

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 918/Ahd/2023
Assessment Year 2011-12**

Gopallal Bherubhai Kumavat, C/103, Madhusudan Residency Nr. Landmark Sarvodaya Hotel, Moraiya, Gujarat-382213 PAN: BCKPK8824P (Appellant)	Vs	Income Tax Officer, Ward-3(2)(2), Ahmedabad (Respondent)
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**Assessee Represented: Shri Sulabh Padshah, A.R.
Revenue Represented: Shri Urjit B Shah, Sr.D.R.**

Date of hearing : 06-03-2024
Date of pronouncement : 28-03-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 05-09-2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)") confirming the addition made by the Assessing Officer under section 69 of the Act, arising out of the reassessment order passed under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2011-12.

2. The Registry has noted that there is a delay of 8 days in filing the above appeal. The assessee by way of a Notarized Affidavit stated that he came to know about the order belatedly from his former Tax Consultant. Thereafter on the advice of the new Tax Consultant, he has filed the above appeal with a delay of 8 days. The Ld. Sr. D.R. has no objection in condoning the above appeal. Thus we hereby condone the delay of 8 days in filing the appeal.

3. The brief facts of the case is that the assessee is an individual and Proprietor of M/s. Shri Dev Steel Asind, engaged in the business of buying and selling of scraps. During the Financial Year 2010-11, the assessee made cash deposits of Rs.17,70,150/- in his State Bank of India Account on the sale of scraps. The assessee also withdrawn cash from the above account for purchase of scrap, but all the above cash transactions were below Rs.25,000/-.

3.1. During the Financial Year, the assessee made total sales of Rs.18,95,280/- on account of scrap trading and earned profit of Rs.1,58,314/- which is 8.35% of total turnover. For the Assessment Year 2011-12, the assessee was required to file his Return of Income, if the gross taxable income exceeds Rs.1,60,000/. Since the assessee's total income is Rs.1,58,314/- only, which was below the taxable limit, assessee has not filed the Return of Income for the Asst. Year 2011-12. However for the previous Asst. Year 2010-11, assessee's gross total income was Rs.1,99,987/-, therefore he filed his Return of Income well within the due date namely 11.06.2011, but no assessment took place on the income earned from the very same scrap selling business.

3.2. For the present Asst. Year 2011-12, the Assessing Officer issued a notice u/s. 142(1) fixing the case for hearing on 07.09.2019 admittedly served on the assessee on 10.09.2018, but assessee did not participate the hearing. Hence a final show cause notice issued on 22.11.2018 fixing the case for hearing on 29.11.2018 which was said to be served on the assessee on 01.12.2018. The same was not responded by the assessee. Therefore the A.O. passed an exparte assessment order making the cash deposits of Rs.17,70,150/- as the unexplained income u/s. 69 of the Act.

4. Aggrieved against the same, the assessee filed an appeal before Ld. CIT(A) explaining the above details and a detailed written submission. However the Ld. CIT(A) confirmed the addition on the ground that party-wise scrap sales have not been co-related with the bank statements and the sales are all in one handwriting, which have been fabricated by the assessee to prove the source of cash deposits. Thus Ld. CIT(A) dismissed the appeal filed by the assessee.

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The learned Commissioner of Income Tax (Appeals) has erred in confirming addition made by Ld. AO of Rs.17,70,150/- on account of cash deposits made u/s 69A of Income Tax Act, 1961. It is submitted that the Ld. AO has made an addition u/s 69 of the Act, whereas the learned Commissioner of Income Tax (Appeals) has confirmed the same addition u/s 69A of the Act without, which shows clear contradictions between lower authorities itself about applicability of provisions of Act. It is therefore submitted that the whole addition made and confirmed of Rs.17,70,150/- is without any basis and thus the same is ought to have been deleted. The same be held now.

2. *The learned AO has erred both on facts and in law in making the addition of Rs.17,70,150/-invoking the provisions of Section 69 of Income Tax Act, 1961. It is submitted that the addition made on account of cash deposits by no stretch of imagination can be considered as Unexplained Investment as provided under the provisions of Section 69 of the Act. On facts and circumstances of the case, the action of learned AO making invoking the provisions of Section 69 of the Act in case of Appellant is illegal and unjust and the entire addition made of Rs.17,70,150/- is unwarranted, deserves to be deleted. The same please be held accordingly.*
 3. *The learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.17,70,150/- treating cash deposits made during the year as Unexplained u/s 69A of the Act. It is submitted that the complete details and documentary evidences explaining the source of cash deposits were filed before CIT(A), however the same had not been appreciated by him while confirming the addition. On facts and circumstances of case, the action of lower authorities making and confirming the addition of Rs.17,70,150/- treating the same as Unexplained u/s 69/69A is completely incorrect and illegal and the same be deleted in the interest of justice.*
 4. *The learned Commissioner of Income Tax (Appeals) and learned AO have erred in confirming and making the addition of Rs.17,70,150/- u/s 69A/69 of the Act respectively. On facts and circumstances of the case, the Appellant is not liable to maintain books of accounts for the year and thus the provisions of Section 69, Section 69A are just not applicable in case of Appellant. Hence, in any event, the addition and confirmed of Rs.17,70,150/- u/s 69 & 69A of the Act being illegal and unjustifiable be deleted.*
 5. *The order passed by the learned Commissioner of Income Tax (Appeals) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.*
 6. *Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing.*
6. Ld. Counsel Sulabh Padshah appearing for the assessee submitted before us copy of the documents filed before the Ld. CIT(A) as well as copy of the assessment order dated 21.03.2023 by the Assessing Officer wherein cash deposits of Rs. 63,08,150/- deposited in three bank accounts of the assessee. The explanation offered by the assessee were taken on record and a detailed

assessment order passed by the Assessing Officer, accepting the income filed by the assessee from the very same scrap business. Thus Ld. Counsel pleaded that the addition made for the Asst. year 2011-12 is not justifiable.

7. Per contra, Ld. Sr. D.R. Shri Urjit B. Shah appearing for the Revenue supported the order passed by the Lower Authorities and requested to uphold the same.

8. We have given our thoughtful consideration and perused the materials available on record. We find that the assessment order passed in this case was an ex parte order by only giving two notices to the assessee, that is also said to have been served after the date of hearing of the cases. During the appellate proceedings, though the assessee explained the details, the ld. CIT(A) has not appreciated the same on the ground that party-wise scrap sales have not been co-related with the bank statements. We have gone through the bank statements and also few sample sales bills and vouchers, all the transactions are less than Rs.25,000/-. Further the assessee filed the Return of Income for the previous Asst. Year 2010-11 as well as subsequent assessment years invoking provisions of section 44AB of the Act. In the assessment order passed u/s. 147 r.w.s. 144B of the Act dated 21.03.2023 for the Asst. Year 2017-18, the Assessing Officer called for information u/s. 133(6) and verified the cash deposit of Rs.63,08,150/- in Industrial Sind Bank and Bank of Baroda. Further the assessee filed the Return of Income u/s. 44AD of the Act showing 8% profit, whereas the assessee offered income at 10.19% to be the profit on

the scrap sales, which was accepted by the Assessing Officer and passed a Nil demand. Thus in our considered opinion, the Ld. CIT(A) is not correct in confirming the entire addition made by the Assessing Officer which was also an exparte assessment order. Even in the present assessment year, the assessee offered 8.35% on the sales turnover of Rs.18,95,280/- which is well above 8% as prescribed u/s. 44AD of the Act. Therefore we have not hesitation in deleting the addition made by the Assessing Officer.

9. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 28-03-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 28/03/2024

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

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद