

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH
BEFORE SHRI PAWAN SINGH JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI ACCOUNTANT MEMBER
ITA No. 2443/Ahd/2016(Assessment year: 2007-08)
(Virtual Court hearing)

Nirmalaben Vasanthbhai Patel L/ H of Vasanthbhai Patel, 'Sneh' Desai Street, at Post office Salvav, Vapi, District Valsad, Gujarat. Email: hardikvora.ca@gmail.com PAN : ACCPP2166L	Vs	Income Tax Officer, Ward No.-9, Wapi, Gujarat
APPELLANT		RESPONDEDNT
Appellant by		Sh. Hardik Vora AR Advocate
Respondent by		Sh. O.P Meena Sr-DR
Date of hearing		03/09/2020
Date of pronouncement		03 /09/2020

ORDER

PER PAWAN SINGH, JUDICIAL MEMEBR :

1. This appeal by assessing is directed against the order Commissioner of income tax (Appeals) [CIT(A)], Valsad, Gujarat dated 23rd August 2016, which arises from assessment order passed under section 144 read with section 147 Income tax Act dated 12th March 2015 for assessment year 2007-08. The assessee has raised following grounds of appeal;

- (i) *On the facts and the circumstances of the case as well as on the subject the assessing officer has erred in issuing the notice under section 147 of the Act and consequently finalizing the assessment under section 144 rws 147 of the Act.*
- (ii) *On the facts and circumstances of the case as well as in the subject, the learned CIT(A) erred in not accepting additional evidences under Rule 46A of the Income Tax Rules.*

(iii) *On the facts and circumstances of the case as well as in the subject, the learned CIT(A) erred in confirming the addition of ₹ 26,48,000/-under section 68 of Income tax Act.*

2. Brief facts of the case as gathered from the orders of the authorities below are that assessee; an individual was engaged in the business and Profession of Civil Engineers. The assessee filed his return of income for assessment year under consideration on 13th February 2008 declaring total income of the Rs. 2,54,400/-. The case of assessee was reopened under section 147. Notice under section 148 dated 11th February 2014 was served on the assessee on 18.02.2014. The assessing officer in para 4 of the assessment order has mentioned that he has recorded the following reasons;

“The assessee filed return of income on 13.02.2018 declaring total income at Rs. 254,400/-. In this case it is seen that the assessee has cash deposits of Rs. 10,48,000/- in his saving bank account in Indian Bank Vapi. Return of income filed by assessee does not reflect the said account and the source of cash of Rs. 10,48,000/- deposited in the bank account. During verification the assessee has not furnished any supporting evidences with regards to the sources of cash.”

3. The assessing officer after serving notice under section 148 served various notices under section 142(1) to the assessee asking him to provide certain information and the evidences and to explain the sources of cash deposit. The assessing officer further recorded that in response to the notices, Sh. Rajesh Bhandari Income tax Practitioner and authorized representative (ITP & AR) of the assessee attended the hearing, however, no compliance was

made by the assessee. The assessing officer ultimately issued final show cause notice to the assessee and fixed the hearing on 03.03.2015, in response to the final show cause notice neither the assessee appeared nor filed required details and evidences with regards to source of cash deposits. The assessing officer during the re-assessment noted that the assessee has not explained the nature of deposits by way of cheque as well. There was total cash and cheques deposit of Rs. 26,48,400/-. The assessee also earned interest of Rs. 2934/- on such unexplained deposits. The assessing officer made addition of Rs. 26,50,934/- (26,48,000/- + 2934) under section 68 of the Act. The assessing officer also disallowed 20% of expenses as well as 20% car expenses from total expenses claimed by the assessee in his profit and loss account. The assessing officer completed the assessment under section 144 rws 147 of the Act vide assessment order dated 12.03.2105.

4. On appeal before Id CIT(A), the assessee besides challenging the validity of re-opening also assailed the addition under section 68 and ad-hock disallowance of business expenses as well as car expenses. The assessee also filed application under Rule 46A for allowing seeking permission to file additional evidences to substantiate the cash deposit in the bank account. The Id CIT(A) upheld the validity of reopening and the addition under section 68. However, the ad-hock disallowance of business and car expenses

was deleted. The application under Rule 46A was also dismissed. Hence, further aggrieved, the assessee has filed present appeal before this Tribunal.

5. We have heard the submissions of the learned authorized representative (ld. AR) for the assessee and the learned departmental representative (ld. DR) for the revenue and have gone through the orders of the lower authorities. Ground No. 1 relates to the validity of the reopening under section 147 and the notice under section 148. The ld. AR for the assessee not argued in support of this ground of appeal, therefore, this ground of appeal is treated as not pressed and accordingly dismissed.
6. Ground No. 2 relates to not accepting additional evidences under Rule 46A. The ld. AR for the assessee submits that the assessee was a senior Citizen and was sufferings by various old age ailments and could not furnished sufficient evidences to substantiate the evidences with regard to cash and cheque deposits in his bank account in Indian Bank. The bank account in Indian Bank was a Joint account of assessee with his wife. As the assessee could not collect the evidences, so such evidences was not handed over to his AR representing him before assessing officer. During the relevant period under consideration the assessee sold firewood, yielded the agriculture holding of the assessee. The assessee deposited the sale proceed of such firewood in his bank account. The assessee filed receipt and the

confirmation of the sale proceeds. The assessee also availed temporary loans from three parties. The assessee furnished the details of the loan and its repayments. The assessee filed an application under Rule 46A of Income Tax Rule 1962, for admissions of additional evidences. The ld CIT(A) not accepted the additional evidences filed by the assessee and confirmed the addition under section 68. The assessee has shown sufficient cause for filing additional evidences. The addition evidences has direct relevance with the additions under section 68. The ld AR further submits that the assessee ultimately died on 10.08.2017, copy of the death certificate is filed on record. The ld AR for the assessee submits that the assessee has filed the copy of the evidences filed before ld CIT(A) and prayed that the additional evidences may be allowed and the matter may be restored to the file of assessing officer to consider the evidences afresh. In support of his submissions the ld AR for the assessee relied on the decision of Punjab & Haryana High Court in PCIT Vs Daljit Singh Sra [2017] 80 taxmann.com271 (P& H) and decision of Tribunal in Zia Ur Rehman Vs ITO [2018] 96 taxmann.con 482 (Delhi-Trib).

7. On the other hand the ld DR For the revenue supported the order of the ld CIT(A) and would submit that the assessing officer granted sufficient opportunities to the assessee. The assessee despite availing full opportunity

not complied the directions of the assessing officer. The assessing officer untimely issued final show cause notice dated 03.303.2015, to the assessee with clear show cause that in case the assessee failed to comply the said notice the assessment would be completed under section 144 of the Act. The ld DR for the revenue further submits that the ld CIT(A) considered the application of the assessee under Rule 46A of Income Tax Rule and the same was rejected by taking clear view that the assessee failed to show that he was prevented by sufficient cause to produce such evidences and that the contention of the assessee was not in accordance with the provisions of Rule 46A. The ld. DR for the revenue prayed for rejection of the ground of appeal.

8. We have considered the rival submissions of the assessee have gone through order of the lower authorities. We have also perused the copy of the evidences furnished by the assessee. The assessing officer made addition under section 68 by taking view that the assessee failed to substantiate the sources of deposit in his bank account and that despite repeated show cause notice the assessee not complied his directions. Before ld CIT(A) the assessee filed detailed written submission which is recorded by ld CIT(A) in para 5 at page no. 6 to 14 of his order. The ld CIT(A) untimely took his view that of the assessing officer has given sufficient opportunity to the

assessee to produce the evidences. It was also held that the application of the assessee is against the spirit of the Rule 46A of Income tax Rule.

9. We have noted that the Id CIT(A) has not examined the relevancy of the evidences furnished before him. Before us, the Id AR for the assessee vehemently submitted that the assessee was old Citizen and was sufferings by various old aged ailment and could collect the relevant evidences, so such evidences was not handed over to his AR representing him before assessing officer. Considering the peculiarity of the facts of the case that the assessee due to old age was unable to collect the evidence and ultimately died on 10.08.2017. We have further noted that evidence furnished by assessee in the form of additional evidence which consist of confirmation of an unsecured loan along with ledgers in the assessee's book. Copy of confirmation letter of Saraswati Saw Mills (Timber Merchant), copy of Form 8A showing the ownership of agriculture land and affidavit of assessee, which have direct relevance with the impugned issue. Therefore, we admit the additional evidence furnished by the assessee and remit the issue to the file of Assessing Officer to consider the additional evidence furnished by assessee afresh and decide the issue/addition under section 68 in accordance with law. Needless to order that passing the order the assessing officer shall grant the opportunity to the assessee (legal heir of the

assessee). The assessee (legal heir) are also directed to provide all necessary information and evidence to substantiate the source of deposit in bank account in Indian Bank. In the result, ground no 2 of the appeal is allowed. Considering the facts that we have allowed the ground No.2 of the appeal, thus, ground No.3 is also restored to the file of assessing officer to decide after considering the evidences of the assessee.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced on 03/09/2020, as per Rule 34 of Income Tax Appellate Tribunal, Rule 1963.

Sd/-
(DR. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 03 /09/2020
Samanta, PS

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

// True Copy //

By order

Assistant Registrar, ITAT, Surat