

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.931/Ahd/2024
Asstt.Year :2017-18

Dushyant M. Pandya At Post : Surroad, Tal: Idar Dist. Sabarkantha. PAN : AKOPP 5443 N	Vs	The DCIT, Circle Himatnagar.
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(Applicant)	(Responent)
Assessee by :	Shri Tej Shah, Advocate
Revenue by :	Ms.Neeju Gupta, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : 25/11/2024
घोषणा की तारीख /**Date of Pronouncement**: 06/12/2024

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), Indore under section 250 of the Income Tax Act, 1961 dated 21.3.2024 pertaining to Asst.Year 2017-18.

2. The grounds raised in the appeal read as under:

"1. The National Faceless Appeal center (NFAC), Delhi has erred in facts and in law and confirmed the addition made by assessing officer Amt. of Rs.10,00,000/- u/s. 69 A of I. T. act as a unexplained cash credit for cash deposited in saving Bank account during the demonetization period for the A.Y.2017-18.

2. Direction to charge interest u/s. 234 B & C without application of mind is unjustified. It be so held now."

3. Solitary issue in the present appeal relates to the addition made to the income of the assessee on account of cash found deposited in the bank account during demonetization period remaining unexplained, amounting to Rs.10.00 lakhs.

4. Before the AO the assessee explained source of cash deposited to be out of sale of agriculture produce, but on account of the fact that the party to whom the sales were made, failed to respond to the notice issued by the AO under section 133(6) of the Act, the AO disbelieved the explanation of the assessee, and went on to treat the source of cash deposited in the bank account as unexplained.

5. Before the Id.CIT(A) none appeared for the assessee, and the Id.CIT(A) accordingly passed *ex parte* order confirming the addition made by the AO.

The argument of the Id.counsel for the assessee before us was that the assessee had discharged its onus sufficiently of proving the source of cash deposits to be out of agriculture income to the AO itself. He pointed out that certain vital facts in this regard were there before the AO himself, which he disregarded and ignored, as under:

- i) The assessee had returned agriculture income in the return of income filed for the impugned year to the tune of Rs.10.50 lakhs which remained undisturbed by the AO;

- ii) The assessee in past also had been consistently returning agriculture income in its return filed. The quantum being as under:

<u>Asst.Year</u>	<u>Amount</u>
2015-16	Rs.9.5 lakhs
2016-17	Rs.10.00 lakhs
2018-19	Rs.8.5 lakhs

- iii) Bills for sale of agriculture produce sold during the year were furnished to the AO;
- iv) 7/12 of the agriculture land in the name of the assessee was also filed to the AO.

6. The ld.counsel for the assessee contended, therefore, that in the light of overwhelming evidences filed, substantiating the assessee's explanation of the cash deposited being out of the agriculture income of the assessee, the AO had wrongly treated the explanation as unsatisfactory.

He explained that before the ld.CIT(A) adequate opportunity of hearing itself was not afforded to the assessee. He pointed out that only two notices were issued, out of which, one notice was issued in the COVID period, and therefore, went un-responded by the assessee; that technically, the assessee was therefore given only one opportunity of hearing, and thereafter, the ld.CIT(A) had passed his order. He pleaded that all the facts being on record before the ld.CIT(A) also, he had erred grossly in confirming the addition made by the AO.

7. The ld.DR, however, pointed out that the AO had categorically noted the fact that on inquiry conducted by the AO with the party to whom the assessee had sold agriculture produce, no response had been received. He pointed out that the AO had issued notice under section 133(6) to the said party i.e. New Surrod Ginning and Pressing Factory, but no response had been received from the said party. The assessee was confronted with this fact, but had failed to file any response to the same, therefore, the AO had rightly treated the explanation of the assessee as false and unverified.

8. The ld.counsel for the assessee, however, responded by saying that the assessee cannot be punished for the act of the third party, who had not responded for reason best known to him to the notice issued by the AO under section 133(6) of the Act. He contended that the assessee had furnished complete address of the said party, and it was for the AO to have carried out whatever inquiry and investigation on the said party; that merely because third party did not respond to the notice under section 133(6) of the Act, did not go to prove that the claim of the assessee was incorrect and false.

9. Having heard contentions of both the parties, I find merit in the contentions of the ld.counsel for the assessee that the addition of cash deposited in the bank account of the assessee to the tune of Rs.10 lakhs, during demonetization was wrongly and incorrectly treated as from unexplained sources, and added to the income of the assessee.

Admittedly, the assessee had explained the source of the same as being out of sale of agriculture produce grown, and had evidenced the said fact by filing the sale bills of the agriculture produce, 7/12 record of land showing that it was growing cotton crops on it, and the return of income for the impugned year reflecting the agriculture income to the tune of Rs.10.50 lakhs. It is also an undisputed fact that the assessee had been consistently returning agriculture income of approx. 9.0 lakhs odd on an average in every year right from Asst.Year 2015-16 to the immediately succeeding year i.e. Asst.Year 2018-19.

10. In the light of these facts, it is an established fact that the assessee was an agriculturist and earning agriculture income. Therefore, the rejection of the assessee's explanation merely for the reason that the party to whom he sold the agriculture produce did not respond to the notice under section 133(6) of the Act is grossly unjust. The assessee cannot be punished for the non-compliance of a third party. Merely because the said party does not respond to the said notice, it does not in any way dilute all other voluminous evidences filed by the assessee to prove the fact that he was an agriculturist earning agriculture income from year to year.

I, therefore, hold that the assessee has sufficiently discharged its onus of proving the source of cash deposited in the bank account, as being out of sale of agriculture produce.

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The addition, therefore, made to its income of Rs.10 lakhs is, directed to be deleted.

The grounds raised by the assessee are accordingly allowed.

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

Order pronounced in the Court on 6th December, 2024 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 06/12/2024

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