

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.346/RJT/2018  
Assessment Year: 2009-10**

Maheshbhai Mohanlal Joshi,  
Maruti Apartment,  
Kotak Street,  
Sanganwa Chowk  
Rajkot – 360 001.  
[PAN – AESPJ 3896 B]  
(Appellant)

vs.

The Income Tax Officer,  
Ward – 2(1)(2), Rajkot.

(Respondent)

Appellant by : Shri R.D. Lalchandani, Ld. AR  
Respondent by : Shri B.D. Gupta, Ld. Sr. D.R.

Date of hearing : 27.07.2022  
Date of pronouncement : 31.08.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

This appeal is filed by the assessee against the order dated 16.07.2018 passed by the CIT(A)-2, Rajkot for the Assessment Year 2009-10.

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

- “1. *The Commissioner of Income Tax [Appeals] erred in holding that the books of accounts prepared on basis of bank statement has no sanctity and are not admissible.*
2. *The Commissioner of Income Tax [Appeals] erred in confirming the reopening the assessment under section 147 of the Act. The reopening of the assessment is not justified. The notice under section 148 was not served upon the appellant and hence the assessment is bad in law.*
3. *The Commissioner of Income Tax [Appeals] erred in confirming the passing an ex-parte order under section 144 of the Act.*

4. *The Commissioner of Income Tax [Appeals] erred in confirming the making of an addition of Rs.2564320/- on account of cash deposited in the bank. The addition is not justified.*
5. *Without prejudice to ground no.3, the addition of Rs.2564320/- is too heavy and arbitrary and not warranted by the fact of the case.”*

3. As per information received the assessee had deposited cash of Rs.25,64,320/- in bank account of State Bank of India as per the observations of the Assessing Officer. The source of cash deposit remained unexplained and unverified and the information gathered from the Income Tax Department application the assessee has no PAN and not filed any return of income. Therefore, the Assessing Officer had reason to believe that there was failure on the part of the assessee to disclose the amount of cash deposits and thus Section 147 of the Income Tax Act, 1961 was invoked for concealment of income to the extent of Rs.25,64,320/- for AY 2009-10. Accordingly, reopening of the assessment under Section 147 of the Act was done by the Assessing Officer. Notice under Section 148 of the Act was issued on 28.03.2016. The Assessing Officer after giving several notices has passed ex-parte order under Section 144 of the Act thereby making addition of Rs.25,64,320/- being non-genuine cash deposit/credit under Section 68 of the Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the Assessing Officer has passed ex-parte order as well as the CIT(A) has also not given proper opportunity for rebuttal of remand proceedings and simplicitor confirmed the order of the Assessing Officer. Therefore, the Ld. AR submitted that the matter may be remanded back to the file of the Assessing Officer for proper adjudication of the issue and the assessee may be given opportunity of filing evidences which were put up before the Assessing Officer.

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A). Ld. DR further submitted that the assessee was given proper opportunity by the authorities but the same was not properly adhered by the assessee.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer as well as the CIT(A) has not given proper opportunity of hearing to the assessee. In the remand proceedings before the CIT(A) the assessee's submissions were not at all considered along with the documents filed before the CIT(A). Therefore, it will be appropriate to remand back this matter/issues to the file of the Assessing Officer for proper adjudication of the issues after taking cognisance of the evidences put up by the assessee before the CIT(A). The Assessing Officer may pass appropriate order after taking cognisance of the evidences filed by the assessee as per due process of law. Needless to say the assessee be given opportunity of hearing by following the principles of natural justice. The assessee is directed to co-operate with the Revenue Authorities thereby appearing for the hearing and presenting the case when the Revenue Authorities calls for the hearing and the assessee should not delay the proceedings. Otherwise, the Revenue Authorities are at liberty to decide as per law.

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

Order pronounced in the open Court on this 31<sup>st</sup> day of August, 2022.

Sd/-  
**(ANNAPURNA GUPTA)**  
Accountant Member

Sd/-  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 31<sup>st</sup> day of August, 2022**

**PBN/\***

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Rajkot Bench, Rajkot*