

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member  
And Shri Waseem Ahmed, Accountant Member**

**ITA No. 613/Ahd/2023  
Assessment Year 2010-11**

Shaileshbhai Kanaiyalal Mehta, 4-Kailash Society, Waghodia Road, Baroda, Gujarat PAN: ACHPM3859L (Appellant)	Vs	Dy. CIT, Circle- 3(1), Vadodara, R. No. 503, 5 <sup>th</sup> Floor, Aayakar Bhavan, Race Course Circle, Vadodara-390007 (Respondent)
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**Assessee by: Shri Tushar Hemani, Sr. A.R. &  
Shri Parimalsinh B. Parmar, A.R.  
Revenue by: Ms. Saumya Pandey Jain, Sr. D.R.**

Date of hearing : 08-02-2024  
Date of pronouncement : 14-02-2024

**आदेश/ORDER**

**PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-**

This is an appeal filed against the order dated 19-06-2023 passed by National Faceless Appeal Centre, Delhi for assessment year 2010-11.

2. The grounds of appeal are as under:-

Sr. No.	Grounds of Appeal	Tax effect relating to each Ground of appeal
1	<i>The Ld.CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in reopening the assessment u/s. 147 of the Act. On the facts and circumstances of the case. Ld. CIT(A) ought to have held that the action of reopening is without jurisdiction and not permissible either in law or on facts.</i>	
2	<i>The Ld CIT(A) has erred in law and on facts in confirming the action of the Ld. AO in adding closing balance of cash on hand in the cash book amounting to Rs. 40,25,806/-. Both the lower authorities have failed to appreciate that the Appellant has maintained proper cash book and any balance appearing therein has already been offered for tax. Taxing closing balance once again amounts to double taxation that is not permissible under the Act</i>	Rs. 12,07,742/-
3	<i>The Lad CIT(A) has erred in law and on facts in confirming the action of the Ld. AO in adding Rs. 16,00,000 on account of undisclosed cash receipts to the total income of the Appellant.</i>	Rs. 4,80,000/-
4	<i>No opportunity for cross examination of person whose statements have been relied upon for making additions had been afforded to the appellant which is violative of principles of natural justice.</i>	
5	<i>Alternatively, and without prejudice, benefit of telescoping is not granted.</i>	
6	<i>Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the Appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural</i>	

	<i>Justice and therefore deserves to be quashed.</i>	
7	<i>The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234A/B/C of the Act.</i>	
8	<i>The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty u/s. 271(1)(c) of the Act.</i>	
9	<i>9. The Appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.</i>	
<i>Total Tax Effect</i>		<i>Rs. 16,87,742/-</i>

3. The assessee filed his return of income for assessment year 2010-11 declaring therein total income of Rs. 20,26,230/- . The assessee is engaged in the business of providing rooms to students popularly known as hostel in proprietary concern, namely Mehta Girls Hostel. As per information received from the DCIT, Central Circle, Baroda-2 on 23-03-2017 which was conveyed/communicated to the Assessing Officer that during the course of search of Sigma Group, a loose paper filed (Annexure A-1) was seized from the residence Shri Mahesh M Kachiya. The loose paper filed contains noting of Rs. 32,25,000/- being cost of house of Krishna Leela, VIP road, Vadodara, purchased for Shri Manish B. Shah on 02-03-2010. Particulars of payment made towards purchase of sale of property revealed that Shri Shailesh Kanaiyalal Mehta was

paid Rs. 16,00,000/- cash on 16-01-2010 which is informed to be not accounted in the books. After recording reasons for initiating proceedings u/s. 147 of the Act on 25-03-2017 and approval for reopening, the Assessing Officer issued notice u/s. 148 on 28-03-2017. In response to the said notice, the assessee requested to treat the original return of income filed in compliance to the notice u/s. 148. Further, notice u/s. 143(2) of the Act was issued on 07-08-2017 and duly served upon the assessee. Notice u/s. 142(1) was issued on 25-10-2017 and was duly served upon the assessee. In response to the notices, the chartered accountant who was duly authorized by the assessee attended the assessment proceedings and furnished the requisite details. During the assessment proceedings, a show cause notice was issued on 08-12-2017 thereby asking the assessee to give the particulars of information including the details of bank account statement mentioned in the said notice. The said show cause notice mentioned that the date of compliance was fixed from 15<sup>th</sup> December, 2017. The Assessing Officer passed the assessment order on 12-12-2017 which is prior to compliance date given under the notice dated 08-12-2017. The Assessing Officer made addition of Rs. 40,25,806/- being closing cash on hand and addition of Rs. 16,00,000/- being receipts of funds on sale of property as per loose paper sheet seized during search operations from the premises of Sigma Group.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Id. Authorized Representative submitted that the assessee was not given proper opportunity and the sufficient time to represent his case before the Assessing Officer as the compliance of the show cause notice was on the later date but the assessment was passed prior to the said compliance date. The Id. Authorized Representative submitted that the CIT(A) has also not taken cognizance of the additional evidence and therefore the matter may be remanded back to the file of Assessing Officer for proper adjudication of the evidences submitted by the assessee before the CIT(A).

6. The Id. Departmental Representative relied upon the assessment order and the order the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the assessee was given the time frame for compliance of the show cause notice dated 08-12-2027 but the Assessing Officer passed the order prior to the said compliance date which amounts to not following principles of natural justice and not allowing the assessee to represent his case fully and

properly as per due process of law. Therefore, it will be proper to remand back this matter to the file of the Assessing Officer for proper adjudication of the evidences which were filed by the assessee before the CIT(A) and after taking cognizance of the same as well as verifying the same and adjudicate as per Income Tax Statute. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

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

Order pronounced in the open court on 14-02-2024

Sd/-

Sd/-

(WASEEM AHMED)  
ACCOUNTANT MEMBER  
Ahmedabad : Dated 14/02/2024

(SUCHITRA KAMBLE)  
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,  
अहमदाबाद