

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, 'डी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No. 879/Ahd/2023
Assessment Year : 2015-16

Rohit Mishra, B/13 Satyam Homes, Near Gayatri Nagar Society Ranoli, Vadodara-391350 PAN: BJVPM9647L	Vs	The ITO Ward-1(2)(2) Vadodara
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Vinit Mundra, AR
Revenue by :		Smt. Bhavna Gupta Singh, Sr. DR

सुनवाई की तारीख/Date of Hearing : 08/05/2024
घोषणा की तारीख /Date of Pronouncement: 14/05/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER:

This appeal is filed by the Assessee as against the appellate order dated 06-09-2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (hereinafter referred to as "CIT(A)") partly deleting the addition made by the Assessing Officer (hereinafter referred as "the AO") under section 69A of the Act, arising out of the reassessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2015-16.

Facts of the case

2. The assessee filed the return of income declaring total income at Rs.2,51,370/- The case was selected for scrutiny through CASS under limited scrutiny to verify the cash deposits in savings bank account in comparison to the sales turnover.

3. The assessment was completed by the AO after issuing notices u/s 143(2) and 142(1). The AO passed the order u/s 143(3) adding Rs. 51,79,410/- u/s. 69A. Aggrieved by the said order of Assessing Officer, the assessee filed an appeal before Ld. CIT(A) who partly allowed the appeal deleting an addition by Rs. 4,88,350/-

4. Now, the assessee is in appeal before us with following grounds of appeal:

1. *The Assessment Order dated 17.10.2017 under section 143(3) for A.Y.2015-16 passed by Assessing Officer is bad in law, void ab initio & deserve to be quashed.*
2. *The learned Commissioner (Appeals) erred in not considering request of the appellant for condonation of 148 days delay in filing appeal in the interest of the justice & rejected appeal mainly on this ground.*
3. *The learned Commissioner (Appeals) ought to have appreciated that delay in filing appeal is not substantial & beyond the control of the appellant & ought to have condone the delay of 148 days in filing appeal in the interest of the justice.*
4. *The learned Commissioner (Appeals) has not considered main ground of appeal of the appellant for addition of Rs 51,79,410/- under section 69A of the act made in assessment order by assessing officer & rejected appeal mainly on premises that delay of 148 days in filing appeal is substantial.*
5. *The learned Commissioner (Appeals) has erred in not examining the reasoning & justification given by assessing officer in making addition of Rs 51,79,410/- under Section 69A of the act in assessment order dated 17.10.2017 passed under section 143(3) of the act for subject assessment year on account of gross receipt of cash of Rs 46,91,060/-deposited in bank account.*
6. *The learned Commissioner Appeals) ought to have appreciated that appellant earned net income of Rs 5,16,370/- out of gross receipt of Rs 62,75,600/- after considering all allowable expenses of Rs 57,59,230/-incurred to earned said net income of Rs 5,16,370/-*

7. *The learned Commissioner (Appeals) ought not to have confirmed the addition of Rs. 46,91,060/- made under section 69A of the act made in assessment order dated 17.10.2017 passed under section 143(3) by Assessing Officer.*
8. *The appellant crave leave to add, alter or amend any or all of above grounds of appeal."*

5. During the course of the hearing the counsel for the assessee preferred not to press for ground numbers 1 to 4, and therefore the same are dismissed.

6. The effective grounds therefore are ground nos. 5, 6 and 7, in which the solitary issue raised relates to the addition made to the income of the assessee under section 69A of the Act amounting to Rs. 46,91,060/- as sustained by Ld. CIT(A)

On Merits

7. The counsel for the assessee explained the facts and took us through the orders of A.O. and Ld. CIT(A). On perusal of the order of AO and Ld. CIT(A), it is concluded that the assessee is engaged in the business in the nature of "Transport Management Services" where the assessee prepares documents for issue of Training Cards for drivers of different transport companies and handles their RTO related matters.

8. During the course of assessment and appellate proceedings the assessee explained that the cash deposits are on account of receipts from the business. Neither AO nor Ld. CIT(A) has denied this fact in their orders. Further the assessee submitted that he was appointed by "Talati Associates" to manage this documentation work and also submitted the copy of notification of Government of Gujarat appointing Talati Associates along

with letter appointing the assessee to take-up the assignment on behalf of Talati Associates.

9. During the course of assessment, the assessee submitted the list of companies, firms and individuals from whom he received the training fees. The assessee also submitted some copies of licenses having addresses on it along with training certificates issued to such persons. The AO has recorded his dissatisfaction stating that he has not verified the genuineness of such receipts for want of detailed addresses, ledger account, cash book, receipts, etc. However, after verification of return of income and the profit and loss accounted submitted by the assessee, the AO has accepted the profit of Rs. 5,16,370/- as business income.

10. The AO added all cash deposits amounting to Rs. 51,79,410/- in three bank accounts u/s 69A, without considering the fact that there are payments made from the same bank accounts towards expenses as explained by the assessee. The AO has neither denied the fact that the assessee is in business nor recorded any adverse reason denying the expenditure claimed against the receipts.

11. AO in his order, while accepting the estimated profit of Rs. 5,16,370/-, has not considered the co-relation of the cash deposits in bank and payments from the bank with the profit and loss account submitted by the assessee.

12. During the course of hearing the counsel for the assessee stated that the assessee has not maintained any books of accounts and the return of

income is filed estimating the business profit on presumptive basis. However, this is not recorded by either AO or Ld. CIT(A) in their orders.

13. Section 69A not only emphasises on unexplained money, etc. but also requires the owner to maintain books of accounts for any source of income.

14. When the assessee is claiming that he has not maintained any books of accounts and return is filed after estimating the profit on presumptive basis, it is very important to verify whether the return was filed under the provisions of section 44AD of the Act as this fact will decide whether addition u/s. 69A is sustainable or not.

15. Ld. DR relied on the orders of lower authorities and stated that no cash book was produced before the AO and Ld. CIT(A) and evidence of mere six persons were produced before the lower authorities.

16. Having gone through the orders of the revenue authorities below and the material available on records, we are of the opinion that the assessee has demonstrated that the cash deposits are linked to his legitimate business. The assessee has taken into account the cash deposits while estimating the profit.

17. We have also taken the note of the fact that CIT(A) has not examined the genuineness of the expenditure. Ld. CIT(A) has not considered the linkage of cash deposit with legitimate business of the assessee and has confirmed the addition u/s. 69A by accepting the correct amount of cash deposit. We therefore set aside the order of Ld. CIT(A) with a direction to

the assessing officer that a fresh assessment be made after due verification whether the return is filed in accordance with the provisions of section 44AD, as claimed by the counsel of the assessee. It is also directed that the effect of all allowable expenditure as claimed by the assessee be given at the time of such fresh assessment.

18. Ground number 8 is general and hence need no adjudication. Accordingly, we partly allow the appeal filed by the assessee.

19. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 14th May, 2024 at Ahmedabad.

Sd/-

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**(MAKARAND V.MAHADEOKAR)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 14/05/2024

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)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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