

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.1126/Ahd/2023
Assessment Year : 2012-13

State Organization of GYN and OBS of Gujarat AMA Building, Nr.Natraj Cinema Ashram Road Ahmedabad 380 009. PAN : AAATS 9145 A	ITO (Exemption) Bhavnagar Now ITO-Ward(1)(1)(3) Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Shri Aseem L. Thakkar, AR
Revenue by :	Shri Ketan Gajjar, Sr.DR

सुनवाई की तारीख /Date of Hearing : 28/02/2024
घोषणा की तारीख /Date of Pronouncement: 06/03/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the Id.Commissioner of Income Tax(Appeal), National Faceless Appeal Centre (NFAC), Delhi dated 30.10.2023 passed under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short]for the Asst.Year 2012-13.

2. The grounds raised are as under:

1. *The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in passing an Ex Parte order without providing reasonable opportunity of being heard to the appellant hence the same being against the principles of natural justice and equity liable to be cancelled.*

2. *The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred and in confirming the action of the A.O. in issuing notice u/s.148 of the I.T.Act, 1961 and reopening the assessment without nay valid reason to believe.*
3. *The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the action of the Assessing officer, Bhavnagar in passing an Ex Parte order u/s.144 of the Act which is without jurisdiction, invalid and illegal requires to be quashed.*
4. *The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the addition of Rs.3,96,154/-made by the assessing Officer treating all the entries in bank statement as alleged unexplained cash credits without considering the expenses incurred out of the said collection.*
5. *The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the addition of Rs.10,09,542/- made by the assessing Officer treating the fixed deposits with the Bank made in earlier year as alleged unexplained investment.*
6. *The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the addition of Rs.23,85,078/- made by the assessing Officer treating the receipts as reflected in Form 26AS in fact the correct total is Rs.11,42.539/-.*
7. *Without prejudice to the above, the learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the double additions and not giving benefit of telescoping whereby both the receipts as per Form 26AS and deposits as well as fixed deposits made with the bank have been added.*
8. *The appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.*

3. At the outset, the ld.counsel for the assessee stated that both the AO and the ld.CIT(A) had passed *ex parte* orders and the solitary plea/prayer before us was restoration of the appeal back to the AO for consideration afresh.

4. He stated that the assessee was a trust for rendering medical service *pro bono* to the weaker sections of the society and comprised primarily of gynecologist and obstetricians; that they organized camps in various places and rendered necessary medical services to the people at very low cost. The ld.counsel for the assessee stated that he

had no explanation to offer for non-compliant attitude of the assessee both before the AO and the Id.CIT. At the same time, he stated that both the authorities below had made addition to the income of the assessee which was not justified even on the basis of the records and documents which were before them. He, therefore, stated that in the interest of justice the matter in any case needed re-consideration.

In this regard, he drew our attention to the assessment order and pointed out that the AO had made addition to the tune of Rs.23,85,078/- being the receipts reflected in Form No.26AS i.e. TDS details of the assessee. He, thereafter, pointed out that the AO also made addition of the total credit transactions including cash deposited in the bank account of the assessee, as also the fixed deposits made, amounting to Rs.10,09,542/-, to the income of the assessee as having remained unexplained. The Id.counsel for the assessee contended that patently, it is a case of double addition, that while the form no.26AS reflected the gross income of the assessee, the cash deposited in the bank account as also FD was an application of income of the assessee at the most, and therefore, it was clear case of double addition made to the income of the assessee. He further pointed out from the grounds of appeal raised by the assessee before the Id.CIT(A), that the assessee had raised a ground contending that the figure of gross income of the assessee as reflected in Form No.26AS was in fact Rs.11,42,539/- and not Rs.23,85,078/- which had been picked up by the AO for treating the income of the assessee and confirmed by the Id.CIT(A). The Id.counsel for the assessee contended that it is very apparent from the information emanating from records and documents available before the revenue authorities, that the additions made were totally uncalled for. He therefore pleaded, in the interest of justice, that the matter be restored back to

the AO for reconsideration. He undertook that the assessee would cooperate in the set aside proceedings before the Revenue authorities, and would not seek unwarranted adjournments in the matter.

5. The ld.DR, however, vehemently opposed the plea of the assessee, but at the same, he was unable to controvert the factual contention made by the ld.counsel for the assessee as above.

6. In view of the above, we are of the view that since it has been reasonably demonstrated before us that the *ex parte* order passed by the AO and confirmed by the ld.CIT(A) is highly unjustified, and has patently made addition of incomes which were uncalled for, considering the documents on records before the Revenue authorities. Therefore, ignoring the non-compliant attitude of the assessee before the Revenue authorities, we are constrained to give one more opportunity to the assessee to plead its case in the interest of justice. Accordingly, the appeal is restored back to the file of the AO for making *de novo* assessment after providing reasonable opportunity of hearing to the assessee in accordance with law.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 6th March, 2024 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

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

Ahmedabad, dated 06/03/2024

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