

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, AHMEDABAD BENCHES, AHMEDABAD**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 808/AHD/2023
Assessment Year: 2017-18

Motabhai Alibhai and Sons, Lokhand Bazar, Viramgam, Ahmedabad-382150, Gujarat	v.	ITO, 3(1)(1), Ahmedabad, Ahmedabad, Gujarat
PAN:AAEFM1116D		
(Appellant)		(Respondent)

Assessee by:	Sh. Prakash D. Shah, AR & Sh. Samit L Jain, & Sh. Saiyam, ARs
Revenue by:	Sh. Chetram Meena, Sr. DR
Date of hearing:	25.01.2024
Date of pronouncement:	25.01.2024 (signed by the JM on 20.03.2024)

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee has arisen out of the appellate order passed by the learned Commissioner of Income-tax(Appeals), Ahmedabad(hereinafter called "the CIT") dated 17.08.2023(DIN & Order No. ITBA/NFAC/ S/250/2023-24/1055172147(1) for the assessment years 2017-18 , which in turn has arisen from the assessment order dated 23.10.2019 passed by learned Assessing Officer(hereinafter called "the AO") u/s 144 of the Income-tax Act, 1961(hereinafter called "the AO")(Order No. ITBA/AST/S/144/2019-20/1019336471(1). The appeal was heard by the Division Bench on hybrid/virtual mode.

2.The assessee has raised following grounds of appeal in memo of appeal filed with Income Tax Appellate Tribunal, Ahmedabad(hereinafter called "the Tribunal") in ITA no. 808/Ahd/2023 for assessment year:2017-18:-

"1. That the notice issued under section 148 of the Act and all the subsequent proceeding are bad in law and therefore the Order passed by Assessing Officer is required to be quashed and the addition made therein are to be deleted in full.

2. That the learned National Faceless Appeal Centre, has erred in law and facts by confirming the addition of Rs.2,43,95,620/- on the ground that it is unexplained money under section 69A of the Income Tax Act of the appellant firm though it relates to a proprietorship firm of and, therefore the learned AO should be directed to delete the said addition while computing the total income.

3. Without prejudice to above grounds, further the NFAC erred in law and fact by treating the said amount of addition under section 69A of the Act, for computing tax under section 115BBE of the Income Tax Act and therefore the learned AO is to be directed the delete the said amount of tax.

4. That your appellant craves a leave to add, alter or amend any grounds at the time of hearing."

2. The brief facts of the case are that the assessee did not file its return of income for the impugned assessment year. A notice u/s. 142(1) dated 03.01.2018 was issued by Revenue calling the assessee to prepare and file true and correct return of income for the impugned assessment year. The assessee did not file any return of income even in response to the aforesaid notice issued by the AO u/s. 142(1) of the Act.

2.2 The AO observed that there are substantial cash deposits in the bank accounts of the assessee during the demonetization period from 9.11.2016 to 30.12.2016 , but the assessee has not filed any income tax return for the impugned assessment year under consideration neither u/s 139 nor filed in response to notice issued by the AO u/s 142(1), and the sources of cash deposits have remained unexplained.

2.3 In view of the failure of the assessee to furnish return u/s 139 and also not filing return of income in response to notice issued u/s 142(1) by the AO , the Revenue keeping in view provisions of Section 144(1)(b) of the 1961 Act, selected the case of the assessee for framing scrutiny assessment .

2.4 The AO during the course of assessment proceedings issued following notices to the assessee:-

<i>S. No.</i>	<i>Nature of Notice/letter</i>	<i>Date of Issue</i>	<i>Compliance on before</i>	<i>Remarks</i>
<i>1.</i>	<i>u/s 142(1)(i)</i>	<i>03/01/2018</i>	<i>02.02.2018</i>	<i>Non Compliance</i>
<i>2.</i>	<i>u/s 142(1)</i>	<i>20/08/2019</i>	<i>28/08/2019</i>	<i>Non Compliance</i>
<i>3.</i>	<i>Showcause notice</i>	<i>23/09/2019</i>	<i>27/09/2019</i>	<i>Non compliance</i>
<i>4.</i>	<i>Final Showcause Notice</i>	<i>10/10/2019</i>	<i>17/10/2019</i>	<i>Non compliance</i>

2.4.1. Despite aforesaid opportunities granted by the AO, the assessee did not complied with the aforesaid notices/questionnaire /SCN's issued by the AO, and no details were furnished by the assessee to the AO.

2.5. Notices u/s. 133(6) were issued by the AO to Kotak Mahindra Bank, Viramgam Branch calling for account opening form, bank account statement, KYC, details of cash deposit during the financial year 2016-17, and the details of cash deposits during the demonization period(9.11.2016 to 30.12.2016), money trail, credit entries, debit entries and the amounts transferred to other bank accounts. The Kotak Mahindra Bank provided the requisite detail to the AO.

2.6 The AO observed that the assessee has deposited Rs. 1,27,47,180/- including Rs. 21,31,000/- in cash during the demonetization period, in its bank account maintained with Kotak Mahindra Bank. The AO observed that apart from cash deposits, there are further credit entry by way of transfer of Rs. 1,16,48,439/- in the said bank account during the year under consideration.

2.6.1. Show cause notice dated 10.10.2019 was issued by the AO to the assessee asking for the aforesaid details of cash deposits as well other credit entries in the bank account, which again was not complied with by the assessee , and it led to the additions to the tune of Rs. 2,43,95,619/- as income of the assessee by the AO u/s

69A read with Section 115BBE , vide assessment order dated 23.10.2019 passed by AO u/s. 144 of the Act.

3. Aggrieved by the assessment framed by AO as above , the assessee filed first appeal with ld. CIT(A) . At the outset, the assessee claimed before ld. CIT(A) that the said firm ‘ Motabhai Alibhai & Sons’ to whom notices were issued by the AO is already been long closed since 2001, and it’s proprietor during the year under consideration was Shri. Shabbirbhai K Patel having PAN No. ABCPP2054L. It was submitted that all the transactions have been duly disclosed by Shri Shabbirbhai K Patel and the same were reflected in the tax audit report filed before the Department. It was also submitted that assessee has filed an application under section 154 of the Act with the ld. JAO which is pending for disposal. It was submitted that the said bank account with Kotak Mahindra Bank belonged to Shri Shabbirbhai K. Patel who is proprietor of the concern M/s Motabhai Alibhai & Sons , and letter from Kotak Mahindra Bank to that effect was obtained, copy of which was submitted before ld. CIT(A) as additional u/r. 46A of the Income-tax Rules, 1962. The ld. CIT(A) rejected the contention of the assessee by holding as under:-

“VII. SUM AND SUBSTANCE OF THE FINDINGS

The latest submission of the assessee has tried to bring in some semblance of evidence as far as the ownership of the account is concerned. The bank confirmation goes on similar lines. The cash deposited in the bank account No 01602120000072 belongs to MOTABHAI ALIBHAI AND SONS. The account opening date being 29/7/2007. The money belongs to the account holder whose name is MOTABHAI ALIBHAI AND SONS. Even though the proprietary concern is in the name of Shabbir Bhai Patel, the bank account is in the name of Motabhai Alibhai and Sons. The cash and credit in the bank account belongs to them. The assessing officer has rightfully assessed the cash and credit entries in the bank account in the hands of the taxpayer. The credit entries are at Rs 1,16,48,439 brought in through transfer. Considering the fact that the firm is defunct from 2001, the cash and credit entries has to be entirely brought to tax. The addition of 24395620/- in Motabhai Alibhai & Sons having PAN No. AAEFM1116D, is upheld.

VIII. In the result the appeal is dismissed.”

4. Aggrieved by the decision of Id. CIT(A) as above, the assessee has filed an second appeal with the Tribunal. At the outset, learned counsel for the assessee submitted that it is a case of mistaken identity and the addition has been wrongly made in the hands of the assessee. It was submitted that the firm 'Motabhai Alibhai & Sons' with PAN No.AAEFM1116D was earlier working but the same firm has since been closed down in the year 2001 . It was submitted that the proprietor Shri Shabbirbhai K Patel with PAN No. ABCPP2054L is now running as proprietor , the said concern namely 'Motabhai Alibhai & Sons'. It was submitted that the bank account with Kotak Mahindra Bank is operating with the PAN number of Shri. Shabbirbhai K Patel, and the partnership firm 'Motabhai Alibhai & Sons' has ceased to exist since 2001. It was submitted that all the transactions in the said bank account maintained with Kotak Mahindra Bank were duly accounted for in the books of accounts maintained by Shri Shabbirbhai K Patel for his proprietary concern 'Motabhai Alibhai and Sons', and due taxes were paid to Government. It was submitted that Revenue has wrongly made the addition in the name of partnership firm 'Motabhai Alibhai & Sons' with PAN No.AAEFM1116D, which has already ceased to exist since 2001. It was submitted that all the transactions with the Kotak Mahindra Bank are duly recorded in the books of accounts of the assessee Shri. Shabbirbhai K Patel. The Tax Audit report was also filed before the Id. CIT(A). It was submitted that because of the closure of the partnership firm ' Motabhai Alibhai and Sons' since 2001, no replies were given before the AO. The certificate of the Kotak Mahindra Bank that bank a/c no. 01602120000072 belong to Shri. Shabbirbhai K Patel who is proprietor of Motabhai Alibhai & Son is enclosed at page no. 51 of the paper book(account open dated 29.07.2007), and it was submitted that the additions were wrongly made in the hands of non existing partnership firm 'Motabhai Alibhai and Sons'. The prayers were made by Id. Counsels for the assessee that the matter be restored back to the file of AO for denovo assessment , wherein complete details and evidences will be filed before the AO so that injustice done to the assessee can be removed. The bank statements are filed in the paper book. The

assessee has also filed Sales Tax registration and dissolution deed , which are all placed in the paper book.

5. The Ld. DR submitted that the notices were issued by the AO but the assessee failed to give any reply. However, it was fairly submitted by ld. DR that matter can be go back to the file of the AO for denovo assessment.

6. After hearing both the parties and carefully considering the material on record, we are of the considered view that the matter need to be restored back to the file of the AO for fresh adjudication of all the issues afresh , as it transpires that claim is made by the assessee the said partnership firm 'Motabhai Alibhai & Sons' with PAN No.AAEFM1116D has since been closed w.e.f. 2001. Dissolution deed is filed and it has also submitted that the proprietary concern namely 'Motabhai Alibhai & Sons' is now operated by proprietor Shri. Shabbirbhai K Patel with PAN No. ABCPP2054L. The bank account of the said proprietary concern is with Kotak Mahindra Bank bearing number 016021200000072 , for which certificate is produced. Thus it is claimed that it is a case of mistaken identity, and additions have been made in the name of non-existing partnership firm 'Motabhai Alibhai and Sons' which has ceased to exist since 2001. it is also claimed that all the transactions in the aforesaid bank account maintained with Kotak Mahindra Bank are duly recorded in the books of accounts maintained by Sh. Shabbirbhai K Patel who is claimed to be proprietor of the proprietary concern namely ' Motabhai Alibhai and Sons' holding PAN no. ABCPP2054L. It is claimed that the aforesaid books of accounts were also subjected to tax audit under section 44AB of the Act , and due taxes were paid to Revenue. Under the facts and circumstances of the case and in the interest of justice and fair play, the matter needs to go back to the file of the AO for fresh adjudication/denovo assessment. The assessee has filed evidences to support its contentions, which are placed in paper book, and these evidences requires verification by the authorities below. We clarify that we have not commented on the merits of the issues in this appeal, and all the contentions are kept open. The assessee

is directed to co-operate with AO and supply all the requisite information/evidences to support its contentions , in order to enable AO to frame denovo assessment on merits in accordance with law. The appeal of the assessee is allowed for statistical purposes, as we set aside the orders of the AO as well as Id. CIT(A) and restore the matter back to the file of the AO for fresh adjudication/denovo-assessment. We order accordingly.

Order was pronounced in open court at Ahmedabad on 25.01.2024 on the conclusion of the hearing in the presence of both the parties and reduced to writing and signed by Id. Accountant Member at Allahabad,U.P. on 12.03.2024 and by Id. Judicial Member at Ahmedabad on 20.03.2024 .

Sd/-

**[MADHUMITA ROY]
JUDICIAL MEMBER**

DATED: 20/03/2024

Sh

Sd/-

**[RAMIT KOCHAR]
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)