

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

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

**ITA Nos: 198 & 199/Ahd/2022
Asst. Years: 2012-13 & 2013-14**

Shri Dushyantsinh Yadvendrasinh Chudasama R.S. No.175/11/2 Valavav Salvi Timba Road, Savli, Vadodara -391 774, Gujarat PAN : ACRPC1888M (Appellant)	Vs	The DCIT Circle-1(2) Vadodara (Respondent)
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Assessee by :	Ms. Kinjal Shah, AR
Revenue by :	Shri Prateek Sharma, Sr.DR

Date of Hearing: 27/03/2024
Date of Pronouncement: 05/04/2024

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

Both the above appeals are filed by the Assessee as against separate appellate orders both dated 25.03.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC)-Delhi [hereinafter referred to as "Ld. CIT(A)"] arising out of separate assessment orders passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relating to the Assessment Years 2012-13 & 2013-14. Since common issues are involved in both the appeals (except change in figures), these were heard together and the same are disposed of by this common order.

2. **ITA No.198/Ahd/2022 (for AY 2012-13)** is taken the lead case and the brief facts of the case are that the assessee is engaged in the business of Trading in Petroleum Products and filed his return of income for A.Y. 2012-13 on 31.03.2014 declaring total income at Rs.49,69,160/-. The case was selected for scrutiny and assessment was completed at total income of Rs.78,49,165/-, wherein an addition of Rs.28,80,005/- was made on account of unexplained cash credit u/s. 68 of the Act.

3. The said addition was confirmed by the Ld.CIT(A), against which the assessee is in appeal and the Grounds of Appeal raised by the assessee are as follows:-

I. On Legality of the Order.

1. *Your Appellant submits that the Order passed by Comm.of Income Tax (Appeals) u/s.250 dated 25-3-2022 is bad in Law and Void and is passed in haste and hurry and without giving proper opportunity of Hearing to your Appellant.*
2. *The notices of Hearing issued were short notice and the order passed against principles of natural justice since the Hearing was fixed on 28-3-2022 but the order was passed on 25-3-2022 as result of which your Appellant could not produce the evidences and proof in support of Grounds of Appeal.*

II. On Merits:

A. On sec.68

1. *Your Appellant submits that the CIT(A) has erred in Law and in fact in upholding addition of Rs.28,80,005/- made by Assessing Officer u/s.68 of the Act which does not apply as per provisions of Law and since the said amount was credited in Bank Passbook and not in Books of Accounts therefore Sec.68 does not apply as held by various Authorities.*
2. *Your Appellant further submits that the amount is received from close relatives of the Appellant who are duly identified and are known persons, assessed to Tax having PAN number, and had known source to which Sec.68 does not apply.*

3. Your Appellant also submits that the Secured Loan was fully supported with documentary evidence which was provided to the AO and the CIT(A) and your Appellant is not required to prove source of source as held by various Authorities.

B. On Business Income

1. Your Appellant submits that he is engaged in business of trading in petrol, diesel, oil, etc. where the Appellant receive cash as Business Sales as per normal trade practice on similar business community.

The nature and character of credit is not like Cash Credit or deposit received from people but it is sort of trade and business receipt to which Sec.68 does not apply.

2. Without prejudice and in the alternative the amount of alleged Cash Credit of Rs.28,80,005/- is Business Income of your Appellant and only Net Profit of Business derived out of Sale of Petrol, Diesel, Kerosene, etc. which are usually sold in Cash as per accepted Trade practice can be added as held by various Authorities and binding judgement of Hon'ble Guj. High Court.

III. On Additional Evidences:

1. It is submitted by your Appellant that the CIT(A) having passed Appellate order on 25-3-2022 though extension for Hearing was fixed on 28-3-2022 has resulted into fake of proper opportunity.

2. Your Appellant submits that on facts and circumstances of the case, the CIT(A) ought to have admitted Additional Evidences as per rule 46A and decided the Appeal on Merit.

It is therefore submitted that relief claimed above be allowed and the order of the Assessing Officer to modified accordingly. Your Appellant reserves right to add, alter, amend to withdraw any or all Ground of Appeal."

4. The first legal ground taken by the assessee is that no proper opportunity of hearing was allowed by the Ld.CIT(A). The Ld. Counsel Ms. Kinjal Shah appearing for the assessee submitted at the outset, that the appeal fixed for hearing before the Ld.CIT(A) on 28.03.2022, but appellate order was passed prior to that date namely on 25.03.2022 itself. As a result, the assessee was prevented from producing the evidences and documents in support

of the grounds of appeal raised before the Ld.CIT(A) and therefore pleaded in the interest of natural justice the case be set aside to the file of Ld CIT[A] for adjudication on merits.

5. Per Contra, the Ld. Sr. DR Shri Prateek Sharma appearing for the Revenue while not controverting the above fact, brought to our attention the assessee was earlier granted hearing opportunities on 08.01.2021, 17.08.2021 and 18.03.2022, which was not availed by the assessee. Therefore the Ld.CIT(A) had allowed ample opportunities to the assessee to produce the evidences, however one final opportunity be given to the assessee.

6. We have carefully considered the submissions of both the sides and perused the materials on record. It is found that a notice u/s. 250 of the Act dated 22.03.2022 was issued vide DIN: ITBA/NFAC/F/APL_1/2021-22/1041255943(1) for AY 2012-13 as per which the assessee was required to furnish his written submissions on or before 28.03.2022. However, the appellate order u/s.250[6] of the Act for AY 2012-13 was passed by the Ld.CIT(A) on 25.03.2022 itself vide DIN & Order No.ITBA/NFAC/S/250/2021-22/1041511406(1). It is, thus, found that the appellate order was passed by the Ld CIT(A) on 25.03.2022, whereas time was allowed upto 28.03.2022 vide his notice u/s.250 dated 22.03.2022 to furnish the written submissions to the assessee. It is also found that the earlier opportunity allowed by the Ld.CIT(A) on 18.03.2022 was a closed holiday on account of Holi. In view of these facts, we are of the considered opinion that no proper opportunity of hearing was granted by the Ld.CIT(A) to produce the evidences and other documents in support of the grounds raised by the assessee. When the final opportunity was allowed till 28.03.2022, the principle of natural justice cannot be allowed to be defeated on the pretext of

earlier opportunities not being availed by the assessee. Thus in our considered view, the Ld.CIT(A) had clearly violated the Principle of Natural Justice by passing order on 25.03.2022 itself, when he had allowed time till 28.03.2022 for furnishing the written submissions by the assessee. We, therefore, set aside the matter back to the file of Ld CIT(A) for allowing another opportunity to the assessee to furnish the submissions, produce the evidences and to decide the appeal on merits. Needless to state that the assessee should make use of this opportunity and produce all necessary details and additional evidences before Ld CIT(A), so as to he pass order on merits of the case.

6.1. Since the appeal is set aside to the Ld.CIT(A) on account of legal ground of violation of Principle of Natural Justice, we are not inclined to take up the grounds taken by the assessee on merits. With regard to grounds taken by the assessee, regarding admission of Additional evidences, the assessee may file the same before the Ld CIT(A), who will decide about the admissibility of those evidences in accordance with Rule 46A of the Income Tax Rules, 1962.

7. In the result, the appeal filed by the assessee in ITA No. 198/Ahd/2022 for AY 2012-13 is treated as allowed for statistical purposes.

8. ITA No.199/Ahd/2022 (for AY 2013-14), the Grounds of Appeal filed by the assessee are as follows:-

“I. On Legality of the Order.

1. Your Appellant submits that the Order passed by Comm.of Income Tax (Appeals) u/s.250 dated 25-3-2022 is bad in Law and Void and is passed in haste and hurry and without giving proper opportunity of Hearing to your Appellant.

2. *The notices of Hearing issued were short notice and the order passed against principles of natural justice since the Hearing was fixed on 28-3-2022 but the order was passed on 25-3-2022 as result of which your Appellant could not produce the evidences and proof in support of Grounds of Appeal.*

II. On Merits:

A. On sec.68

1. *Your Appellant submits that the CIT(A) has erred in Law and in fact in upholding addition of Rs.58,43,000/- made by Assessing Officer u/s.68 of the Act which does not apply as per provisions of Law and since the said amount was credited in Bank Passbook and not in Books of Accounts therefore Sec.68 does not apply as held by various Authorities.*

2. *Your Appellant submits that he is engaged in business of trading in petrol, diesel, oil, etc. where the Appellant receive cash as Business Sales as per normal trade practice on similar business community.*

The nature and character of credit is not like Cash Credit or deposit received from people but it is sort of trade and business receipt to which Sec.68 does not apply.

3. *Your Appellant also submits that by nature of business is such that he is having large cash on hand as well as he had cash on hand of Rs.28,80,005/- added as cash credit in Asst.Year 2012-13 which was opening cash for the year under Appeal and hence duly available for crediting in books of accounts & hence is required to be deducted from 58,43,000/-.*

B. On Business Income

1. *Your Appellant submits that he is engaged in business of trading in petrol, diesel, oil, etc. where the Appellant receive cash as Business Sales as per normal trade practice on similar business community.*

The nature and character of credit is not like Cash Credit or deposit received from people but it is sort of trade and business receipt to which Sec.68 does not apply.

2. *Without prejudice and in the alternative the amount of alleged Cash Credit of Rs.58,43,000/- is Business Income of your Appellant and only Net Profit of Business derived out of Sale of Petrol, Diesel, Kerosene, etc. which are usually sold in Cash as per accepted Trade practice can be added as held by various Authorities and binding judgement of Hon. Guj. High Court.*

III. On Additional Evidences:

1. *It is submitted by your Appellant that the CIT(A) having passed Appellate order on 25-3-2022 though extension for Hearing was fixed on 28-3-2022 has resulted into fake of proper opportunity.*
2. *Your Appellant submits that on facts and circumstances of the case, the CIT(A) ought to have admitted Additional Evidences as per rule 46A and decided the Appeal on Merit.*

It is therefore submitted that relief claimed above be allowed and the order of the Assessing Officer to modified accordingly. Your Appellant reserves right to add, alter, amend to withdraw any or all Ground of Appeal.”

9. Since the facts and circumstances of the present case are identical to that of ITA No.198/Ahd/2012 for AY 2012-13 in assessee's own case (supra). In this year also, time was allowed to the assessee was till 28.03.2022 to furnish the written submissions, but the appellate order was passed by the Ld.CIT(A) on 25.03.2022 itself. We are of the considered view that the matter needs to be restored back to the file of ld.CIT(A) to decide the issue on merits and in accordance with law, in the light of our aforesaid discussion made in paragraph 6 & 6.1. of this order. Needless to state that the Ld.CIT(A) shall grant adequate opportunity of hearing to the assessee and the assessee is also directed to co-operate by promptly furnishing all the required details. **Thus, assessee's appeal in ITA No.199/Ahd/2022 for AY 2013-14 is also allowed for statistical purposes.**

10. In the combined result, both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 05-04-2024

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

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

Ahmedabad, Dated 05/04/2024

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 ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad