen to examine only part of the transactions attributing to increase in cash being activities of business or agriculture carried out by the assessee. They have completely ignored the other factors/transactions contributing to the increase in cash balance though the cash book was clearly there before them and the assessee had explained all sources contributing to increase in cash balance.

11. Such half-baked inquiry of the Assessing Officer/CIT(A), we hold, cannot be the basis for treating the cash balance as income of the assessee for the year.

12. Thirdly, the Revenue Authorities have categorically held the assessee to have not carried out any business activity of trading in fruits in the semi-wholesale market in the impugned year, but surprisingly and contrary to this finding, they have accepted the income returned by the assessee from this business activity of Rs.3,83,930/-. The Assessing Officer categorically mentions this at page No.13 of his order as under:-

“

In view of the above discussions, it is clear that the assessee has submitted and colorable device during the assessment proceedings. The assessee has not submitted any documentary evidences in support of the business activities carried by him during the assessment year. However, Income offered by the assessee in his return of income of Rs. 3,83,930/- is accepted for taxation purpose.”

13. Besides, during the course of hearing before us, the Id. Counsel for the assessee contended that he had been regularly disclosing income from this business in the preceding and succeeding years also. Copies of returns of income and computation of income for AY 2013-14 to 2018-19 were placed before us disclosing income from business and profession in all the years. The computation of income for AY 2018-19 reveals the nature of business has been wholesale and retail trade of other products. The computation of income for AY 2016-17 reveals the address of the assessee as “M.N.G.P. Fruits”, in which his business of wholesale trading of fruits were carried out by the assessee. So also the income-tax returns filed by the assessee for AY 2016-17 revealing the address of the assessee as “M.N.G.P. Fruits” and disclosing income from business.

14. In view of the above, we hold that the addition of the closing balance of cash in the hands of the assessee as income from undisclosed sources of the impugned year is totally unjustified and has been made based on incomplete

inquiry by the Assessing Officer of the explanation furnished by the assessee along with the books of accounts – more particularly, the cash book submitted by the assessee and, therefore, is not sustainable. For the aforementioned reasons, the addition made is directed to be deleted, and the appeal filed by the assessee is accordingly allowed.

15. In effect, the appeal of the assessee is allowed.

Order pronounced in the open Court on 26/04/2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad; Dated 26/04/2024

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आदेश की प्रतिलिपि अग्रेषित/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,अधिकरण अपीलीय आयकर** , /DR,ITAT, Ahmedabad,
6. **गार्ड फाईल** /Guard file.

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आदेशानुसार/ BY ORDER,

**सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad**