

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.88/Ahd/2024
Asstt.Year :2017-18

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| Prahladbhai Karsanbhai Patel AT & PO, Hajipur Himatnagar Sabarkantha Gujarat 383 120 PAN : DDKPP 6179 R | Vs | ITO, Ward-3 Himatnagar 383 001 |
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| (Applicant) | | (Responent) |
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| Assessee by : | Ms.Arti N. Shah, AR |
| Revenue by : | Shri Ketan Gajjar, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 04/04/2024
घोषणा की तारीख /Date of Pronouncement: 17/04/2024

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short referred to as ld.CIT(A)] under section 250 of the Income Tax Act, 1961 dated 21.11.2023 pertaining to Asst.Year 2017-18.

2. Though the assessee has raised as many as seven grounds, but in fact the issues revolves around a single issue i.e. against the addition on account of unexplained cash deposits of Rs.19,33,335/- under section 69A read with section 115BBE of the Act.

3. Before going to the merits of the case, we shall first deal with the preliminary objection raised by the assessee against the order of the ld.CIT(A) that the impugned *exparte* order was passed by the ld.CIT(A) without providing fair opportunity of hearing to the assessee, and

without considering the documentary evidences on record, and such action of the Revenue authorities is violative of the principles of natural justice. The ld.counsel for the assessee submitted that a perusal of the para 3 of the impugned order reveals that in fact the last notice issued by the Department only on 4.11.2022, and the assessee had sought adjournments lastly on 9.11.2023 as the assessee was required to gather certain details for the purpose of filing written submissions. However, the ld.CIT(A)/NFAC without considering the adjournment application filed by the assessee, passed the *ex parte* order dated 21.11.2023. In view of this, the ld.counsel for the assessee prayed that in the interest of justice and fair trial, the case of the assessee be sent back to the file of the ld.CIT(A) for reconsideration of the issues on merits.

4. On the other hand, the ld.DR supported the orders of the Revenue authorities and submitted the assessee was given reasonable opportunity of hearing, as can be seen from the impugned orders.

5. I have heard both the parties; gone through the orders of the Revenue authorities, and also the material available on record. Without going to the merits of the addition, I find that the ld.CIT(A) confirmed the action of the AO in making addition of cash deposits of Rs.19.33 lacs, which remained unexplained, under section 69A read with section 115BBE of the Act on the ground that the assessee has failed to explain and justify about the nature of the money so found deposited in the bank account. The contention of the ld.counsel for the assessee before me was that though the assessee had sought more time to gather certain details to support his case, but the Revenue authorities rejected the same and went on to pass in the impugned order *ex parte* even in the absence of material on record. The ld.counsel accordingly sought remanding of the matter back to the file

of ld.NFAC/CIT(A) for adjudication afresh on merit by giving reasonable opportunity of hearing to the assessee, so that the assessee can provide more supporting evidence to substantiate his case.

6. I find that at para-3 of the impugned order, the ld.CIT(A) notes that on the last occasion i.e. on 9.11.2023, the assessee had sought adjournment, but the ld.CIT(A) despite this application, passed the impugned order on 21.11.2023, which would assume that proper opportunity of hearing to the assessee has not been provided, and therefore, the assessee deserves a lenient view in the matter.

7. The fact that opportunity is not availed of in a particular case, would not entitle the ld.CIT(A) to decide the hastily without providing fair opportunity to the assessee. As the facts emanate from the record, the assessee did apply for adjournment stating therein that it required some more time to gather necessary details and information, which concern of the assessee was not looked into by the Revenue authorities, and straight away passed the impugned *ex parte* order.

8. It must be emphasized that the mere absence of engagement by the assessee in a given instance does not empower the ld.CIT(A) to hastily render a decision without affording fair opportunity to the assessee. It is inconceivable that any reasonable assessee would willfully forfeit their case by refraining from appellate proceedings and subjecting themselves to an adverse ruling by way of imposition of huge addition.

Therefore, in the given facts and circumstances, the assessee still deserves one more opportunity to present his case before the lower authorities in the interest of justice and fair trial. Therefore, I allow this preliminary ground of appeal and set aside the impugned

order of the Id.CIT(A) for fresh adjudication on merit after providing reasonable opportunity of hearing to the assessee in accordance with law.

Needless to mention here, the assessee shall cooperate in the set aside appellate proceeding and would not seek unnecessary adjournment nor indulge in delay tactics.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 17th April, 2024 at Ahmedabad.

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

Ahmedabad, dated 17/04/2024