

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.886 and 887/Ahd/2023
Assessment Year : 2010-11 & 2011-12

Altaf Hafij Pathan B/59, Aman Society B/h. Narayan Bus Stop Ajwa Road Vadodara 390 019. PAN : ANLPP 7193 F	ITO, Ward-3(1)(1) Vadodara.
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(Applicant)	(Responent)
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Assessee by :	Shri Sanket Bakshi, 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

Above two appeals have been filed by the assessee against orders passed by the Id.Commissioner of Income Tax(Appeal), National Faceless Appeal Centre (NFAC), Delhi dated 15.9.2023 and 3.10.2023 passed under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short]for the Asst.Year 2010-11 and 2011-12 respectively.

2. It was common ground that the issue involved in both the appeals was identical emanating in the backdrop of identical set of facts. Both the appeals were therefore taken up for hearing together

and are being disposed of by this consolidated order. ITA No.886/Ahd/2023 for A.Y.2010-11 is taken as a lead case, and our decision in this appeal will apply *mutatis mutandis* to other appeal also.

3. ITA No.886/Ahd/2023 : Assesses appeal A.Y 2010-11

4. Grounds raised in the appeal are as under:

“1. The Appellant is an Individual having Permanent Account Number ANLPP7193F and engaged in the business of trading in scrap tyres and tubes. The Appellant has been engaged in the business since more than 15 years and operates from Vadodara, Gujarat.

2. The Appellant received a notice for reopening of assessment proceedings u/s. 148 of the Act on 17.03.2017 i.e. beyond a period of 4 years and as per the provisions of Section 149(l)(b) of the Act on the basis of the AIR/ CIB information in possession with the Department that the Appellant had made a cash deposit in its bank account of Rs.11,34,3997- for FY 2009-10.

3. Subsequently, notice u/s. 142(1) of the Act was issued directing the Appellant to file the return of income for the year under consideration. The Appellant in response to the notice from the Department filed the return of income u/s. 148 of the Act and submitted the same through letter dated 06.09.2017 thereby declaring total turnover pf Rs.38,23,166/- with a profit of Rs.3,05,853/-. The returned income for the year under consideration was Rs.2,95,850/-.

4. Further, notices u/s. 142(1) and 143(2) of the Act were issued, a notice was issued dated 07.09.2017 was issued directing the Appellant to submit the deposits made to the Axis Bank Account of the Appellant. A show-cause notice was further issued on 21.09.2017 directing the Appellant to submit the details of the cash deposit made to Axis Bank during the year under consideration. The learned AO went ahead and made an addition Axis Bank during the year under consideration. The learned AO went ahead and made an addition of Rs.11,34,3997- being the amount of cash deposited in the bank account of the Appellant. The Assessment Order was finalised u/s. 143(3) rws 147 of the Act vide order dated 18.10.2017. Further, the said assessment order was rectified vide order u/s. 154 of the Act dated 27.10.2017 stating that the bank stated as Axis Bank should be read as ICICI Bank. It may be mentioned that the fact that details were required for the deposits made to the ICICI Bank Ltd. Was known the Appellant for the first time at the time of receipt of the rectification order. During the entire assessment proceedings, it was duly stated that details for the cash deposits to Axis Bank were to be submitted. The Appellant could not submit the details of the bank account which were not directed to be submitted. The entire fact was brought on record for the first time after the closure of assessment proceedings through rectification order.

5. Subsequently, the Appellant filed an appeal with the learned Commissioner of Income Tax (Appeals) ["the CIT(A)"] on 15.11.2017 in Form 35. The matter was taken up for hearing, and the Appellant during the course of hearing submitted additional evidence in form of bank statements held by the Appellant and the details of the sales made. The Appellant submitted a detailed submission vide letter dated 14.09.2020 submitting the additional evidence. Further submissions were made by the Appellant on 29.03.2023 and 25.07.2023 submitting the bank statements of ICICI Bank and Bank of Baroda.

6. A remand report was called upon by the learned CIT(A) which was submitted vide remand report dated 31.07.2023. In the remand report the learned AO took into consideration the additional evidence on record and brought the following facts on record.

a. That an amount of Rs. 36,28,079 was deposited in ICICI Bank Ltd. And Rs.4,97,227/- was deposited in Bank of Baroda therefore total cash deposit of Rs.41,25,306/- was made during the year under consideration.

b. That during AY 2010-11 the threshold u/s. 44AD was Rs.40 lakhs and the amount deposited to the bank account of the Appellant was in excess of Rs.40 lakhs and was liable to maintain books of accounts and the provisions of Section 44AD of the Act cannot be applied. It is to be considered that the AO did not bring any material to prove that the business receipts of the Appellant was in excess to what was declared in the return of income. It was merely presumed by the learned AO that the entire amount of cash deposit tantamounted to business income of the Assessee.

c. That, as per provisions of Section 44AD(4) of the Act, the Appellant is required to disclose profits at 8% / 6% for the subsequent 5 years which was not done was the Appellant. The learned AO failed to acknowledge that the provision of Section 44AD(4) of the Act that the Assessee is required to disclose profits as per Section 44AD for next 5 years was brought into effect from Finance Act 2016.

7. In the remand report it was further brought on record that cash deposits were made from multiple cities across India like Jalandhar, Ambala, Ahmedabad, Ajmer, Dakor and Ludhiana etc. established that the cash was obtained from local customers was an afterthought. It may be submitted that there is no provision under the Act which states that sales cannot be made to other cities across India.

8. The learned CIT(A) relied upon the remand report and made and confirmed the addition to the total income of the Appellant. It may be submitted that the learned CIT(A) did not apply his own mind in making the appeal order and simply confirmed the addition made by the AO. It is submitted that the remand report is required to be submitted for making comments on the additional evidence submitted by an Assessee however the CIT(A) is required to record his own opinion after application of his mind taking into consideration the remand report. However, the CIT(A) has merely stated the same facts stated in remand report and made the addition.

9. *Henceforth, the Appellant is before the Hon'ble Bench in appeal against the order of the learned CIT(A)."*

5. Grounds raising challenge to the reopening of the case under section 147 of the Act, as stated in ground no.1 and 2 were not argued before us, the same are, therefore, dismissed.

Issues raised in ground nos.7 to 10 are either general in nature or consequential and need no adjudication.

No arguments were made vis-à-vis ground no.6 also before us, the same is also dismissed.

6. The only effective grounds therefore are ground no.3 to 5, in which the solitary issue raised relates to the addition made to the income of the assessee under section 69A of the Act amounting to Rs.11,34,399/-.

A perusal of the order of the AO reveals that the said amount pertained to cash deposits in the saving bank account of the assessee during the impugned year, which remained unexplained, was added to the income of the assessee.

7. Before the AO none came present on behalf of the assessee and no explanation was offered on these cash deposits in the bank account of the assessee. Accordingly, the entire cash deposits was treated as unexplained and added to the income of the assessee under section 69A of the Act resulting an addition of Rs.11,34,399/- to the income of the assessee.

8. Before the Id.CIT(A), the assessee explained that the bank account pertaining to the assessee in which the cash deposit was

noted by the AO, did not pertain to the assessee at all, and he revealed to the Id.CIT(A) the correct bank account belonging to the assessee. He pointed out that while the AO had noted the bank account of the assessee with AXIS Bank, the assessee had no account in the said bank. He also pointed out that he had two accounts in Bank of Baroda and ICICI Bank. He contended that total cash deposits in these bank accounts was Rs.36,28,079/- in the ICICI Bank, and Rs.4,97,227/- in the Bank of Baroda aggregating in all to Rs.41,25,306/-; He also contended that the cash deposits pertained to the receipts of his small business of trading in tyres. He stated that income from the said business had been disclosed by him on presumptive basis by resorting to provisions of section 44AD of the Act, disclosing profits earned thereon at prescribed rate therein at 8% of the total sales. The Id.CIT(A) sought a remand report from the AO on the submissions of the assessee, who though had nothing to comment on the incorrect bank account noted by the AO, in which cash was found deposited to the tune of Rs.11.34 lakhs, however, he vehemently opposed the contention of the assessee that the cash deposits in his actual bank account pertained to his business turnover income from which he returned the tax under section 44AD of the Act.

9. The Id.CIT(A) after considering the submissions of the assessee and the remand report of the AO, appreciated the objections made by the AO in his remand proceedings, and upheld the addition as a consequence made to the income of the assessee by the AO.

10. Having gone through the orders of the Revenue authorities below, we are of the view that this is a most casual and arbitrary order passed by the authorities below on a serious aspect of assessment of income of an assessee, on which he was burdened with the liability to

pay tax. There could not have been a more lax attitude exhibited by the Revenue authorities in framing an assessment, as in the present case. The reasons for the same are that the AO notes the bank account belonging to the assessee attributing cash deposited in the same to him, which actually never belonged to the assessee, and despite this fact having been pointed out to him in the remand proceedings and the same remaining uncontroverted by the AO, the Id.CIT(A) still goes on to treat the cash deposited in that account of Rs.11.34 lakhs as the income of the assessee. When the assessee had fairly revealed the correct bank account belonging to him, and had come out clean that the cash deposits in his actual bank account were aggregating to Rs.41,25,306/-, the Ld.CIT(A) confirms addition of Rs.11.34 lacs which is cash deposited in bank account not pertaining to the assessee. A glaring case of totally ignoring the facts pointed out by the assessee, and passing order in appellate proceedings in an arbitrary manner.

Besides this, we have also noted that the assessee had stated the cash deposited in bank account of Rs.41,25,306/- as pertained to his turnover of his business, and had also stated to have returned the same to tax under section 44AD of the Act. The orders of the Revenue authorities reveal that, while this contention of the assessee was rejected for whatever reasons, but at the same time, they had accepted the business income so returned by the assessee. Another glaring instance of passing orders without application of mind to the pleadings and the facts before the Revenue authorities.

11. Having accepted the business income returned by the assessee, we fail to understand how the Revenue authorities could have taken a stand that the cash deposited in his bank account were not in

relation to the same, without assigning any reason, and added the same to the income of the assessee ! The entire addition made in the case of the assessee, it seems, has been passed without application of any mind – either by the AO or by the Id.CIT(A).

12. In the light of the above, we are not inclined to uphold such an order of the Id.CIT(A), which was passed in a most arbitrary manner, and for this reason alone, we are inclined to allow the appeal of the assessee, directing the deletion of the addition made to his income under section 69A of the Act of Rs.11,34,399/-.

Thus, the grounds under adjudication is accordingly allowed.

13. In the result, both the appeals of the assessee are partly allowed.

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