

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 3036/Mum/2023 (A.Y. 2005-06)**

**Narendra I Bhuva and Others.**

554, Jonette, Jama Jamshedji Road,  
Matunga,  
Mumbai - 400 019.

**PAN: AAAHN2096M**

..... Appellant

Vs.

**Income Tax Officer,**

Ward 20(2) (1), Piramal Chamber,  
Mumbai – 400 012.

..... Respondent

Appellant by : Shri Dinkle Hariya, Ld. AR  
Respondent by : Shri R.R. Makwana, JCIT, Ld. DR  
Date of hearing : 03/04/2024  
Date of pronouncement : 16/05/2024

**ORDER**

**PER GAGAN GOYAL, A.M.:**

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 30.06.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2005-06. The assessee has raised the following grounds of appeal: -

### **"GROUNDS OF APPEAL"**

- 1) *On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeal) has failed to consider that the amount deposited into bank account during the year was an agricultural income.*
- 2) *On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeal) has failed to consider that all the documents submitted were genuine and has erred in upholding that all the documents submitted are made up documents.*
- 3) *On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeal) has erred in upholding the addition of Rs. 12,50,000/- made by Assessing Officer to the returned income on account of unexplained investment u/s 69 of the L.T. Act, 1961 in respect of cash deposited in the bank account during the year.*
- 4) *The appellant craves leave to add, alter, amend or substitute the above referred ground or to add any other grounds of appeals.*

2. The brief facts of the case are that the assessee is H.U.F. and a non-filer of return for the year under consideration. A piece of information was received through AIR in the case of the assessee H.U.F. that cash of Rs. 12.5 Lacs was deposited in its savings account with Indian Overseas Bank. Given the above, the assessee's case and a notice u/s. 148 of the Act was issued for reopening vide dated: 30.03.2012. The case of the assessee was assessed at Rs. 12,50,160/- u/s. 143(3) r.w.s. 147 of the Act. The assessee being aggrieved with the order preferred an appeal before the Ld. CIT(A), NFAC, Delhi, who in turn confirmed the order of the AO. The assessee further aggrieved with the same and preferred the present appeal before us.

3. We have gone through the order of AO passed u/s. 143(3) r.w.s. 147 of the Act, order of Ld. CIT (A) u/s. 250 of the Act and submissions of the assessee along with grounds of appeal. It is observed that the assessee is a H.U.F. and Narendra I. Bhuvra was his karta, which expired on 10.08.2008. The assessee H.U.F. owns 2.5 Acres of agricultural land in the village at Akola Distt. The

assessee deposited cash on 2 occasions, i.e. Rs. 6.5 Lacs on 23.04.2004 and Rs. 6 Lacs on 22.06.2004. For better understanding and clarity on the issue, we are reproducing herein below the provisions of section 69 of the Act as under:

**Section - 69, Income-tax Act, 1961**

***Unexplained investments.***

*69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the **nature and source of the investments** or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.*

4. The case of the assessee is of no accounts case, i.e. no regular books of accounts were being maintained. Hence, we have examined the copy of the bank passbook submitted by the assessee vide Pages No. 12 and 13 of the paper book for the period 30.01.2003 to 06.02.2007. It is observed that in F.Y. 2002-03, cash deposit was there to the tune of Rs. 4 Lacs only, in F.Y. 2003-04 it was Rs. 3 Lacs and suddenly 12.5 Lacs in the F.Y. 2004-05, whereas again in the F.Y. 2005-06 it was Rs. 2.1 Lacs only. It is also observed that there was an issuance of cheque on the very same day of cash deposit in every financial year.

5. As per section 69 of the Act, the assessee is duty-bound to explain the nature and source of the cash deposit to come out of the purview of section 69 of the Act. We have gone through the documents submitted by the assessee before us. It is found that even before us, the assessee was not able to establish the source of the cash deposited. In these circumstances, it looks like a *modus operandi* of the assessee, i.e. deposit cash in the designated bank account and issue a cheque on the same date. Still, as we have examined the trend of cash deposits in the designated bank for previous F.Y.s and succeeding

F.Y.s and the highest amount of deposit comes to Rs. 4 Lacs, we allow the same figure as genuine and the rest of the addition is sustained.

6. Based on the above, AO is directed to delete the addition to the tune of Rs. 4 Lacs and the balance addition of Rs. 8.5 Lacs is sustained. **As a result, the appeal of the assessee is partly allowed in the above terms.**

The order was pronounced in the open court on 16<sup>th</sup> May 2024.

Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER  
Mumbai, दिनांक/Dated: 16/05/2024  
*Sr. PS (Dhananjay)*

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**