



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.915/RJT/2024

निर्धारणवर्ष / Assessment Year: (2010-11)

(Hybrid Hearing)

Late Oghadbhai Karabhai Odedara (L/H Babubhai Oghadbhai Odedara) At Bavalvav, Porbandar, Gujarat-360575	Vs.	Income Tax Officer, Ward-2(4), Porbandar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAJPO3410B		
(Appellant)		(Respondent)

Appellant by : Shri Dushyant Maharshi, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. (DR)
Date of Hearing : 05/03/2025
Date of Pronouncement : 29/05/2025

आदेश / ORDER

Dr. Arjun Lal Saini, AM

Captioned appeal filed by the assessee, pertaining to Assessment Year 2010-11, is directed against the order passed by the Learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 10/10/2024, which in turn arises out of an order passed by the Assessing Officer, dated 09/10/2017, u/s 143(3) of the Income Tax Act, 1961.

2. The Grounds of appeal raised by the assessee, are as follows:



“1. Hon'ble CIT (Appeals) erred in confirming reopening u/s. 147 of the Act which is invalid as the case has been re-opened by Non-Jurisdictional Assessing Officer.

2. Re-opening u/s.147 of the Act is not valid as the certified copy of the reasons have not been provided by the Ld. AO within 30 days of the filing of the return by the assessee as per directions issued by the Hon'ble Supreme Court in the case of Sahkari Khand Udyog Madal Ltd. (SCA. No. 3955 of 2014). The Ld AO has only provided the extract of reason recorded by him. Hon'ble CIT (Appeals) erred in confirming the reopening of assessment.

3. Transfer of assessee's case from one jurisdiction to other jurisdiction is not valid as transfer order is not provided to the assessee in terms of section 127(1). Hon. CIT(Appeals) erred in confirming the reopening of assessment.

4. Hon'ble CIT (Appeals) erred in confirming the re-opening of assessment which was made only on the basis of information received from Bank and Ld AO has not provided his satisfaction for having "reasons to believe" for income escaping assessment. Merely non filing of return of income because the income does not exceed the not chargeable to tax, cannot be said escapement of income.

5. Ld AO has made re-opening of assessment on the basis of information received from bank mere to verify the details received and conducting rowing inquiry which is not valid in the eyes of Law. Hon'ble CIT (Appeals) erred in confirming the reassessment.

6. Hon'ble CIT (Appeals) erred in upholding addition of Rs. 7,70,000/- u/s. 69A as unexplained money out of total cash deposited in bank account which is from opening cash on hand available with assessee and without considering the documents submitted during the course of assessee proceedings.

7. Hon'ble CIT (Appeals) erred in upholding addition of Rs. 6,50,000/- u/s. 69A as unexplained money which is received as Gift from assessee's son out of his income without considering all the relevant documents submitted during the course of appellate proceedings to prove nature and source of income as well as creditworthiness.”

3. Brief facts qua the issue are that assessee filed return of income on 14th April, 2017, electronically declaring total income Rs. 76,800/-. The returned income was processed u/s 143(1) of the Income tax Act, 1961. The assessee's case was selected for scrutiny through NMS. Accordingly, notice u/s 148 of the Act, was issued on 30.03.2017, and duly served upon the assessee, on 01.04.2017. Subsequently, a notice u/s.142(1) r.w.s. 129 of the Act for filing of return of income was issued on 27.06.2017 and duly served upon the assessee



and a notice cum /questioner u/s. 142(1) of the Act for calling various information was issued on the assessee. During the assessment proceedings, the assessing officer noticed that assessee had deposited cash in the bank account by amounting to Rs. 23,30,000/-. Therefore, assessing officer issued a notice to the assessee, to explain the source of cash deposit. In response, the assessee submitted that most of the income were derived from agricultural savings, past savings, withdrawal from bank, and borrowed funds etc, and submitted the relevant proof also. However, the assessing officer rejected these evidences of the assessee and observed that the assessee's cash deposited in the bank account by amounting to Rs. 23,30,000/-, is nothing but assessee's income earned during the financial year from the undisclosed source of income known by the assessee only, which is taxable as per the Income-tax Act and treated unexplained money u/s 69A of the Act. Hence, addition of Rs. 23,30,000/- was made in the return of income of the assessee u/s 69A of the I.T. Act.

4. During the assessment proceedings, the assessing officer also noticed that assessee had shown agricultural income, amounting to Rs. 3,59,000/-. In response to notice, under section 142(1) of the Act, the assessee submitted its reply before the assessing officer that this is purely an agricultural income derived from agricultural activities and disclosed the same in the return of income. However, the assessing officer rejected the above contention of the assessee and observed that during the course of assessment proceedings, the assessee has not submitted the copy of Form No.12 mentioning the details regarding agricultural produce received from Land. Therefore, the assessing officer held that agricultural income shown by the assessee amounting to Rs. 3,59,000/- is nothing but assessee's taxable income. Hence, addition of Rs.



3,59,000/- was made in the return of income u/s 68 of the I.T. Act as unexplained cash credit u/s 68 of the Act.

5. Aggrieved, by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has deleted the addition partly. The learned CIT(A) fully deleted the addition to the tune of Rs.3,59,000/-. Besides, out of total addition of Rs. 23,30,000/-, the ld.CIT(A) sustained the addition, to the tune of Rs.14,20,000/-. The assessee is in appeal before us against the addition sustained by the ld. CIT(A) to the tune of Rs.14,20,000/-.

6. Learned Counsel for the assessee argued that son of the assessee, Mr. Babu Oghad Odedara (assessee), is having agricultural land of approximately 37 vighas situated at Bavalvav, Porbandar and he is carrying agricultural activities on the same. On 31/07/2009, Mr. Babu Oghad Odedara, has given gift of Rs. 6,50,000/-to the assessee out of his agricultural income. Declaration of Mr. Babu Oghad Odedara for giving gift to assessee, was submitted during the assessment proceedings. In the declaration given by Mr. Babu Oghad Odedara, he has mentioned his source of income, stating that during the year under consideration, he has earned agricultural income of Rs. 3,30,000/- and had earlier savings of Rs. 3,50,000/-. Further, it is also declared that he has not having any bank account during F.Y. 2009-10. Hence, out of Rs. 6,80,000/-, cash on hand, Mr. Babu Oghad Odedara has given cash gift of Rs. 6,50,000/-. Mr. Babu Oghad Odedara has given the said gift out of agricultural income earned by him. The copy of statement of 7/12 & 8A and copy of bills of agricultural income of Mr. Babu Oghad Odedara, were submitted. About Rs. 7,70,000/- addition, under section 69A of the Act, the ld. Counsel submitted that CIT (Appeals) erred in upholding addition of Rs. 7,70,000/- u/s. 69A of the Act,



as unexplained money, out of total cash deposited in bank account, which is from opening cash on hand, available with assessee. Besides, the assessee submitted other documents and evidences to prove this claim, however, learned CIT(A), without considering the documents submitted during the course of assessment proceedings, confirmed the addition, which is not acceptable.

7. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Id.CIT(A), which we have already noted in our earlier para and is not being repeated for the sake of brevity.

8. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials brought on record. We note that assessee is in appeal before us against the addition sustained by the Id. CIT(A) to the tune of Rs.14,20,000/- (Rs. 6,50,000 + Rs. 7,70,000). During the appellate proceedings, the assessee claimed that cash was deposited out of following sources;

- (i) Opening Cash Balance - Rs.7,70,000
- (ii) Gift Received from Mr. Babu Oghad Odedara - Rs.6,50,000
- (iii) Agricultural income received from Mr. Rajabhai Pandavadra for FY 2009-10-Rs.3,59,000
- (iv) Amount received from Mr. Rajabhai Pandavadra as outstanding for FY 2008-09-Rs. 1,00,000/-
- (v) Withdrawal from bank account and agricultural income of his wife Rs.451,000/-



9. The Id.CIT(A) noticed that regarding, opening cash balance, the assessee did not submit any proof to support the cash book for FY 2008-09 and 2009-10, during assessment and appeal proceedings. There is no proof either for cash gift from his son Mr.Babu Oghad Odedara. Land ownership and agricultural bills to indicate that the giver had income which will not suffice to prove that the amount was gifted to the assessee. At least withdrawal from bank is necessary to prove cash transactions. The assessee submitted proof that he was the owner of 40 Vighas of Agricultural Land situated at Bavalvav, Porbandar. There is nothing to indicate that the land was kept idle. Either the assessee was cultivating it or he had given it to Mr. Rajabhai Bhikhabhai Pandavadra for carrying out Agricultural Activities on his behalf. The agreement submitted during assessment proceedings may have been an afterthought as stated by the AO. It is seen that one party has put thumb imprint on the agreement. Among illiterate people in villages, it is not always necessary that written agreements are registered. Many a time oral or informal agreements may suffice.

10. **There is no doubt that the assessee was owning substantial area of agricultural land and he was in a position to earn agricultural income from it either directly or indirectly.** Giving benefit of doubt to the assessee and on the basis of details of land ownership, the receipt of Rs.4,59,000 from agricultural activities was accepted by Id. CIT(A). The assessee received Rs.3,59,000/- as agricultural income for the A.Y. 2010-11 and it can also be accepted that Rs.1,00,000/- was received as outstanding from earlier year. The assessee claimed that source of Rs. 4,51,000 was withdrawal from bank account and agricultural income of his wife. The bank statement of Dena Bank Savings Account No. 8111 was verified and the details are as below:



Cash withdrawal		Cash Deposit	
22.05.2009	Rs 2,08,000	29.06.2009	Rs. 2,00,000
	28.07.2009		Rs.4,20,000
	01.08.2009		Rs.8,00,000
	14.10.2009		Rs.2.50,000
	16.10.2009		Rs 1,00,000
	03.12.2009		Rs 3,00.000
07.12.2009	Rs.4,43,000	15.12.2009	Rs.2,60,000
	Total: Rs.23330000		

11. The Id. CIT(A) noticed that this was a joint account of the assessee and his wife. Logically, half of the credits shall be attributed to the joint account holder. The assessee produced proof of 8 vighas of agricultural land owned by his wife also. The Ld. CIT(A) noted that ITATs have consistently held that assessee can show earlier cash withdrawals from bank account as source of subsequent cash deposits as long as assessing officer was unable to prove that cash withdrawals were used for some other purpose. As per details given above, cash deposits of Rs.2,00,000 on 29.06.2009 and Rs.2,60,000 on 15.12.2009 can be attributed to cash withdrawals of Rs.2,08,000 on 22.05.2009 and Rs.4,43,000 on 07.12.2009 respectively. Hence, there is basis for the assessee's claim that Rs.4,51,000 was agricultural income of his wife withdrawn from bank account and re-deposited. As per above discussions, the assessee was able to establish proof for cash deposit of Rs.4,59,000 as agricultural receipts and Rs.4,51,000 as earlier withdrawals from bank account. Due to the absence of proof of cash receipts, addition of balance amount of Rs. 14,20,000 (2330000 - 459000 - 451000) was sustained under section 69A of the Act, by Id. CIT(A). We note that assessee has submitted plethora of documents to prove his claim, however the learned CIT(A) has not considered the entire documents and evidences submitted by the assessee in right perspective. The whole exercise is to be based on facts and it is the duty of the assessing officer to marshal all the facts and



come to a logical conclusion about the income of the assessee for the year under consideration. For this, we rely on the Judgment of Hon'ble Supreme Court in case of Sreelekha Bannerjee (491 ITR 122), wherein it was held that “ *before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...*”

12. Therefore, considering these facts and circumstances and the documents and evidences submitted by the assessee, we note that it is appropriate to sustain the addition at the rate of 10% of Rs.14,20,000/-, which comes to Rs.1,42,000/-. Therefore, we, direct the assessing officer to sustain the addition in the hands of the assessee to the extent of Rs. 1,42,000/-. The assessee's appeal is partly allowed.

13. In the result, appeal filed by the assessee is partly allowed, in above terms.

Order pronounced in the open court on 29/05/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot

दिनांक/ Date: 29/05/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

TRUE COPY

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot