

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.863/Ahd/2024  
(Assessment Year: 2017-18)

Niteshkumar Chandrakantbhai Patel 160, Kuivali Khadki, Kanthariya, Anand, Gujarat-388307	Vs.	Income Tax Officer, Ward-1(3)(1), Vadodara
[PAN No.CMCP4913M]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Dhruvil Gandhi, A.R.
<b>Respondent by:</b>	Shri Atul Pandey, Sr. DR

<b>Date of Hearing</b>	26.11.2024
<b>Date of Pronouncement</b>	27.11.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), (in short “Ld. CIT(A)”), National Faceless Appeal Center, (in short “NFAC”), Delhi vide order dated 29.02.2024 passed for A.Y. 2017-18.

2. The Assessee has taken the following grounds of appeal:-

“1. The learned CIT(A) wrongly dismissed the appeal by considering learned AO’s grounds only.

2. The learned CIT(A) heavily relied on the wrong base of the learned AO without considering materials available on records.

3. The learned CIT(A) wrongly confirmed the addition amounting to INR 1,58,99,090.

4. The confirmation of learned CIT (A) regarding addition resulted in tax impact on the sale proceeds of banana and not on commission income.

5. The appellant craves to add, amend, alter or remove any of the above grounds of appeals.”

3. The brief facts of the case are that the assessee is a Banana Commission Agent earning primarily commission income from sale of bananas on behalf of farmers. The assessee worked as a middle man between farmers and fruit vendors. These fruit vendors are located at different cities of Gujarat, Haryana and Punjab. The business activity of the assessee mainly consists of supplying of bananas taken from the farmers to various fruit vendors, at their respective locations and collecting sale proceeds from fruit vendors and thereafter making payment to the farmers in cash by withdrawing the same from the bank account. Therefore, modus operandi of the assessee was that he collected sale proceeds of bananas from respective fruit vendors, in his own bank account and thereafter withdrew this amount for making payment to respective farmers, in cash.

4. The assessee's case was selected for scrutiny for the impugned assessment year for the reason "cash deposit of Rs. 1,58,99,090/-" during the year. However, despite issuance of several notices of hearing, none appeared on behalf of the assessee and accordingly, the AO made addition to this cash deposit amounting to Rs. 1.58 crores as unexplained income of the assessee, under Section 68 of the Act.

5. In appeal, the assessee filed reply dated 12.12.2023 before Ld. CIT(A), and the Ld. CIT(A) also called for a remand report from the AO, where the AO raised concerns over the quality of evidences furnished by the assessee. Accordingly, Ld. CIT(A) confirmed the order passed by the Ld. AO on the ground that the assessee has not proven the genuineness of the banana supply business with reliable supporting evidences and has not submitted confirmation from the concerned parties with their identity, PAN and ITRs. While passing the order, Ld. CIT(A) made the following observations:

*“I have considered the finding of the AO in remand report submitted on without prejudice basis and counter comments of the appellant. I find that the appellant has not proved the genuineness of banana supply business with reliable supporting evidences and not submitted confirmations from the concerned parties with their identity, PAN and ITRs. Only giving phone numbers of some of the parties is not adequate to prove the genuineness of the transactions. Further the claim of earning commission at the rate of 2 to 3% is also not supported by any evidence. The contention of the appellant that cash was deposited from different locations is also found to inadequate since it is not backed up by the confirmation, identity and creditworthiness of the concerned party. In absence of such details I find that the appellant has not discharged the primary onus of proving genuineness of cash deposits made in the bank account. Therefore the addition made by the AO is confirmed and ground of appeal raised by **the appellant is dismissed.**”*

6. Before us, the Counsel for the assessee submitted that the assessee had filed detailed submissions and explanation before Ld. CIT(A) which were clearly disregarded by the Ld. CIT(A) in a summary manner without giving any concrete finding with respect to the same. The Counsel for the assessee submitted that perusal of the bank account shows that cash was deposited in his bank account directly by the fruit vendors from various locations such as Surat, Vadodara, Delhi, Mohali, Rewari, Vasad, Anand, Rohtak, Khanna, Panipat etc. which shows that these amounts have been deposited by various vendors in his bank account who are situated in various part of India. It was submitted before us that Ld. CIT(A) failed to appreciate that the assessee is a resident of a small village Asodar located near Anand in Gujarat which clearly shows that the claim of the Department that the assessee had deposited cash in his bank account from different locations across India is clearly against the principle of probabilities and surrounding circumstances. Further, the Counsel for the assessee submitted that the assessee had furnished substantial details before Ld. CIT(A) for his consideration, however, without carrying out due verification, the Ld. CIT(A) simply brushed aside the additional evidences sought to be filed by the assessee. Accordingly, the Counsel for the assessee submitted that in the interest of justice, the case may be restored to the file of Ld. CIT(A) for de-novo consideration.

7. In response, the Ld. D.R. placed reliance on the observations made by the AO and Ld. CIT(A) in their respective orders.

8. We have heard the rival contentions and perused the material on record.

9. On going through the facts of the instant case, we observe that the AO has proceeded to add the entire amount of cash deposits, as income of the assessee. However, from a perusal of the bank account, it is seen that there are regular withdrawals by the assessee from this bank account as well (which as per the assessee was withdrawn to make payments to the respective farmers towards supply of banana). However, while passing the order, Ld. CIT(A) has not given any credit for the withdrawals made by the assessee from the same bank account and confirmed the order of AO, whereby the entire deposits in the bank account were treated as unexplained income of the assessee, without giving due credit for the withdrawals made by the assessee from this bank account. Secondly, Ld. CIT(A) did not give any consideration to the argument of the assessee that the deposits in the bank account were made from various branches across India which clearly prove that the said deposits represented sale consideration made by the assessee to various banana vendors. Thirdly, we observe that the assessee had furnished a table giving names, address and contact / phone numbers of around 15 farmers from whom the purchases have been made and also phone numbers of approximately 10 fruit vendors to whom the sales were stated to have been made by the assessee. However, even without carrying out the necessary verification, the evidence furnished by the assessee was simply brushed aside by the Ld. CIT(A). Further, the sample invoices for sale of bananas furnished by the assessee were also dismissed by Ld. CIT(A) as being fictitious. We also observe that the assessee has furnished details of land holdings of some

of the farmers, along with their PAN card and Aadhar card, which were not considered by Ld. CIT(A).

10. Accordingly, looking into the instant facts, we are of the considered view that the assessee has been able to furnish evidence in support of the cash deposits / withdrawals during the impugned year, which in our view, requires to be taken into consideration by Ld. CIT(A), in the interest of justice.

11. Accordingly, looking into the instant facts, the matter is restored to the file of Ld. CIT(A) for de-novo consideration, after giving due opportunity of hearing to the assessee and to carry out necessary verification in respect of details of farmers and fruit vendors furnished by the assessee.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

<b>This Order pronounced in Open Court on</b>	<b>27/11/2024</b>
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**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 27/11/2024

TANMAY, Sr. PS

**TRUE COPY**

**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, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad