

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 153/Rjt/2019
निर्धारण वर्ष/Asstt. Years: 2015-2016

Shri Bharat Singh, Kalyanpur (Kondh), Kondh, Dhrangadra-363310. PAN: CATPS9626P	Vs.	I.T.O., Ward-3, Surendranagar.
--	-----	--------------------------------------

Assessee by :	None
Revenue by :	Shri B.D Gupta, CIT. D.R

सुनवाई की तारीख / **Date of Hearing** : **22/09/2022**
घोषणा की तारीख / **Date of Pronouncement**: **11/11/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-2, Rajkot, dated 18/07/2018 arising in the matter of assessment order passed under s.144 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-16.

2. The assessee has raised following grounds of appeal:

1. *The learned CIT(A) has erred in confirming the addition made by the AO despite the fact that the Assessment Order was passed ex parte in violation of the Principles of Natural Justice.*
2. *The learned CIT(A) has erred in passing the order in limine without providing reasons which is in violation of Section 250(6) of the Act.*
3. *The learned CIT(A) has grossly erred in confirming the addition without any application of mind and in not adjudication the addition independently.*
4. *The learned CIT(A) has erred in law and on facts in confirming the action of AO of making an addition of Rs.4,44,784/- by treating receipts of Rs.6,28,345/- as non-presumptive business income.*
5. *The learned CIT(A) ought to have treated receipts of Rs.6,28,345/- as gross receipts u/s.44AD of the Act.*
6. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanation and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
7. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id.AO in levying interest u/s.234A/B/C of the Act.*
8. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id.AO in initiating penalty u/s.271(1)(c) of the Act.*
9. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id.AO in initiating penalty u/s.271(1)(b) of the Act.*
10. *The appellant craves leave to add, amend alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

3. At the outset, we note that there was a delay in filing the appeal by the assessee for 236 days. It was explained by the assessee in the condonation petition that his father was not keeping well and eventually passed away dated 21 September 2018. The assessee in support of his contention has filed the affidavit duly notarized which is available on record. The learned AR admitted that there was reasonable cause prevented the assessee in filing the appeal before the ITAT in time. Accordingly, the delay filing the appeal should be condoned and the issue

raised by the assessee ought to be decided on merit. The learned DR, on the other hand, opposed to condone the delay in filing the appeal by the assessee.

Heard the rival contentions of both the parties and perused the materials available on record. Considering the ill-health of the father of the assessee who eventually passed away dated 21 September 2018, we find a fit case for condoning the delay in filing the appeal by the assessee. Hence, we admit the appeal preferred by the assessee and proceed to adjudicate the same on merit.

4. The only effective issue raised by the assessee is that the learned CIT(A) erred in sustaining the addition made by the AO for Rs. 4,44,784/- only.

5. The assessee is an individual and derived income from salary and business and profession. The assessee for the year under consideration i.e. A.Y. 2015-16 filed return of income dated 25-01-2017 by declaring taxable income at Rs. 2,48,900/- only. The Return of the assessee was selected for scrutiny assessment and therefore, a notice under section 143(2) of the Act was issued upon the assessee. The AO during the assessment proceedings found that the assessee has shown gross business receipt of Rs. 6,28,345/- in cash and declared profit on the same under section 44AD of the Act at Rs. 1,83,561/-only. The AO, on noticing the fact that the return of income was filed by the assessee after demonetization period, required the assessee to explain, vide notice dated 3-10-2017 inter-alia about the business activity carried the year based on the documents. It was also enquired by the AO why the gross receipt should be treated as non-presumptive income. However the assessee failed to make any reply despite being given several opportunities. Therefore, the AO framed the assessment under section 144 of the Act by treating the amount of Rs. 6,28,345/- as non-presumptive income and made addition of Rs. 4,44,784/- after providing the adjustment of income of Rs. 1,83,561/- already disclosed in the income tax return by the assessee.

6. On appeal by the assessee, the leaned CIT(A) confirmed the addition made by the observing as under:

3. The only ground of appeal Is against the addition of Rs.4,44,784/- made by the AO to the appellant's total income. During the assessment proceedings, various notices were issued to the appellant but there was no compliance to any of the notices. Accordingly, the AO passed the order u/s. 144 of the Act and added the gross receipts of the appellant as his income. During the appellate proceedings, the AR of the appellant attended the hearings and furnished certain details in the form of bills, bank statement and financial statements. However, no written submissions have been filed in this case. Moreover, merely furnishing some bills and vouchers without any explanation thereof or any cash flow statement does not explain anything. Further, the appellant has also not made any request for admission of additional evidence under Rule 46A of the I.T rules and even stated during the appellate proceedings that he had no further submission to make. In view of these facts, I find no reason to disagree with the findings of the AO and the addition of Rs.4,44,784/- made by the Assessing Officer is confirmed.

7. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

8. The learned AR before us vide letter dated NIL has filed the additional documents in the form of paper book running from pages 1 to 161 wherein it was prayed to admit the additional evidences for the purpose of the adjudication. It was submitted by the assessee that he was not conversant with the income tax proceedings and furthermore he was engaged in the small activity of retail business with various farmers. Besides the above, his father also was not keeping well. Thus, in such a situation the assessee failed to file the necessary details during the assessment proceedings. However, some of the necessary details were filed during the appellate proceedings but the consultant has not moved any application for the admission of the additional evidences before the learned CIT-A under the provisions of rule 46A of Income Tax Rules 1962. Thereafter, the health of the father of the assessee further deteriorated substantially which has finally resulted untimely death on 21 September 2018. In view of the above, the learned AR requested that additional documents which are crucial to decide the issue on hand should be admitted and the matter should be restored back to the AO for fresh adjudication. On the other hand, the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there were additional documents filed by

the assessee 1st time before the Tribunal which include profit and loss account, balance sheet, purchase bills, sales bills and the bank statement. All these details filed by the assessee before us were to justify that he was engaged in the retail business activities and his case is covered under the provisions of section 44 AD of the Act. The 1st controversy that arises before us to adjudicate the admission of the additional evidences filed by the assessee vide letter dated NIL which is placed on record.

9.1 Pursuant to provisions of sub-section (5) of section 255 of the Act, the ITAT Rules, 1963 ("the Appellate Tribunal Rules") have been formulated. Rule 18(4) and Rules 29, 30 & 31 of the Appellate Tribunal Rules are relevant for the discussion which deal with production of additional evidence before the Tribunal.

a. RULE 8 – PREPARATION OF PAPER BOOKS, ETC.

Sub-rule (4) of Rule 8 provides that the additional evidence, if any, shall not form part of the same paper book. If any party desires to file additional evidence, then same shall be filed by way of a separate paper book containing such particulars as are referred to in sub-rule (3) accompanied by an application stating the reasons for filing such additional evidence.

b. RULE 29 - PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE TRIBUNAL

The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal. If the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

c. RULE 30 - MODE OF TAKING ADDITIONAL EVIDENCE

Such document may be produced or such witness examined or such evidence adduced either before the Tribunal or before such income-tax authority as the Tribunal may direct.

d. RULE 31 - ADDITIONAL EVIDENCE TO BE SUBMITTED TO THE TRIBUNAL

If the document is directed to be produced or witness examined or evidence adduced before any income-tax authority, he shall comply with the direction of the Tribunal and after compliance send the document, the record of the deposition of the witness or the record of the evidence adduced to the Tribunal.

In the case of *CIT v. Smt. Kamal C. Mahboobani* [\[1995\] 214 ITR 15/81 Taxman 311 \(Bom.\)](#), the Bombay High Court held as under:-

"We are of the opinion that rule 29 does not confer any right on the parties, as such, to produce any additional evidence either oral or documentary before the Tribunal. On the other hand, such a right has specifically been taken away by prohibiting the production of the additional evidence by the parties. The power has been vested only in the Tribunal to require production of any document or evidence if it is of the opinion that it is necessary to do so to enable it to pass order or for any other substantial cause."

9.2 In view of the aforesaid discussion, the additional evidence cannot be placed by the assessee for the admission before the Tribunal as a matter of right. The Tribunal has the sole discretion whether to admit or not to admit additional evidence. However such discretion cannot be used in arbitrary manner.

9.3 Now coming to the facts of the case on hand, the learned AR in the application for the admission of the additional evidences has submitted that the assessee being a small businessman was not well conversant with the income tax proceedings and furthermore his father was not keeping well who eventually passed away dated 29th of September 2018. The assessee in support of his contention has also filed the affidavit which is available on record. Considering the reasons for not filing the necessary documents during the assessment proceedings, we are inclined

to admit the additional evidences. Thus, we set aside the issue raised before us by the assessee in the appeal to the file of the AO for fresh adjudication as per the provisions of law. It is needless to mention that the assessee during the proceedings shall extend full cooperation to the authority. Hence the ground of appeal of the assessee is hereby allowed for the statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for the statistical purposes.

Order pronounced in the Court on 11/11/2022 at Ahmedabad.

Sd/-
(T.R SENTHIL KUMAR)
JUDICIAL MEMBER
(True Copy)

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 11/11/2022
Manish