

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

**BEFORE SHRI PRAMOD KUMAR ACCOUNTANT MEMBER AND
SHRI S.S. GODARA JUDICIAL MEMBER**

**ITAs No.2118/Ahd/2007
A.Y.2002-03**

Mukesh V. Prajapati, C/o Jay ambe Agro Industries, Survey No.1259, Nesada Road, Dholka, Dist. Ahmedabad.	Vs	ITO, Ward 6(1), Ahmedabad.
(Appellant)		(Respondent)

Revenue by :	Shri Dinesh Singh, Sr.D.R.,
Assessee(s) by :	Shri S.N. Divatia, A.R.

सुनवाई का तारख/Date of Hearing : 28/04/2015
घोषणा का तारख/Date of Pronouncement: 9/06/2015

आदेश/O R D E R

PER SHRI S.S. GODARA, JUDICIAL MEMBER

This assessee's appeal for A.Y.2002-03, arises from order of CIT(A)-XII, Ahmedabad dated 12.1.2007 passed in case no.CIT(A)-XII/Wd.6(1)/103/05-06 upholding addition of unexplained cash credits amounting to Rs.10,14,135/- made in the course of a regular assessment framed under section 143(3) of the Income Tax Act in short the Act

2. A perusal of the case file reveals that the assessee has filed the instant appeal after delay of four days. He filed a condonation petition dated 17.5.2007. The Revenue is fair enough not to dispute content thereof. We condone delay of four days in filing of this appeal accordingly. The case is taken up for decision on merits.

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3. The assessee/individual is partner in a firm M/s. Jay Ambe Agro Industries. The Assessing Officer noticed him to have introduced additional capital worth Rs.10,64,135/-. He sought for relevant details. The assessee gave five names in this regard i.e. Prajapati Baldevbhai Shankarbhai and family, Prajapati Govindbhai Shankarbhai and family, Prajapati Jerambhai Jivabhai and family, Prajapati Keshabhai Chhaganbhai and family and Prajapati Kannubhai Natthabhai and family; all of Taluk-Dholaka District-Ahmedabad having given him loans of Rs.2 lacs each in first two cases, 2.5 lacs each in third and fourth party and Rs.1.5 lac in case of the last name. The assessee stated all of them to be his relatives. The Assessing Officer summoned all of them. The case file reveals that only Prajapati Govindbhai Shankarbhai appeared, proved identity and confirmed the assessee's claim. He deposed his source of income to be 35 bighas of agricultural land as well as other income from dairy products. There is no dispute that assessee is maternal nephew of the said creditor. The Assessing Officer stated that this creditor failed to produce source of the fund deposited in cash. This creditor had also not received any interest from the assessee. The Assessing Officer noticed that this creditor's land stood pledged as a collateral security with Dena Bank. No bills of sale of agricultural produce were also forthcoming. The Assessing Officer assumed that this creditor was maintaining a large family. And he did not have any capacity to lend this money in question amounting to Rs.2 lacs to the assessee. This made the Assessing Officer to doubt genuineness/creditworthiness of the assessee's claim resulting in section 68 being invoked for making the impugned addition.

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4. It is evident from the assessment order dated 28.3.2005 that the other four creditors also files confirmation, land record documents as well as other details . The Assessing Officer's findings read that all of them are assessee's relatives, they had made cash deposits, their land records revealed bank loans against the lands in question, they had large families to maintain and these depositors had not furnished any bills against the sale of agricultural produce. All these resulted in the impugned addition being made in the assessee's income amounting to Rs.10,64,135/-.

5. The assessee preferred an appeal. The CIT(A) has confirmed the Assessing Officer's action. This leaves the assessee aggrieved.

6. We have heard both sides. Case file perused. The assessee has filed a paper book containing land records, confirmations of the aforesaid five creditors. The Revenue strongly supports the CIT(A) order in favour of the impugned addition. The cash credits in question read Rs.10,64,135/-. The assessee has tendered explanation of Rs.10,50,000/-. Therefore, the balance sum of Rs.14,135/- stands confirmed accordingly.

7. Now we come to the assessee's case naming five creditors (supra) stated to be his relatives. Even the Assessing Officer has not disputed the same. It has come on record that one of the creditors is assessee's maternal uncle. He owned 35 bighas of land. Necessary revenue record was placed in the case file. This creditor also appeared in person. The Assessing Officer doubts capacity/genuiness/creditworthiness of this creditor on an assumption that he is already having a large family to

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maintain, his land is already pledged as collateral security and no bills of sale of agricultural produce are forthcoming. We differ with this approach. We observe that once the land record proves this creditor's land to be fertile, presumption rather goes in favour of the creditor that he is sowing crops and deriving agricultural income. The land record rather specifies the nature of the crop grown as well. Merely because he is a farmer not having enough documentary evidence of having sold the produce is no ground to dispute the aforesaid land revenue document. The other presumptions of collateral security is also a technical reason. The Assessing Officer appears to have applied business law principles in agricultural farming intricacies. We deem it appropriate to observe that merely because a farmer has pledged his land as a collateral security for obtaining same bank loan scheme does not necessarily mean that he is not having sufficient agricultural income. The third objection of large family being maintained on the same agricultural income is also without any basis. The authorities below have not done any homework or to inquire about sources of income in case of other family member; if any. Therefore, we hold that the impugned presumptions drawn in the course of assessment and affirmed in the lower appellate proceedings are without any supportive material. We accordingly hold that the assessee's maternal uncle a farmer had sufficient means to advancing cash loan of Rs.2 lacs in cash since not having a bank account. There is no material on record apart from these presumptions so as to doubt source/genuineness/creditworthiness of the assessee's claim. Therefore, this 2 lac amount is held to be explained.

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8. This leaves us with the balance sum of Rs.8.5 lacs in case of other four creditors (supra). The Assessing Officer himself holds them to be assessee's relatives. Therefore, identity of the creditors is not an issue here. They have also filed confirmations along with all revenue documents. The only difference that they have not appeared in person before the Assessing Officer. We have already indicated hereinabove that the assessing authority proceeded mere assumptions and presumptions. It also raises similar reasons against these four creditors as well. In these circumstances, we observe that the Assessing Officer's reasons in all four cases are identical to those raised in case of Shri Govindbhai decided hereinabove. We draw support therefrom. And accept assessee's arguments herein as well and ignore technical reason of personal non-appearance of these four creditors. The assessee's explanation regarding balance cash credit of Rs.8.5 lacs is accepted. He gets relief in this appeal to the tune of Rs.10.5 lacs. The balance addition of unexplained cash credit amounting to Rs.14,135/- is confirmed.

9. The assessee's appeal is partly allowed.

Order pronounced in the Court on this day, the 9th June, 2015 at Ahmedabad.

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER
Ahmedabad; Dated /05/2015
Prabhat Kr. Kesarwani, Sr. P.S

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

आदेश का प्रतिलिपि अपेक्षित/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)-III, Ahmedabad

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5. ँभागीय ँतऱऱध, आयकर अऱीलऱ अधकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गाडऱफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक ढंजीकार (Dy./Asstt.Registrar)

आयकर अऱीलऱ अधकरण, अहमदाबाद / ITAT, Ahmedabad