

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 89/Ahd/2022
Assessment Year : 2012-13

Shri Ankit Tejpal Jain, 302, Parshvanath Apartment, Subhash Nagar, Shahibaug, Ahmedabad-380004 PAN : AIRPJ 1115 C	Vs	Income Tax Officer, Ward 1(2)(1), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Bandish Soparkar, AR
Revenue by :		Shri Atul Pandey, Sr. DR

सुनवाई की तारीख/Date of Hearing : 29/07/2022
घोषणा की तारीख /Date of Pronouncement: 29/07/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["CIT(A)" in short] dated 14.03.2022 for Assessment Year 2012-13.

2. The assessee, in the present case, is an individual who is engaged in the business of trading of gold under the name and style of his proprietary concern M/s. Ankit Impex. Return of income for the year under consideration was filed by him on 28.09.2012 declaring a total income of Rs.1,99,070/-. The said return was selected for scrutiny and in the assessment completed under Section 143(3) of the Income-tax Act, 1961

("the Act" in short) vide order dated 19.02.2015, the total income of the assessee was assessed by the Assessing Officer at the same figure of Rs.1,99,070/- as declared by the assessee in the return of income. Thereafter, information was received by the Assessing Officer regarding the cash deposits of Rs.63,97,16,823/- made in the bank account of M/s. Anikt Impex, proprietary concern of the assessee. He, therefore, issued a notice under Section 133(6) of the Act to the assessee seeking explanation as regards the said transactions of cash deposits found to be made in the bank account of his proprietary concern. Although the assessee in response to the said notice filed a written reply along with copy of the concerned bank account, he did not file any satisfactory explanation as regards the cash deposits found to be made in the bank account of M/s. Anikt Impex. The Assessing Officer, therefore, reopened the assessment and issued a notice under Section 148 of the Act to the assessee on 28.03.2019 after recording the reasons and taking necessary approval of the higher authority. Although the assessee filed return in response to the said notice belatedly, there was no full compliance on the part of the assessee in response to the notices issued by the Assessing Officer subsequently under Section 142(1) of the Act inasmuch as the details and documents required by the Assessing Officer were not completely furnished by the assessee. The Assessing Officer, therefore, was left with no option but to complete the assessment to the best of his judgment on the basis of material available on record. In the assessment so completed under Section 144 of the Act vide an order dated 30.12.2019, the entire amount of cash deposits found to be made in the bank account of the proprietary concern of the assessee aggregating to Rs.63,97,16,823/- was added by him to the total income of the assessee by treating the same as unexplained cash credit under Section 68 of the Act. He also made further additions of Rs.8,02,94,134/- and Rs.27,85,802/- to the

total income of the assessee on account of unexplained purchases and unaccounted purchases respectively and determined a total income of the assessee at Rs.72,29,95,830/-.

3. Against the order passed by the Assessing Officer under Section 144 of the Act, an appeal was filed by the assessee before the learned CIT(A) challenging the validity of the said assessment and disputing the additions made therein by the Assessing Officer on merit. During the course of appellate proceedings, the assessee was given opportunity by the learned CIT(A) to make the submissions in support of his case on the issues raised in the appeal. As noted by the learned CIT(A) in his impugned order, e-notices issued by him on 23.12.2020, 07.01.2022 and 13.01.2022, however, remained uncomplied with and the assessee failed to avail the opportunity given to him to make the submissions. Keeping in view this failure of the assessee during the course of appellate proceedings before him as well as during the course of assessment proceedings before the Assessing Officer, the learned CIT(A) proceeded to dispose of the appeal of the assessee on the basis of material available before him vide his appellate order dated 14.03.2022. By the said order, he upheld the validity of the order passed by the Assessing Officer under Section 144 of the Act and also confirmed the additions made by the Assessing Officer therein to the total income of the assessee on merit. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. The learned Counsel for the assessee has submitted that a detailed written submission running into 32 pages (copy placed at page nos. 182 to 213 of the paper-book) was filed by

the assessee during the course of appellate proceedings before the learned CIT(A) in support of his case on all the issues raised in the appeal. He has submitted that the said written submission filed by the assessee on 19.02.2022, however, has not been taken into consideration at all by the learned CIT(A) while dismissing the appeal of the assessee vide his impugned order passed on 14.03.2022. He has urged that the matter may, therefore, be sent back to the learned CIT(A) for disposing of the appeal of the assessee afresh after taking into consideration the said written submission filed by the assessee covering all the issues raised in the appeal. The learned DR in this regard has submitted that the assessee was given time upto 20.01.2022 by the learned CIT(A) to file his submission but the assessee filed the same only on 19.02.2022. As clarified by the learned Counsel for the assessee, the assessee however was suffering from Covid-19 and a request, therefore, was made to the learned CIT(A) on-line on 20.01.2022 to allow a period of at least one month to file the written submission. He has also invited our attention to the copy of the relevant Covid-19 Test Report placed at page no.177 of the paper-book which was filed by the assessee before the learned CIT(A) while seeking further time on 20.01.2022. Keeping in view all these facts of the case, we are of the view that the appeal of the assessee was dismissed by the learned CIT(A) vide his impugned order without taking into consideration the detailed written submission filed by the assessee in support of his case on all the issues raised in the appeal and there is a clear violation of principle of natural justice. We, therefore, consider it fair and proper and in the interest of justice to set aside the impugned order passed by the learned CIT(A) and remit the matter back to him for disposing of the appeal of the assessee afresh on merit in accordance with law after taking into consideration the

written submission filed by the assessee on 19.02.2022 and after giving proper and sufficient opportunity of being heard to the assessee.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 29th July, 2022 at Ahmedabad.

Sd/-

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 29/07/2022

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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 प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad