

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos: 152 & 153/Rjt/2023
Assessment Year: 2010-11**

Shri Prashant Jentilal Ramani, Om Akashdeep, Street No. 5, B/h Mavdi Gurukul, Rajkot (Gujarat) PAN No: AOXPR0661P (Appellant)	Vs	The ITO, Ward-3(1)(3), Rajkot (Respondent)
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**Assessee Represented: None
Revenue Represented: Shri Ashish Kumar Pandey, Sr. D.R.**

Date of hearing : 13-09-2023
Date of pronouncement : 20-09-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These two appeals are filed by the Assessee as against the separate appellate orders dated 03-03-2023 and 20-03-2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), arising out of the reassessment order passed under section 147 r.w.s. 144 and penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the same Assessment Year (A.Y) 2010-11.

2. The brief facts of the case is that the assessee is an individual and engaged in trading of shares. The assessee has maintained bank account with Axis Bank Ltd., Rajkot and made cash deposit of Rs. 4,92,500/- during the financial Year 2009-10 relevant to the Assessment Year 2010-11 on various dates. The assessee had operated Demat account with HSBC Invest Direct Securities (India) Limited. During the course of statement recorded by the ADIT(Inv.), Rajkot on oath dated 31.07.2016 and 28.02.2014. The assessee was asked to explain the source of cash deposit in the Axis Bank. The assessee failed to explain the source of cash deposits and not filed Return of Income for the Assessment Year 2010-11. Hence a show cause notice u/s. 148 was issued on 28.03.2017 reopening the assessment. The assessee has not responded to the reopening notice as well as to the notices issued u/s. 142(1) and four more notices. Hence a final show cause notice dated 30.11.2017 was issued by the A.O. why not to treat the cash deposit in Axis Bank as unexplained money u/s. 69A of the Act. As there was no reply from the assessee, Best Judgment Assessment was made u/s. 144 of the Act, making addition of Rs. 4,92,500/- as unexplained cash credit u/s. 69A of the Act. The Assessing Officer also initiated penalty proceedings.

3. Aggrieved against the same, the assessee filed an appeal before Ld. NFAC with a delay of 301 days in filing the appeal. Ld. NFAC condoned the delay in filing the above appeal and given five hearing opportunities namely on 12.03.2021, 19.07.2021, 10.08.2021, 02.02.2023 and 14.02.2023. However the assessee failed to response to above notices neither filed any adjournment nor filed written submissions before the

Ld. NFAC. In the absence of any details, the Ld. NFAC dismissed the assessee appeal.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. On the facts and circumstances of the Appellant's NIL case and in law the Ld. Commissioner of Income Tax (Appeals) failed to comment on the validity of the assessment order passed u/s 147 r.w.s. 144 of the Income Tax Act, 1961.

2. On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made amounting to Rs.4,92,500/- being cash deposit by treating the same as unexplained money by invoking the provisions of Section 69A of the Income Tax Act, 1961.

3. The Appellant craves leaves to add, to amend, alter, modify and/or withdraw any or all of the above grounds of appeal, each of which are without prejudice to one another.

5. It is seen from record, the case is listed for hearing 5th time today, even in the previous hearings None appeared on behalf of the assessee, in spite of service of notices to the assessee. Final hearing notice was served through Department by way of Affixture. Neither the assessee nor his Authorized Representative, appeared for the hearing. This clearly shows that the assessee is not interested in pursuing the above appeal, we proceed to hear to appeal with the assistance of Ld. Sr. D.R.

6. The Ld. D.R. Mr. Ashish Kumar Pandey appearing for the Revenue brought to our notice even the reassessment order is an exparte assessment order, wherein cash deposit to the extent of Rs. 4,92,500/- is the main issue of cash deposits in Bank account. Even before ld. CIT(A) in spite of five hearing notices given, the assessee failed to file any submission nor request for any adjournment of the hearings. Therefore

the Ld. CIT(A) after going into the merits of the case with available material on record, dismissed the assessee appeal.

6.1. Thus the Ld. Sr. D.R. submitted the Hon'ble High Court of Gujarat in the case of PCIT Vs. Ashokji Chanduji Thakor in Tax Appeal No. 1160 & 1161 of 2018 dated 09-10-2018, after considering the Tax Appeal No. 710 of 2018 dated 2-06-2018 set aside the order passed by the Tribunal and restored the exparte appellate order and assessment order. Following the above Jurisdictional High Court judgment, the exparte order passed by the Ld. NFAC and Assessing Officer does not require any interference and the present appeal filed by the assessee is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. It is seen from the reassessment records, the assessee has not responded to the various notices and not filed relevant documents and materials before the Assessing officer. Therefore the Assessing officer passed an exparte order u/s. 144 of the Act. Even before the Ld. NFAC, five opportunities of hearing were given to the assessee namely 12.03.2021, 19.07.2021, 10.08.2021, 02.02.2023 and 14.02.2023, the assessee neither filed written submissions nor requested for any adjournment of the hearings. Therefore the Ld. CIT(A) passed an exparte appellate order holding that the peak credit adopted by the Assessing Officer is found to be acceptable. We do not find any infirmity in the order passed by the Ld. CIT(A) on merits. Further the Jurisdictional High Court in the case of Ashokji Chanduji Thakor (cited supra) held as follows:

...Both these appeals are filed by the Revenue. Revenue has challenged the judgment of the Income Tax Appellate Tribunal, Ahmedabad [Tribunal for short

dated 27th December 2017 by which the Tribunal was pleased to remand the proceedings before the CIT(A) for fresh adjudication. The Tribunal noted that despite service of notices, before CIT(A) no one appeared on behalf of the assessee. No written response was also made. Despite this, the Tribunal placed the matter back before the Ld. CIT(A) for fresh consideration.

We may noticed that in case of the group of assesseees, this Court in Tax Appeal No. 710 of 2018 and connected appeals, by judgment dated 27th June 2018 had reversed such a view of the Tribunal. The Court was of the opinion that the Tribunal had exercised its discretion without stating reasons.

Eventually, the Court made the following observations:

"8.0. It is required to be noted that in the present case right from very begging i.e. assessment proceeding, assessee was non cooperative. Number of opportunities were given by the AO, however assessee did not cooperate and even did not file any reply. Therefore, considering the material on record, the AO made addition as unexplained investment. Even before the learned CIT(A) also the assessee was non cooperative. Number of opportunities were given to the assessee to represent his case, however none remained present on behalf of assessee. Thereafter, the learned CIT(A) proceeded further with the appeal ex parte and decided the appeal on merits and confirmed the order passed by the AO confirming additions of unexplained investment. Thus, even learned CIT(A) also decided the matter on merits. On going through the orders passed by the AO as well as learned CIT(A), we are of the opinion that in absence of any explanation by the assessee on the investment in question, AO was justified in making the addition of unexplained investment and thereafter learned CIT(A) was justified in confirming the same. Therefore, even the order passed by the learned CIT(A) which was on merits was not required to be interfered with by the learned CIT(A) and ought not to have been quashed and set aside without assigning any reasons. Under the circumstances, the impugned orders passed by the learned Tribunal cannot be sustained.

9.0. In view of the above and for the reasons stated above, the questions of law are answered in favour of the Revenue and against the assessee and impugned common judgment and order passed by the learned Tribunal in IT(SSJA No.117/AHD/2015 to IT(SSIA No.122/AHD/2015 is hereby quashed and set aside and the orders passed by the AO as well as learned CIT(A) are restored. All the appeals are allowed accordingly. No costs."

In the result, these Tax Appeals are also allowed.

Impugned common order of the Tribunal is set aside."

7.1. Respectfully following the above judgment of the Jurisdictional High Court, we have no other option than to dismiss the appeal filed by the assessee.

8. In the result, the appeal filed by the Assessee in ITA No. 152/Rjt/2023 is hereby dismissed.

9. **ITA No. 153/Ahd/2023** is against the levy of penalty u/s. 271(1)(c) of the Act. Since the quantum appeal is dismissed in ITA No. 152/Ahd/2023, this Penalty appeal filed by the Assessee is also consequentially dismissed.

10. In the result, both the appeals filed by the Assessee are dismissed.

Order pronounced in the open court on	20-09-2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 20/09/2023

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

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

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

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट