

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.28/Asr/2023
Assessment Year: 2001-02**

Hira Lal Kadlabju 16203, ATS Advantage, Ahinsa Khand, Indrapuram Ghaziabad. [PAN:ANFPK2670L] (Appellant)	Vs.	ACIT, Circle-1, Jammu. (Respondent)
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**I.T.A. No.193/Asr/2014
Assessment Year: 2001-02**

Anish Bhan S/o J. L. BhanTrikuta Nagar, Jammu. [PAN:ADFPB9881J] (Appellant)	Vs.	ITO, Ward-1(1), Jammu. (Respondent)
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Appellant by	Sh. Dalip Kumar Kaul, & Sh. Tarun Bansal, ARs.
Respondent by	Sh. S. M. Surendranath, Sr. DR

Date of Hearing	17.05.2023
Date of Pronouncement	26.05.2023

ORDER

Per:Anikesh Banerjee, JM:

Both the appeals of the different assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’], order passed u/s 250of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2001-02. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward 2(1), Jammu[in brevity ‘AO’], order passed u/s 143(3) of the Act.

2. Both the appeals are same nature of fact and arises out from the common issue. Both the appeals are from the different assessee which are taken together heard together and adjudicated with a common order for the sake of convenience. Therefore, we taken ITA No. 28/Asr/2023 is as lead case.

3. The assessee has taken the following ground:

1. The addition of Rs, 26,40,100/- made by learned AO in the order of assessment issued under section 143(3) of Income Tax Act, 1961 are without fully looking into the facts and records, without application of mind and without affording opportunity of being heard but in a slip shot manner and thereby denying natural justice to the

appellant and therefore, bad in the eyes of law and hence liable to be quashed.

2. That the order issued is not a speaking order as important evidences and circumstances have not only been ignored but also omitted from the assessment order and hence deserves to be quashed on this count also

3. The addition of Rs. 26,40,100 made by Ld. AO is based only on a handwritten plain paper denial statement sent by fax by son-in-law of the appellant which by no stretch of imagination can be termed as an evidence against the appellant especially when seen in light of affidavit made under oath before the Oath Commissioner and an Advocate and submitted before the Hon'ble High Court of Gujarat and the same having not been proved to be false.

That addition has wrongly been made as the basic condition precede t to invocation of section 69A has not been met and hence deserves to be quashed.

4. The addition of Rs. 5,50,000 has been made without judicious appreciation of facts and records

available with the Ld. AO and is based only on one factor that the appellant could not produce the person who had advanced the money to him against sale proceeds of his house property. That the conclusion drawn by Ld. AO is only an imagination and not based on facts and is devoid of legalities and cannot therefore, sustain in the eyes of law.

5. That the appellant further craves to reserve the right to add, delete, amend, alter all or any of the above grounds of appeal before or at the time of hearing and final disposal of the appeal proceedings.”

4. Tersely, we advert the fact of the case that the assessee, Mr. Hira Lal Kadlabju is ex father in law of Mr. Anish Bhan, another assessee. A search was conducted by the CBI (Central Bureau of Investigation) and the cash was found in the premises of assessee, Mr H.L.Kadlabju. Later, the assessment was completed with addition amount of Rs.5,50,000/- and Rs.26,40,100/- on basis of the cash which was found in the premises of the assessee. Mr. Hira Lal Kadlabju explained that Rs.26,40,100/- is related to his son in law Mr. Anish Bhan. Accordingly, a statement and an acceptance letter were submitted by the son in law. Related to

addition of Rs.5,50,000/- the assessee explained that the same amount was originated from the sale of house property. But the Id. AO during assessment made addition and completed the assessment on substantive basis in the hands of father-in-law. On the other hand, the protective assessment was completed in the hands of son in law. Later, the son in law retracted from his statement and submitted that Rs.26,40,100/- on account as cash seized in apartment owned by Mr. Kadlabjuwas related to elder son-in-law, Mr. Arjun Basu situated at state of Ahmedabad. Both the assessee are filed appeal before the Id. CIT(A). The Id. CIT(A) rejected the appeal of the assessee on the ground that the ownership is still yet determined by the Hon'ble High Court of Gujarat related to the matter of the CBI. The case is still pending and not yet decided. Being aggrieved against the appeal orders both the appeals are filed before us.

5. Both the Id. ARs filed a paper book which are kept in the record. As the matter still yet pending before the Hon'ble High Court of Gujarat, the ownership of the cash is not yet determined.

6. The Id. DR argued and placed reliance on the orders of the revenue authorities.

7. We heard the rival submission and relied on the documents available in the record. Related to the case of the assessee, the Id. CIT(A) has taken an observation which is extracted as below:

“4.5. Issue 5 - Case to be kept in abeyance

The assessee had requested in his submissions, that the suit was pending before the High Court of Gujarat and that proceedings were not yet completed; hence, the case may be kept in abeyance until the ownership of money is decided by the High Court.

It is clear from the judgement of the Honorable Apex Court in case of Chuharmul vs CIT (quoted supra) that proceedings of additions to income are not entirely governed by outcomes of proceedings under other Acts. In that case while the assessee was acquitted under other acts finally by the courts concerned, as far as income of assessee taxable under IT Act, the court stated that the rigours of rules of Evidence are not applicable to Income Tax Act, only common law jurisprudence is to be applied and upheld the view of the revenue on taxing the assessee under section 69A. Further, the Honorable Supreme court in State of Karnataka vs. Selvi J. Jayalalitha [2017] 78 taxmann.com 161 (SC)/[2017] 392 ITR 97 (SC) had stated that IT returns and orders are again only pieces of evidence which

cannot be the sole basis for determining the disproportionate assets under Prevention of Corruption Act. Thus, the rules of taxing income are not tied completely with the rules and outcomes of other acts. Hence, these proceedings are concluded without waiting for the outcome in the pending suit in the high court.

Also, it is brought on record that the order u/s 143(3), which is the subject matter of appeal, was passed on 24/3/2004 and appeal filed on 27/4/2004. More than 18 years has passed and this is a long time to continue to keep in abeyance the proceedings. Further delay only harms the interest of the assessee, which will add to the interest burden on non-payment of the demands raised. Further, in case of any favourable outcome, the assessee has always the option to rely on the same and request for its applicability to provide relief in further appeal under the IT Act, this being only the first appeal.”

7.1 We find that the issue is not yet mature for determination of the ownership of the cash in both the assessee. The substantive assessment and protective assessment both are still alive for determination. Both the Id. Ars has filed new documents before the bench which is not yet verified by the Id. AO. So, the entire grounds of appeal of both the assesseees are remitted back to the Id. AO for further adjudication considering the final determination of the Hon’ble High Court.

The ITA No.28/Asr/2023 is mutatis mutandis applicable for ITA 193/Asr/2014 and follows accordingly.

8. In the result, both the appeals of the assessee bearing **ITA No. 28/Asr/2023 & 193/Asr/2014** are allowed for statistical purpose.

Order pronounced in the open court on 26.05.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order