

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

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

आयकर अपील सं./I.T.A. No. 900/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2012-13)

Vllabhbhai K. Borad At. Sarsai, Tal. Visavadar, Sarsai S.O., Junagadh – 362120	बनाम/ Vs.	Income Tax Officer Ward 1, Patan
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AENPB6920M		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Vimal Desai, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Nitin Vishnu Kulkarni, Sr. DR

Date of Hearing	18/03/2024
Date of Pronouncement	20/03/2024

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed at the instance of the appellant is directed against the order dated 26.09.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 08.11.2019 passed by the ITO, Ward-5, Patan under Section

144 r.w.s. 147 of the Income Tax Act, 1961, (hereinafter referred to as 'the Act') for Assessment Year 2012-13.

2. The Ld. AO has made an addition of Rs.20,15,000/- on account of unexplained cash deposit and further addition of Rs.6,04,500/- on account of undisclosed interest income. Such order passed by the Ld. AO is an ex parte one under Section 144 r.w.s. 147 of the Act as none appeared on behalf of the appellant in spite of several notices were served upon him.

3. The case of the appellant is this that the appellant is agriculturist frequently has withdrawn cash from Dena Bank in order to give advances to farmers who happens to be his relatives or family friends for agricultural purposes. Such advance as and when received back, the same were again deposited in the said bank account. The appellant before the Ld. CIT(A) submitted the necessary explanation in support of this case alongwith several documents which are also filed before us including the land holding proof, the copy of bank statements for F.Y. 2010-11 and 2011-12, data-wise cash flow statement showing cash deposit, cash withdrawals and available cash in hand, were not considered in its proper perspective. No deliberation has been made by the Ld. CIT(A) on these evidences adduced before him. Neither any remand report was called for by the Ld. CIT(A). On the contrary, the addition made by the Ld. AO was confirmed which is not in consonance with the principle of natural justice

which further renders the order unsustainable, as the crux of the submission made by the Ld. AR. However, in order to get the issue decided in its proper perspective, the Ld. AR further prays for setting aside the issues to the file of the Ld. AO. On the contrary, the Ld. DR relied upon the orders passed by the authorities below.

4. Having heard the Ld. Counsels appearing for the parties and having regard to the facts and circumstances of the case, particularly, necessary explanation being rendered by the assessee before the Ld. CIT(A) in order to justify the cash deposit which alleged to have been unexplained that too with corroborating evidences as indicated hereinabove, the order passed by the Ld. CIT(A) seems to be a product of non-application of mind, arbitrary and found to be bad in law. Thus, for the ends of justice, we find it fit and proper to set aside the issue to the file of the Ld. AO, as the Ld. AO passed an order under Section 147 r.w.s. 144 of the Act and further that even after receiving the additional evidences and the necessary explanations made by the appellant, the Ld. CIT(A) has not called for any remand report. We, thus, set aside the issue to the file of the Ld. AO for adjudication afresh on the same on merit upon granting opportunity of being heard to the appellant and upon considering the evidence on records or any other evidence which the appellant may choose to file at the time of hearing of the matter. We also make it clear, that in the event the

assessee fails to co-operate with the Ld. AO, the authority will be at liberty to pass orders strictly in accordance with law.

5. In the result, appeal preferred by the appellant is allowed for statistical purposes.

This Order pronounced on 20/03/2024

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 20/03/2024

S. K. SINHA

True Copy

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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad