

आयकर अपीलिय अधिकरण, डी बेंच, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.634/Ahd/2023
Assessment Year : 2017-18

Bhavin Gunvantbhai Sagar 501, Madhuram Apartment Nr. Sant Kabir School Ahmedabad - 380013 Gujarat	v.	The Dy. Commissioner of Income- Tax, Circle-2(2)(1) Ahmedabad-380015 Gujarat
PAN: AMMPS 1447 D		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Aseem L. Thakkar, CA	
Revenue by :	Shri Atul Pandey, Sr.D.R.	

सुनवाई की तारीख/Date of Hearing : 18/01/2024
घोषणा की तारीख /Date of Pronouncement: 18/01/2024

आदेश/ORDER

Per Coram

This appeal filed by the assessee is directed against the appellate order dated 21/06/2023 passed by Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)" in short] under section 250 of the Income Tax Act, 1961 (hereinafter called "the Act") for Assessment Year 2017-18 (DIN & Order No.ITBA/NFAC/S/250/2023-24/1053833888(1)), the appellate proceedings have arisen before Ld.CIT(A) from assessment order dated 26/12/2019 passed by Ld. Assessing Officer (hereinafter called "the AO") u/s.143(3) of the 1961 Act (DIN & Order No. ITBA/AST/S/143(3)/2019-20/1023131866(1)).

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Ahmedabad Benches, Ahmedabad (hereinafter called "the Tribunal):

"1. The Ld. CIT(A), NFAC, Delhi has erred in passing an ex Parte order dismissing the appeal of the assessee without giving reasonable opportunity of being heard to the appellant hence the same being against the principles of natural justice and law requires to be quashed.

2. The Ld. CIT(A), NFAC, Delhi has erred in passing an Ex Parte order and confirming the addition made by the Assessing Officer without considering the written submissions dtd. 12.06.2023 with annexures thereto filed on portal by the appellant on 12.06.2023.

3. The Ld. CIT(A) NFAC, Delhi has erred in confirming the action of the Assessing Officer in making addition of Rs.36,60,000/- u/s.68 of the I.T. Act, 1961 being cash deposited out of sale proceeds of the business.

4. The appellant craves leave to add, alter, amend or modify all or any of the grounds of appeal before or at the time of hearing."

3. The brief facts of the case are that the assessment has been framed by the Assessing Officer vide assessment order dated 26/12/2019 passed u/s 143(3) of the Income-tax Act, 1961, wherein an addition of Rs.36,60,000/- was made by the AO on account of 'unexplained cash credits' u/s. 68 of the Income Tax Act, 1961. There was a cash deposits in the bank account by the assessee during demonetization period, and the explanation submitted by the assessee was not accepted by the AO, which led to aforesaid additions to the income of the assessee. The assessee filed its first appeal before Ld.CIT(A). During appellate proceedings, Ld.CIT(A) issued two notices dated 13/1/2021 and 11/05/2023 to the assessee. The assessee requested for adjournment in response to notice issued by Ld. CIT(A) on 11/5/2023. The Ld.CIT(A) issued notice on 06/06/2023 giving final opportunity to the assessee, asking assessee to file submissions by 12/06/2023. The assessee did

not filed any submissions. The Ld.CIT(A) dismissed the appeal of the assessee vide orders dated 21.06.2023 , by holding as under:-

"4.2 The Hon'ble ITAT in ITA No. 1025 - 1027 / Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it. Keeping in view of the aforesaid factual position, the appeal filed by the appellant is, therefore, decided on merits.

5. In the instance of the case of the case the app appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in this regard. I have gone through the record before me and based on the record I have decided to adjudicate the issue on the merits of the case. In the instant case the AO has rightly assessed an income of Rs.74,15,420/- under the head "unexplained cash credit u/s 68 of the I.T.Act, 1961" amounting to Rs.36,60,000/-. Since the appellant failed to substantiate appellant's claim and addition made by the Assessing Officer of Rs.36,60,000/- is hereby confirmed."

3.1. The assessee has now filed second appeal before the Tribunal, and at the outset, the ld.counsel for the assessee submitted that the assessee has duly filed reply before Ld.CIT(A) on 12/06/2023 vide acknowledgement No. 227325211120623 in e-proceedings response, whereby the assessee has submitted complete replies , which were not considered by ld. CIT(A), and the appeal of the assessee was dismissed by ld. CIT(A) for non prosecution. The said e-proceedings response acknowledgment filed by the assessee is placed on record in file. The ld. counsel for the assessee submitted that the ld.CIT(A) has passed a cryptic, non-speaking and non reasoned order. It was submitted that ld. CIT(A) has simply upheld the addition of Rs.36,60,000/- by holding that the AO has rightly made the addition. Thus, there is no independent application of mind by the Ld.CIT(A), the order is

not a reasoned and speaking order , and the provisions of section 250(6) of the Act is not complied with by the Ld.CIT(A).

4. The Ld.DR, on the other hand, could not controvert the said submission of the assessee.

5. After considering the material available on record as well as the submissions made by both the parties, we are of the considered view that, in the instant case, the Ld. CIT(A) has not adjudicated the issue on merits and has simply dismissed the appeal of the assessee by passing a non-speaking, non-reasoned and cryptic order, thus, there is no independent application of mind by the Ld.CIT(A). The ld. CIT(A) has just held that the AO has rightly made the additions of Rs. 36,60,000/- under the head 'unexplained cash credit u/s 68 of the 1961 Act. There are no facts discussed by ld. CIT(A), there is no independent reasoning and application of mind by ld. CIT(A), and a cryptic non speaking order is passed. Thus, the order passed by the Ld.CIT(A) is not in compliance with the provisions of section 250(6) of the Act. Further, the Ld.CIT(A) has observed that the assessee has not filed any submission with respect to notice issued on 06/06/2023 for which compliance was called for by 12/06/2023 and, in fact, rather the assessee has duly filed the reply/submissions through e-proceedings on 12/06/2023; i.e. within the time provided by the Ld.CIT(A) and, hence, the appellate order of the Ld.CIT(A) also suffers from this infirmity. The evidence to that effect is on record , which is placed in file. Thus, in the interest of justice and fair play, we are inclined to restore the matter back to the file of Ld.CIT(A) with the direction to pass a reasoned and speaking order on merits in accordance with law, after providing reasonable opportunity of being heard. The assessee is also directed to co-operate with

the Ld.CIT(A), and comply with the directions of the Ld.CIT(A). Thus, in nutshell, the appeal of the assessee is restored back to the file of ld.CIT(A) for fresh adjudication on merits in accordance with law, after giving opportunity of being heard. We clarify that we have not commented on the merits of the issue in this appeal and all the contentions are kept open. In nutshell, the appeal of the assessee is allowed for statistical purposes. We order accordingly.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Court on 18th January, 2024 at Ahmedabad. in the presence of both the parties, and reduced to writing and signed on 22 January, 2024.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 22/01/2024

टी. सी. नायर, व. नि. स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NAFC)-Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad