

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.885/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2017-2018

Bhailalbhai Mafatlal Pujara, 100 Sivam Gate, Dayanand Complex, Becharaji, Mehsana-384210. PAN: AETPP7146K	Vs.	Income Tax Officer, Ward-5, Mehsana.
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(Applicant)		(Respondent)
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Assessee by	:	Shri Suchit Patel, AR
Revenue by	:	Shri V.K Mangla, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **13/02/2024**

घोषणा की तारीख /**Date of Pronouncement**: **21/02/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Gandhinagar, arising in the matter of assessment order passed under s. 144 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-2018.

2. The first issue raised by the assessee is that the Ld. CIT(A) erred in rejecting the admission of the additional evidence filed before him which were not submitted during the assessment proceedings due to unavoidable reason.

3. The facts in brief are that the assessee in the present case is an individual and is engaged in the business of dealing in agricultural produce. The AO during the assessment proceedings found that there were cash deposits in the bank account during the demonetization period amounting to Rs. 41,74,900/- the source of which was not explained. Therefore, the AO made the addition on account of cash deposits of Rs. 41,74,900/- treating the same as unexplained money u/s 69A of the Act and added to the total income of the assessee.

3.1 Besides the above, the AO also found that there were also cash deposits of Rs. 95,69,800/- other than the demonetization period in the bank account of the assessee which is not commensurate to the gross turnover shown by the assessee amounting to Rs. 58,83,700/- only in the return of income. As such the AO treated the difference amount of Rs. 36,86,100/- (Rs. 95,69,800 – 58,83,700) as gross business receipt of the assessee. Thus, the AO by applying the rate of profit specified u/s 44AD of the Act, being 8% of difference amount of cash deposit and gross turnover, workouts to Rs. 2,94,888/- as unreported income and added the same to the total income of the assessee.

4. Aggrieved assessee carried the matter before the Ld. CIT(A). The assessee before the Ld. CIT(A), filed the additional documents with the prayer for admission under rule 46A of Income Tax Rules. The Ld. CIT(A) also called for the remand report from the AO who opposed to admit the additional evidence. But the AO in the remand report has also made comments on the additional evidence on the merit of the case. However, Ld. CIT(A), rejected the application of the assessee for the admission of additional evidence under rule 46A of income tax rules by observing as under:

8. Decision: I have carefully considered the facts of the case, submissions of the appellant, the observations of the AO in the assessment order and remand report

Before proceeding to the grounds of appeal it is relevant to mention that additional evidence was submitted with a request to admit it. It was forwarded to the AO for his comments on 22.06.2023. The AO in his report has stated that additional evidence submitted u/r 46A be not admitted. I am inclined to agree with the contention of the AO as appellant did not have sufficient cause that prevented him from producing it before the AO. Therefore the basic condition for admitting additional evidence u/r 46A is not satisfied

5. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

6. The Ld. AR before us filed a paper book running from pages 1 to 495 and contended that once the remand report has been called upon by the Ld. CIT(A) from the AO who in turn supplied the same, then in such a situation the Ld. CIT(A), ought to have accepted the additional documents for deciding the issue on merit of the case after considering the additional documents.

7. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. There is no ambiguity that the additional documents were filed by the assessee before the Ld. CIT(A), which were also forwarded to the AO for his comments. The provision of rule 46A(1) of the Income Tax Rules prescribes the situation under which the additional document have to be admitted by the Ld. CIT(A). However, the provision of sub rule (2) of 46A of the Income-Tax Rules gives power to the Ld. CIT(A) to admit the additional evidence filed by the assessee after recording the reason in writing for the admission of additional evidence. In other words, the Ld. CIT(A), was given power under subrule (2) of rule 46A of Income Tax Rule for the admission of the additional evidence filed by the assessee. However, from the findings of the Ld. CIT(A), it is transpired that the Ld. CIT(A), without applying his own mind and without exercising the power

granted under the statute has dismissed the application for the admission of the additional evidence on the behest of the AO which is contrary to the provision of law. As such, we are of the view that the Ld. CIT(A) was to exercise his power within the provision of law for admission of the additional documents instead of getting guided by the comment of the AO in the remand report.

8.1 We have also perused the bank statement filed by the assessee and on verification of the bank entries of the demonetization period, we note that such cash deposits were primarily used for making payment to Gujarat Agro Industries which is a State Government Organization and dealing in the agricultural produce. Thus, prima facie it appears to us that the cash deposits during demonetization period was representing business transactions and therefore we are of the view that the same cannot be made subject to tax under the provisions of section 69A of the Act. We are making this observation that the cash deposits during demonetization period represent the business transaction to arrive at an opinion that the assessee has very meritorious case which could not be dismissed due to technical lapses as held by the Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in 276 ITR 165 where it was held as under:

20. A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This Court, in an unreported decision in case of Vinay Chandulal Satia v. N.O. Parekh, CIT [Spl. Civil Application No. 622 of 1981 dated 20-8-1981], has laid down the approach that the authorities must adopt in such matters in the following terms:

9. "The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 and Babutmal Raichand Oswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."

8.2 From the above, it is revealed that the income of the assessee should not be over assessed even there is a mistake of the assessee. As such the legitimate

deduction for which the assessee is entitled should be allowed while determining the taxable income.

8.3 We also note that the Hon'ble Gujarat High Court in the case of Vareli textile industry versus CIT reported in 154 Taxman 33 has also observed as under:

10. It is equally well-settled that where a cause is consciously abandoned (as in the present case) the party seeking condonation has to show by cogent evidence sufficient cause in support of its claim of condonation. The onus is greater. One of the propositions of settled legal position is to ensure that a meritorious case is not thrown out on the ground of limitation. Therefore, it is necessary to examine, at least prima facie, whether the assessee has or has not a case on merits.

8.4 In view of the above and in the interest of justice and fair play we deem it fit to direct the Ld. CIT(A), to admit the additional evidence filed by the assessee under rule 46A of the Income Tax Rule and adjudicate the issue on merit afresh as per the provisions of law. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

8.5 Coming to the remaining grounds of appeal raised by the assessee, we note that the main issue relating to the admission of additional document has been set-aside to the file of the Ld. CIT(A), accordingly we are inclined to set-aside all other issue raised by the assessee to the file of Ld. CIT(A), for fresh adjudication as per the provisions of law. Hence, all the remaining grounds of appeal are allowed for the statistical purposes.

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

Order pronounced in the Court on 21/02/2024 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
21/02/2024