

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Ms. Suchitra Kamble, Judicial Member

**ITA No. 436/Ahd/2022
Assessment Year 2011-12**

Shahrukhkhan Sharfarazkhan Pathan, 10-11 Amir Park, Opp. Samir Bihar Society, Sarkhej Road, Juhapura, Ahmedabad PAN: BDLPP5774M (Appellant)	Vs	The Income Tax Officer, Ward-3(3)(5), Ahmedabad, (Respondent)
---	----	---

Assessee by: Shri P.D. Shah, A.R.

Revenue by: Shri Purushottam Kumar, Sr. D.R.

Date of hearing : 09-01-2023

Date of pronouncement : 12-01-2024

आदेश/ORDER

This is an appeal filed against the order dated 04-10-2022 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2011-12.

2. The grounds of appeal are as under:-

“1. That the learned National Faceless Appeal Centre (NFAC) has erred in law and facts by not quashing the reassessment proceeding and therefore the learned AO should be directed to delete the addition made therein, by quashing the assessment order passed by the learned AO.

2. That the learned National Faceless Appeal Centre has erred in law and facts by confirming the Addition of Income of Rs. 10,24,850/- under section 69 of the Act, on the ground that the cash deposited into bank account and therefore the learned AO should be directed to delete the said addition while computing the total income.

3. That your appellant craves a leave to add, alter or amend any grounds at the time of hearing.

Total Tax Effect

Rs. 1,66,299/-”

3. In this case, notice u/s. 148 of the Act issued on 30/03/2018 as the AO has certain information in his possession which shows that the assessee has made cash deposits of Rs. 10,24,850/- with ICICI Bank and also made commodity transactions of Rs. 38,23,87,995/- and he has not filed return of income. The said notice was duly served upon the assessee by speed post. In terms of the said notice, the assessee was required to file the return of income within 30 days from the receipt of the said notice. The assessee did not file return of income as required by notice u/s. 148 of the Act. Thereafter, a number of notice u/s. 142(1) of the I.T. Act were issued, the details of which are as under:

Sr. No.	Notice U/s.	Dt. of Notice	Dale of Hearing	Dt. of Service	Remarks
1	142(1)	14/08/2018	Compliance required immediately	By Speed Post	No compliance and no adjournment was sought.
2	142(1)	18/09/2018	04/10/2018	By Speed Post	No compliance and no adjournment was sought.
3	142(1)	10/10/2018	22/10/2018	By Speed Post	No compliance and no adjournment was sought.
4	142(1)	16/11/2018	Compliance within 5 days	By Speed Post	No compliance and no adjournment was sought.
5	142(1)	23/11/2018	03/12/2018	By Speed Post	No compliance and no adjournment was sought.
6	142(1)	05/12/2018	14/12/2018	By Speed Post	No compliance and no adjournment was sought.

To meet the end of justice a final notice in the form of show cause notice was issued on 24/12/2018 fixing the hearing on 28/12/2018 which was served upon the assessee through speed post. The assessee again failed to attend and produce the details as called for. In the circumstance, the Assessing Officer was left with no alternative but to pass the order ex-parte order u/s 144 of the Act on the basis of material available on record and to the best of his judgment. Accordingly, the Assessing Officer proceeded to assess income of the assessee for A.Y. 2011-2012.

4. During the course of assessment proceedings, copy of assessee's bank statement with ICICI Bank was called for under section 133(6) of the Act. A perusal of the bank statements was noticed that during the year under consideration the assessee had made cash deposits of Rs. 10,24,850/- in his bank Account maintained with ICICI Bank. During the course of assessment proceedings, the assessee was asked to explain the source of the aforesaid cash deposits of Rs. 10,24,850/-. However, the assessee did not file any evidences to prove the source of the said cash deposits of Rs. 10,24,850/- maintained with ICICI Bank. As such, vide show cause notice dated 24/12/2018, the assessee was once again requested to furnish evidence to prove the source of deposits made with the above mentioned bank. This time also the assessee failed to comply with the show cause notice issued. As mentioned supra, the assessee has been provided with a number of opportunities to prove the source of cash deposits of Rs. 10,24,850/- made with the above mentioned bank but did not chose to avail the same for the reasons best known to it. Section 69 of the Act provides that when no explanation is forthcoming from the assessee's side to prove the source of investment made in the bank account, the same requires to be added. In the circumstances and considering the recalcitrant attitude of the assessee in complying the Statutory notices issued, the Assessing Officer was left with no alternative but

considerer the cash deposits of Rs. 10,24,850/- made with the above mentioned banks as the income of the assessee out of undisclosed sources. In light of the above facts, the cash deposits amounting to Rs. 10,24,850/- made in the above mentioned bank account is treated as unexplained deposits and the same is added to the total income of the assessee for the year under consideration u/s 69 of the Act. Penalty proceedings u/s. 271(1)(c) are initiated on this issue for concealment of income.

5. The ld. A.R. submitted that as the assessee could not file the relevant documents before the Assessing Officer as well as before the CIT(A) due to personal difficulties as he was hospitalized and at surgery during the same period. Therefore, the ld. A.R. requested that the matter may be remanded back to the file of Assessing Officer for proper adjudication.

6. The ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the assessee has not appeared before the Assessing Officer as well as before the CIT(A) and the reasons recorded for non-

appearing before both the authorities is a genuine reason due to the medical history of the assessee. Therefore, in the interest of justice, the matter is remanded back to the file of Assessing Officer for proper adjudication and verifications of the evidences which will be put up by the assessee before the Assessing Officer and decide the case as per law. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice.

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

Order pronounced in the open court on 12-01-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad : Dated 12/01/2024

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,
अहमदाबाद