

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.66/Ahd/2023  
Assessment Year : 2017-18

Hitendra Dilipsinh Jadeja 4, Sanjay Park Society Nr.Jogni Mata Temple Sanand Ahmedabad - 382 110 Gujarat PAN: AGFPJ1666A	Vs	The ITO Ward-3(2)(2) Ahmedabad
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		None
Revenue by :		Ms.Saumya Pandey Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 14/02/2024  
घोषणा की तारीख /Date of Pronouncement: 21/02/2024

आदेश/ORDER

PER MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed by the Assessee against the order dated 19/10/2022 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" in short] for Assessment Year (AY) 2017-18.

2. Grounds of appeal are as under:

"1. The Hon'ble CIT(A) has erred in passing an order without understanding the fact that the appellant had originally filed an appeal before the Hon'ble CIT(A) on 18-01-2020 through his original Authorized Representative (AR). However, the

AR was thereafter changed and the original AR did not give the details the appellant and accordingly the appellant was not aware about the timely filing of the appeal by the original AR and accordingly the appeal was again filed by the new AR requesting for condonation of delay. Both the appeals are very much reflected on the Portal of the Hon'ble CIT(A). However, the Hon'ble CIT(A) has not taken into consideration the appeal filed by the original AR and taken into account only the subsequent appeal filed by the new AR including for condonation of delay and the Hon'ble CIT (A) has stated that there was a delay in filing the appeal and therefore he has rejected all the grounds of the appeal of the appellant without going into merit of case and only on the ground of delayed filing of appeal. However, the original appeal filed by the original AR of the appellant within the time limit prescribed by the law was very much before the Hon'ble CIT(A) and he has not taken heed to it which is in violation of the principles of natural justice.

2. The Hon'ble CIT(A) has erred in law and on facts in confirming the action of the Ld. AO without going on the merit of the case by confirming the addition of Rs.31,30,000/- towards cash received from Shri Devendra Dilipsinh Jadeja (brother of the appellant) on account of cancellation of land deal and without considering the facts and circumstances of the case. The Hon'ble CIT(A) has erred in passing the order in limine without providing reasons which is in violation of Section 250(6) of the Act.

3. The Hon'ble CIT(A) has erred both in law and on the facts by confirming addition of Rs.9,72,300/- as unexplained agriculture income u/s 68 of the Act without taking into account the arguments of the appellant. Thus, Hon'ble CIT(A) has not taken into account the details submitted by the appellant and rejected the grounds of appeal only on account of substantial delay in filing the appeal which is totally in contravention of the law and accordingly also in violation of the principles of natural justice.

4. The Hon'ble CIT (A) has confirmed the addition of Rs.18,74,226/- as capital gain on sale of property without going into the merits of the case wherein the appellant was only 1/3<sup>rd</sup> holder of the land and a certain short term capital loss was also required to be set off against the same and accordingly the ground taken by the Hon'ble CIT(A) is in complete violation of the Act.

5. The Hon'ble CIT(A) has grossly erred in confirming addition of Rs.43,81,712/- u/s 68 of the Act without understanding the facts of the case and also not going into the details of the case of the appellant and thus has violated the basic principles of the Act.

6. *The Hon'ble CIT(A) has also erred in law and on facts by confirming addition of Rs.3,00,000/- towards "Estimated Household Expense" as stated by the Ld. AO which was only on the basis of the estimation and accordingly is in violation of the principles of natural justice.*

7. *The Hon'ble CIT (A) has also further erred in law and on facts in confirming addition of Rs.15,920/- u/s 44AD of the Act, which is completely against the Income Tax Act and Rules made thereunder.*

8. *The Hon'ble CIT (A) has erred in law and on facts in confirming the action of the Ld. AO in levying interest u/s 234A, 234B and 234C of the Act.*

9. *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 Justice and therefore deserves to be quashed.*

10. *The Hon'ble 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."*

3. The assessee filed return of income on 31/03/2028 declaring total income at Rs.2,32,820/-. The case was selected for scrutiny and the notice u/s.143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" in short) was issued to the assessee on 24/09/2018. In response to various statutory notices, the assessee filed his submissions on 10/12/2019 along with the details. After going through the submissions filed on various dates, the Assessing Officer made addition of Rs.31,30,000/- towards cash receipts from Shri Devendra D.Jadeja, addition of Rs.9,72,300/- towards agricultural income, addition of Rs.18,74,226/- towards Short Term Capital Gain (STCG) on sale of land and estimated the addition of Rs.3 Lakhs

towards household expenses. The Assessing Officer also treated Rs.43,81,712/- as unexplained credit u/s.68 of the Act in respect of income u/s.44AD of the Act which was shown by the assessee and taxed the same u/s.115BBE of the Act.

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

5. At the time of hearing, none appeared on behalf of the assessee despite giving notices which were duly served upon the assessee by the Registry. Therefore, we are proceeding on the basis of the submissions made by the assessee before the CIT(A).

6. The Ld.DR submitted that since the assessee has filed two appeals, the CIT(A) has rightly dismissed the present appeal.

7. We have heard the Ld.DR and perused all the relevant material available on record. It is pertinent to note that the present appeal was dismissed by the CIT(A) as the appeal was having a substantial delay of 364 days and the assessee explained that the assessee has filed one more appeal before the CIT(A) and the same is reflected on the Portal. Therefore, the present appeal was rightly dismissed by the CIT(A) as the appeal which is filed by the assessee appears to be filed beyond time. Thus, the present appeal cannot be entertained and was rightly dismissed by the CIT(A) on the principles of *res judicata*. Thus, the appeal of the assessee is dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

**Order pronounced in the Court on 21<sup>st</sup> February, 2024 at Ahmedabad.**

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

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

Ahmedabad, Dated 21/02/2024

*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)-(NFAC)
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