

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

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1107/Ahd/2024  
(Assessment Year: 2010-11)

Amit Hasmukhbhai Shah, Anil R. Shah (C.A.), Shreeji House, 4 <sup>th</sup> Floor, B/h. M.J. Library, Ellis Bridge, Ahmedabad-380006	Vs.	Income Tax Officer, Ward-3(1)(1), Vadodara
[PAN No.ANLP50562R]		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by:	Shri V K Mangla, Sr. DR

Date of Hearing	19.12.2024
Date of Pronouncement	22.01.2025

O R D E R

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), ADDL/JCIT (A)-1, Kolkata vide order dated 28.03.2024 passed for A.Y. 2010-11.

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

**“On Legality**

1. (a) The CIT(A) has erred both in Law and in Fact in upholding the Reopening of the Assessment by Assessing Officer which has not apply to facts of the case & provision of Law.

(b) It is submitted that no Income has escaped escapement or under assessed a Reopening is not applicable particularly because the Assessing Officer has not mentioned what is and what amount has escaped Assesse.

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2. *Your Appellant further submits that if the Assessing Officer has not Recorded Reasons for Reopening and since he has failed to supply the same to your Appellant making Reassessment bad-in law. Further it is also submitted that the Assessing Officer has failed to follow the accepted principles laid down procedure to sec 148 to Reopen the Assessee as held by Madras High Court Shree Nagalinga Vilas Oil Mills vs. ITO 149 taxmann.com 249 and Pr.CIT in Tata Sons Ltd. 146 taxmann.com 161(SC).*

3. (a) *Your Appellant also submits that the addition made by the Assessing Officer relying on information u/s. 133(6) of the Bank Officer as well as u/s. 133(6) of Mamlatdar a copy of which was not supplied to the Appellant and the chance of examination was also not given and hence such information collected u/s. 133(6) can not be relied for invoking 69A and making addition of Rs. 15,88,210/-.*

(b) *Similarly the AO had examined Shri Mafatbhai K. Patel u/s. 131 of the Act and statement was recorded was wholly relied for making addition but was not given to the Appellant and as held by various Courts statement u/s. 131 cannot be relied without giving copy to the Appellant and chance to examine the deponent is invalid and bad in Law.*

(c) *Your Appellant submits that in view of judgement of Ahmedabad IT AT in case of M/s. Shailee Developers vs ITO ITA No. 1909 & 1910 - 2010; Gujarat High Court in case of Radhe Associates 218 taxmann.com 97 & of SC in case of Andaman Timber Industries vs. Comm. of Central Excise Civil Appeal No. 4228 of 2016 and of Madras High Court in case of S. Kadarkhan Son 300 ITR P. 157 (confirmed by S.C in 352 ITR P.48) entire addition of Rs.15,88,210/- based on Solely on Statement Recorded be delete.*

**On Merits:**

1. (a) *The CIT(A) has erred both in Law and in fact in upholding applicability of Sec.69A and confirming addition of Rs. 15,88,210/- added by the AO under Section 69A which is not applicable both on facts of the case and provisions of Law.*

(b) *Your Appellant had taken loan from farmers, friends and relatives whose Identity, creditworthiness and genuineness of transaction was proved and hence the sum is not liable to be added u/s.69A.*

(c) *Your Appellant, Without Prejudice and in the alternative submits that if at all Sec.69A is applicable then the entire amount of Rs.15,88,210/- cannot be added and only the net profit at 2% be taken as income as held by various judgements and case Law and in the case of Ahmedabad Tribunal 'B' Bench DCIT, Vadodara Kalpataru Packaging Pr. Ltd. ITA No. 2039/Ahd/2018 dated 23/2/2022."*

3. The brief facts of the case are that the case of the assessee was reopened due to cash deposit of Rs. 15,88,210/- made in his savings bank

account held with Cosmos Co-operative Bank Ltd., Waghodia Road, Vadodara. The Assessing Officer asked the assessee to explain the source of the deposit. The AO issued a letter under section 133(6) to the concerned bank, and upon receipt of the bank statement, the Assessing Officer observed that cash deposit was made in Account No. 066050104412 held by the assessee. The assessee in response to query by AO submitted that the deposits in the aforesaid bank account was a loan taken by the assessee from farmers, friends, and relatives and submitted confirmation letters from the concerned farmers. To verify the creditworthiness of the farmers, the AO issued show-cause notice asking for additional documentation like Form No. 7/12 and 8/12 and evidence of agricultural expenses and produce sales of these farmers. However, the assessee could only provide "Gram Namuno" for the concerned parties but failed to submit the required forms and further evidence. Accordingly, the AO issued another notice to the Mamlatdar office, which provided information on three of the six farmers, confirming that they had not yielded crops during the year in question and had taken loans from banks. Based on this information, the AO held that the creditworthiness of the farmers could not be established. The AO then issued another show-cause notice on 05/09/2017, asking the assessee why the deposit of Rs. 15,88,210/- should not be treated as unexplained income of the assessee under section 69A of the Act. However, despite several adjournments, the Assessing Officer noted that the assessee failed to provide sufficient documentation or explanations in support of creditworthiness of the said farmers. The assessee then produced one depositor, Shri Mafatbhai K. Patel and his was statement recorded. However, the depositor could not provide any evidence regarding the source of funds. The Assessing Officer observed that despite numerous

opportunities, the assessee did not furnish satisfactory explanations or evidence for the cash deposits. Accordingly, the AO treated the deposits of Rs. 15,88,210/- as unexplained income under section 69A of the Act and added the same to the total income of the assessee.

4. In appeal before Ld. CIT(Appeals), he observed that during the course of assessment proceedings, the assessee failed to provide important documents such as Form No. 7/12, Form No. 8/12, proof of expenses incurred by farmers for agricultural activities, and bills for the sale of agricultural produce. The assessee was also unable to establish the creditworthiness of the farmers. In response to final show-cause letter dated 11/10/2017, the assessee produced one of the six depositors, Shri Mafatbhai K. Patel, however, Shri Mafatbhai K. Patel was unable to provide any evidence regarding the source of the funds used for giving the unsecured loans to the assessee. Accordingly, in light of these facts Ld. CIT(Appeals) held that the assessee's claims were not supported by evidence and therefore the provisions of section 69A were correctly applied by the Assessing Officer.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) dismissing the appeal of the assessee. On going through the records of the case, we are of the considered view that the assessee had submitted considerable information/details before the assessing officer, which were not duly considered by him. We observe that the assessee had submitted names of the farmers/ lenders, confirmation letters from the farmers, "Gram Namuno" of the farmers, the Assessing Officer had also received information in respect of three farmers from the Mamlatdar office, the assessee had produced one farmer in person and his statement was also

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taken on record. However, the Assessing Officer rejected the details filed by the assessee. In appeal, Ld. CIT(Appeals) summarily dismissed the appeal of the assessee without discussing the merits of the information furnished by the assessee during the course of assessment proceedings. Accordingly, looking into the instant facts, we are of the considered view that interests of justice would be served if the matter is restored to the file the Assessing Officer to again give an opportunity of hearing to the assessee and pass appropriate orders after giving due opportunity of hearing to the assessee and taking into consideration the evidence filed by the assessee.

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

<b>This Order is pronounced in the Open Court on</b>	<b>22/01/2025</b>
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**Sd/-**  
**(DR. BRR KUMAR)**  
**VICE PRESIDENT**

Ahmedabad; Dated 22/01/2025

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