

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 178/Rjt/2019  
Assessment Year 2009-10**

M/s. Kalpataru Credit Co-operative Society, Rajkot PAN: AAAAK0999F (Appellant)	Vs	The ITO, Ward-1(1)(1), Rajkot (Respondent)
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**Assessee by: Shri Mehul Ranpura, A.R.  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 29-06-2022  
Date of pronouncement : 08-07-2022

**आदेश/ORDER**

**PER BENCH:-**

This assessee's appeal for A.Y. 2009-10, arises from order of the Ld. CIT(A), Jamnagar dated 23-01-2019, in proceedings under section 147 r.w.s. 144 of the Income Tax Act, 1961; in short "the Act".

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

*“1. The grounds of appeal mentioned hereunder are without prejudice to one another.*

*2. The learned Commissioner of Income Tax (Appeals), Jamnagar [hereinafter referred to as the "CIT(A)] erred on facts as also in law in dismissing appeal ex-parte.*

*3. The ld. CIT(A) erred on facts as also in law rejecting the ground of appeal related to validity of notice issued u/s 148 of the Income tax Act, 1961. That on facts as also in law, initiation of action u/s. 147 of the Act is invalid and assessment made on such invalid initiation deserves to be quashed and may kindly be quashed.*

*4. The ld. CIT(A) erred on facts as also in law in confirming addition of Rs.3,12,360/- made by AO on the alleged ground that the appellant failed to justify the source of cash deposit with M/s. Panchnath Enterprise. The addition confirmed without considering the written submission filed is totally unjustified and uncalled for and deserves to be deleted and may kindly be deleted.*

*5. Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.*

*Total tax effect*

*50,220/-“*

3. At the outset, we note that the appeal is time-barred by 119 days. The assessee has filed an affidavit to the effect that during course of appellate proceedings, the assessee filed written submission on 16-01-2019, however the Ld. CIT(Appeals) dismissed the appeal of the assessee vide order dated 23-01-2019 without considering the written submissions filed and in disregard of the documentary evidences placed on record vide the above submission. Thereafter, the assessee filed letter dated 08-02-2019 requesting the Ld. CIT(Appeals) to consider the written submissions earlier filed by the

assessee and to decide the appeal on merits after allowing opportunity of being heard to the assessee. The assessee waited for 6 months for the Ld. CIT(Appeals) to consider the request of the assessee, and thereafter since the Ld. CIT(Appeals) did not rectify his earlier order, the assessee filed the present appeal with the Tribunal. The entire process mentioned above caused a delay of 119 days in filing the appeal before the ITAT. Given the above background, in the interests of justice, we are hereby condoning the delay of 119 days in filing the present appeal before us. Accordingly, the delay in filing the appeal by the assessee is hereby being condoned.

4. On merits, the brief facts of the case are that the AO reopened the case of the assessee under section 147 of the Act on the basis that the Revenue is in possession of information that the assessee purchased cheque/DD in lieu of cash to the tune of ₹ 3,12,360/- from M/s Panchnath Enterprise, Rajkot on various dates during assessment year 2009-10. The AO issued several notices to the assessee, but since the assessee failed to appear, the AO passed ex parte order holding that since the assessee has failed to prove identity, capacity and genuineness of the transaction to the tune of ₹ 3,12,360/-, therefore the whole amount of ₹3,12,360/- is considered as income of the assessee from undisclosed sources and hence added to the total income of the assessee.

5. In appeal, none appeared on behalf of the assessee before Ld. CIT(Appeals). Accordingly, Ld. CIT(Appeals) dismissed the appeal of the assessee with the following observations:

*“Decision*

5. *The order u/s. 144 r.w.s. 147 of the Act of the assessing officer as well statement of the fact of the appellant have been considered. The first ground of appeal of the appellant is that the initiation of the action u/s 147 and issue of notice u/s. 148 is valid, illegal and bad in law and the assessment based on such illegal and invalid initiation is bad in law and void-ab-inito and may kindly be quashed. The second ground of the appeal of the appellant is that the assessment order passed u/s. 144 r.w.s. 147 of the Act without valid service of notice u/s. 148 of the Act is bad in law and void-ab-inito and may kindly be quashed. The third ground of appeal of the appellant is that the order of the assessing officer in so far as he assessed the appellant u/s. 144 of the Act is totally bad on facts as also in law and deserves to be quashed which may kindly be quashed. As stated above the appellant has not filed any written submission during the course of appellant proceedings. The appellant in his statement of facts has merely stated that the assessing officer passed the order on incorrect information and incorrectly held that this source of payment of Rs. 3,12,360/- made to Shree Panchnath Enterprises for obtaining demand draft of Rs. 3,12,360/- remained unexplained and unverified. As per the appellant, the assessing Officer initiated re-assessment proceedings u/s. 147 of the Act by issuing notice u/s. 148 of the Act dated 31-03-2016. As per the appellant however he has never been in receipt of such notice u/s. 148 of the Act. As per the appellant the assessing Officer however without availing opportunity of being heard finalized the assessment proceedings ex-parte as well vide order passed u/s. 144 r.w.s. 147 of the Act dated 28-12-2015 wherein he has assessed the total income at Rs. 3,12,360/- by making addition of this amount on the alleged ground of unexplained cash deposit with Shri Panchnath Enterprises. But this entire submission of the appellant is of general in nature and are not supported by any evidences. The assessing officer in the assessment order u/s. 144 r.w.s. 147 of the Act has mentioned that the case of the appellant has been reopened by issuing notice u/s. 148 on 31-03-2016 on its address last known to the department. The assessing officer further in the assessment order has mentioned that due to change of incumbent a fresh notice u/s. 142(1) along with detailed questionnaire were issued to the appellant on 11-07-2016. As per the assessing officer thereafter again notice u/s. 142(1) of the Act was issued to the appellant on 28-07-2016. As per*

*the Assessing Officer further the reminder letter/notice was also issued to the appellant. As per the assessing Officer these notices were not complied with by the appellant. As per the assessing Officer as soon as current/new address of the appellant came to the notice of the department a final show cause notice was issued to the appellant on such new address which was duly served upon the appellant. In my opinion the appellant has not explained and has also not filed any evidences to show that notices were not received by it which were issued by the Assessing Officer. Considering all these facts the submission of the appellant that it was not in receipt of above notices is not found to be acceptable and accordingly all the above three grounds of appellant are hereby dismissed.*

*Ground of appeal no. 4 of the appellant is that the order of the Assessing Officer in so far as he assessed total income at the Rs. 3,12,360/- as against the originally assessed income of Rs. NIL is totally bad in fact as also in law. The ground of appeal No. 5 of the appellant is that the Assessing Officer has grievously erred on facts as also in law in making addition of Rs. 3,12,360/- on the alleged ground that the appellant failed to justify the sources of cash deposit with Shri Panchnath Enterprises. As per this ground of appeal the addition made by the Assessing Officer is totally unwarranted and unjustified on the facts and also in law and deserves to be deleted may kindly be deleted. With regard to these two grounds of appeal, the appellant has not filed submission as well as evidences to explain the sources of amount of Rs. 3,12,360/- which was used to purchase cheque/DD from M/s Panchnath Enterprises. In view of the this it is held that the Assessing Officer has correctly made the addition of this amount of Rs. 3,12,360/- by holding same from undisclosed sources and such addition of the Assessing Officer is hereby confirmed. Thus, the grounds of appeal no. 4 and 5 of the appellant are dismissed. The grounds of appeal 6 of the appellant is that the Assessing Officer has erred in charging interest u/s. 234A, 234B of the Act. This ground of appeal of the appellant is hereby dismissed as the appellant has not explained as to how the Assessing Officer has erred in charging interest 234A, 234B. The ground of appeal no. 7 of the appellant is that the Assessing Officer has erred in initiating penalty u/s. 271(1)(c) and 271(B) of the Act. This ground of appeal being premature cannot be entertained and therefore the same is dismissed.”*

6. Before us, the counsel for the assessee submitted that the Ld. CIT(Appeals) has passed the order without considering/appreciating the written submissions filed by the assessee annexed at pages 1 to 7 of the paper book. We note that both the AO as well as Ld. CIT(Appeals) have passed ex parte order in absence of assessee being present during the course of assessment/appellate proceedings. Therefore, in the interests of justice, we are restoring the file to the assessing officer to decide the matter afresh after giving due opportunity of hearing to the assessee to present his case on merits. In the result, the matter is set aside to the file of the assessing officer with the above directions.

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

Order pronounced in the open court on 08-07-2022

**Sd/-**

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Rajkot : Dated 08/07/2022**

**Sd/-**

**(SIDHHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot