

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 646/SRT/2023 (AY: 2017-18)**

(Hybrid hearing)

Ranjitbhai Balvantbhai Patel, At & Post Arthan, Tal: Olpad, District – Surat, 394130. PAN : BXJPP1448N	Vs.	The ITO, Ward -2(2)(4), Surat.
APPELLANT		RESPONDEDNT

Appellant by	Ms. Chaitali Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of institution	25/09/2023
Date of hearing	28/11/2023
Date of pronouncement	28/11/2023

Order Under Section 254(1) of Income tax Act

PER PAWAN SINGH, JUDICIAL MEMEBR:

1. This appeal by assessee is directed against the order of Learned Commissioner of Income Tax (Appeals) [in short 'Ld. CIT(A)'] / Learned National Faceless Appeal Centre (in short 'the NFAC'), Delhi, dated 22.09.2023 for Assessment Year (AY) 2017-18. The assessee has raised the following grounds:

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in not admitting the appeal u/s 249(4) when no tax was payable as advance tax.

2. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in making addition of Rs.13,69,000/- being cash deposits made during the demonetization period in the bank accounts of the assessee as unexplained u/s. 69A of the Act.

3. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in making addition of Rs.8,000/- being cash deposits made during the period other than demonetization period in the bank accounts of the assessee as unexplained u/s. 69A of the Act.

4. *On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in making addition of Rs.10,42,036/- being other credits in the bank accounts of the assessee as unexplained u/s. 69A of the Act.*

5. *On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in taxing the addition by taking the rate @ 77.25% by attracting S. 115BBE instead of normal tax rate.*

6. *It is therefore prayed that above additions made by the assessing officer may please be deleted.*

7. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*

2. Rival submissions of the parties heard and record perused. The learned authorised representative (ld. AR) of the assessee submits that ld. CIT(A) dismissed the appeal of assessee *in limine* by taking view that assessee was required to pay an amount equal to amount of advance tax, which was payable. And that the assessee has not paid advance tax, while filing the appeal before him/ld. NFAC, therefore appeal is not liable to be admitted as per provision of section 249(4) of the Income Tax Act. The ld. AR of the assessee submits that assessee purely an agriculturist. The assessee has no other source of income except agricultural income. The case of assessee was reopened for the reasons that assessee made cash deposits in his bank accounts during demonetization period with Syndicate Bank. The firm stand of assessee right from the beginning is that he is not liable to pay any tax as he has no other source of income, except agricultural income. The assessee has not filed return of income, although the assessee was filing return of income regularly from AY.2014-15 and 2016-17 and as shown certain agricultural income, below the taxable limit which was accepted by Department without any variation. The ld. AR further submits

that during the pendency of appeal before Id. CIT(A), issued a deficiency letter/show cause notice to the assessee that tax on return income was not paid/particulars of payment not mentioned. In response to such deficiency letter, the assessee filed his reply dated 19.11.2022, the acknowledgement of such reply is filed of page no.2 of the paper book. Copy of reply is filed on page no.3 of paper book. In reply, the assessee duly explained the assessee is purely an agriculturist and have no other source of income, so assessee is not liable to file return of income, hence no question of mentioning tax on return income, not paid. The reply of assessee was enabled by Id. CIT(A). Again vide show cause notice/clarification dated 15.09.2023, similar objection was raised. The assessee again vide reply dated 15.09.2023, repeated the similar contention that assessee is not liable to file return of income for the year under consideration, therefore there is no question of mentioning tax on returned income, not paid. The Id. AR of the assessee invited my attention on column no.8 and 9 of Form No. 35, wherein the assessee in both the columns has clearly mentioned "No" against the details; whether the tax due on the income returned has been paid in full and/or where no income tax return filed by the assessee whether amount equal to an advance tax as Section 249(b) has been paid.

3. The Id. AR for the assessee submits that in response to deficiency letter, the assessee clearly explained the fact that no tax was in due or liable to deposit as there is taxable income of assessee and it was only an agricultural income. The Id. CIT(A) instead of appreciating the fact dismiss the appeal of assessee *in limine*. The Id. AR for the assessee submits that appeal of assessee was not adjudicated by Id. CIT(A) on merit, therefore the

matter may be restored back to the file of ld. CIT(A) to decide the appeal on merit. To support her submissions, the ld AR for the assessee relied on the decision of Pune Tribunal in Hotel Sai Siddi (P) Ltd. Vs DCIT (2011) 13 taxmann.com 155 (Pune).

4. On the other hand, ld. Senior Departmental representative (Sr DR) for the Revenue submits that Assessing Officer passed the assessment order under section 144 for non-compliance of various show cause noticed. The Assessing Officer assessed the income at Rs.24,19,036/-. The assessee has not deposited the due tax as per the assessment order, the Assessing Officer computed the total income at Rs.24,19,036/- and computed the tax payable at Rs.29,52,552/- which includes the advance tax payable by the assessee as well as the interest on the amount of delayed payment of advance tax. The assessee has not paid tax and secondly particulars of payment of tax not mentioned on appeal for.
5. I have considered the submission of both the parties and have gone through the order of lower authorities below. I find that Assessing Officer was having information that assessee has not filed return of income, though the assessee has made cash deposits of Rs.4,51,000/-, Rs.2,73,000/- and Rs.6,45,000/- in his various bank accounts with Syndicate Bank during the period from 09.11.2016 to 30.12.2016. The Assessing Officer in order to verify the information issued notice under section 133(6) to the Branch Manager of Syndicate Bank, Arthan Branch, Surat. In response to such notice, the various branch managers provided information and on receipt of such verification the Assessing Officer was of the view that assessee has made total cash deposits and received funds

other than cash aggregating Rs.22,74,929/- in the financial year 2016-17 relevant for AY.2017-18.

6. On appeal before the ld. CIT(A), the action of Assessing Officer was confirmed by taking view such assessee has not paid advance tax payable before filing of appeal. Before me, the ld. AR of the assessee vehemently urged that assessee is purely an agriculturist and have no other income except agriculture income during the year under consideration, and it was further argued that in response to deficiency letter, the assessee duly explained the fact that assessee has no other source of income except agriculture income and not liable to file return of income and hence assessee no occasion for mentioning tax on the return of income not paid/particular of payment not mentioned on appeal form. I find that the defence of assessee right from the beginning is that the agriculturist and being no source of income, so he is not liable to pay tax. I find that Division Bench of ITAT, Pune in the case of Hotel Sai Siddi (P.) Ltd. vs. DCIT (supra) held that when the assessee has incurred loss while filing return of income and was not liable to pay tax of an amount equal to amount of advance tax as required under section 249(4)(b), the assessee's appeal was liable to be admitted. Considering the peculiar facts of the case and ratio of the decision in the case of Hotel Sai Siddi (P.) Ltd. vs. DCIT (supra) and keeping in view that the assessee has claiming that he has no taxable income. I deem it appropriate to restore the case to the file of ld. CIT(A) to admit the appeal of assessee and passed the order on merit in accordance with law. Needless to direct that before passing the order afresh the ld CIT(A)/ NFAC shall grant opportunity of hearing to the

assessee. The assessee is also directed to comply with the notices issued by NFAC/ ld CIT(A) and not to seek adjournment without any valid reasons.

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

Order pronounced in open court on 28/11/2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28/11/2023
SAMANTA

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr.PS/PS, ITAT, Surat