

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.680/Ahd/2023
(Assessment Year: 2011-12)

Munirabanu Mohammed Safi Shaikh, 201, Shyamwala Complex, Panigate, Baroda, Gujarat-390017	Vs.	Income Tax Officer, Ward-3(1)(1), Vadodara
[PAN No.ATRPS3670E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Jigar Adhiyaru, A.R.
Respondent by:	Shri Yogesh Mishra, Sr. DR

Date of Hearing	01.05.2024
Date of Pronouncement	20 .05.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short öLd. CIT(A)ö), National Faceless Appeal Centre (in short öNFACö), Delhi vide order dated 09.06.2023 passed for Assessment Year 2011-12.

2. The Assessee has taken the following grounds of appeal:-

“1. The ld. CIT(A) on the facts and in the circumstances of the case and in law has grossly erred in confirming the addition of Rs. 39,64,193/- without considering the written submission of the appellant which was duly filed to him on 10.06.2023. The ex-parte order passed by the ld. CIT(A) was devoid of any merit as well as against the principal of natural justice.

2. The ld. CIT(A) on the facts and in the circumstances of the case and in law has passed the appellate order dated 09.06.2023 despite the fact that appellate proceedings in the case of the appellant was closed only on 12.06.2023 as per income tax portal and therefore such appellate order dated 09.06.2023 is illegal and bad in law. Further the written submission dated 10.06.2023 was filed by the appellant on 10.06.2023 i.e., well before completion of appellate proceedings and which was not considered by the ld. CIT(A) while passing the appellate order. Thus,

the appellate order passed by the ld. CIT(A) without considering the written submission of the appellant on record was gross violation of natural justice.

3. On the facts and in the circumstances of the case and in law, the ex-parte order passed by ld. CIT(A) without considering the written submission of the appellant be set aside being bad in law ab initio and the appellant be granted opportunity of being hearing and the appellate order be passed after considering her written submission.”

3. The brief facts of the case are that the assessee had not filed her return of income for the A.Y. 2011-12. As per the information available with the Department in AIR, there were huge cash deposits totalling to Rs.27,90,000/- and other credits of Rs. 15,64,819/- in the saving bank account with Bank of Baroda during the F.Y. 2010-11. Accordingly, in order to examine the source of cash deposits and other credits, the AO reopened the case by issuing a notice under Section 148 of the Act on 28.03.2018. Thereafter, a series of statutory notices under Section 142(1) on various dates, as recorded in the assessment order were issued, and finally the assessee filed her income-tax return on 17.10.2008, at an income of Rs.3,79,630/-. Thereafter, a final show cause notice was issued by the AO on 22.11.2018, requiring the assessee to file evidences of source of cash deposits /credits in her bank account. However, the show cause notice was not complied by the appellant and the AO completed the assessment by making an addition of cash deposits /credits in bank account totalling to Rs.39,64,193/- under Section 69A of the Act.

4. Aggrieved by this addition, the appellant filed appeal before CIT(Appels). Before Ld. CIT(Appels), none appeared on behalf of the Assessee despite issuance of several notices. Accordingly, Ld.

CIT(Appeals) passed ex-parte order, confirming the additions made by the assessing officer, with the following observation:

“7.2 The fundamental question involved is that whether or not the AO was justified in making the addition of Rs. 39,64,193/- under section 69A in the hands of the assessee, and the most critical thing to be examined in this regard is explanation of the assessee with respect to these credits. There is no, and there cannot be any, dispute on the fundamental legal position that the onus is on the assessee to prove 'bonafides' or 'genuineness' of the money credited in his bank account. This approach finds support from the scheme of Section 68 / 69, which provides that where any sum is found credited in the books / bank accounts of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, such sum may be charged to income tax as the income of that assessee for that previous year. The burden is thus on the assessee to prove the nature and source thereof, to the satisfaction of the Assessing Officer. Everything thus hinges on the explanation given by the assessee and on how acceptable is the explanation so given by the assessee. The next question is as to what the kind of explanation that the assessee is expected to give.

*7.3 As noted by Hon'ble Delhi High Court, in the context of issuance of share capital and in the case of **PCIT Vs Youth Construction Pvt Ltd [(2013)357ITR197 (Del)]**, "it involves three ingredients, namely, the proof regarding the identity of three applicants, their creditworthiness to purchase the shares and the genuineness of the transaction as a whole".*

*7.4 That is the approach adopted by Hon'ble Courts above all along. In the case of **CIT v. United Commercial and Industrial Co (P.) Ltd [1991] 187 ITR 596 (Cal)**], Hon'ble Calcutta High Court has held that under the scheme of Section 68 " it was necessary for the assessee to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions".*

*7.5 Similarly, in the case of **CIT v. Precision Finance (P.) Ltd [1994] 208 ITR 465 (Cal)**], it was observed that "it is for the assessee to prove the identity of creditors, their creditworthiness and genuineness of transactions".*

*7.6 While examining the issue of genuineness of the transactions entered into by the assessee, it is also important to keep in mind Hon'ble Supreme Court's observation, in the case of **CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)]**, to the effect that "Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities".*

*7.7 Similarly, in a later decision in the case of **Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)]**, Hon'ble Supreme Court rejected the theory that it is for the assessee to prove that the apparent and not real, and observed that, "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities.....Similarly the observationthat if it is alleged that these tickets were obtained through fraudulent means, it is upon the assessee to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available.....In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human*

probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably".

7.8 *An addition under Section 69A can be made where any sum is found credited in the bank account for any previous year, and the assessee either offers no explanation about the nature and source as regards the same, or the explanation offered by him in the opinion of the assessing officer is not found to be satisfactory. That before adverting further, the relevant extract of the aforesaid statutory provision, viz. Section 69A, which reads as under: -*

"Unexplained money, etc.

69A. *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, In the opinion of the Assessing Officer satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.*

7.9 *That a bare perusal of the aforesaid deeming section therein reveals that an addition under the said statutory provision can be made where the assessee is found to be the owner of a bank account in which the credits were recorded outside the regular books of account maintained for any previous year. Thus, the very sine qua non for making of an addition under Section 69A pre supposes a credit of the aforesaid amount in the 'bank account' held for the previous year. This is the settled position of law that a statutory provision has to be strictly construed and interpreted as per its plain literal interpretation, and no word howsoever meaningful it may so appear can be allowed to be read into a statutory provision in the garb of giving effect to the underlying intent of the legislature.*

7.10 *Having considered entire facts of the case, and the case laws cited above, it is apparent that the appellant .has completely failed to offer any explanation either before the AO during assessment proceedings or before me during appellate proceedings, despite affording sufficient number of opportunities and hence, I find no infirmity in the order of AO. Accordingly, the addition made of Rs. 39,64,193/- is confirmed. Accordingly, this ground of appeal is dismissed.*

8. *Other grounds of the appeal are consequential in nature and the same are dismissed for the statistical purposes. Order passed u/s 250 r.w.s. 251 of the I.T. Act, 1961."*

5. The assessee is in appeal before us against order passed by Ld. CIT(Appeals). At the outset, we observe that there is a delay of 30 days in filing of the present appeal. The Counsel for the Appellant submitted that the delay in filing of the appeal is on account of genuine difficulty faced by the assessee, since the mother of the assessee/appellant was keeping unwell for some time and had also expired during the course of assessment

proceedings, and there is no mala-fide intention whatsoever in the minor delay of 30 days in filing of the present appeal. Looking into the facts of the instant case and the period of only 30 days delay in filing the present appeal, we are here by condoning the delay in filing of the present appeal.

6. On Merits, the Counsel for The Assessee/appellant submitted that the order passed by CIT was against the principles of natural justice, and if given an opportunity of hearing, the assessee/appellant would be in a position to sufficiently explain the source of deposits made in the bank account of the assessee/appellant, being out of business carried on by the assessee/appellant. The Ld. CIT(A) passed the appellate order dated 09.06.2023 despite the fact that appellate proceedings in the case of the appellant was closed only on 12.06.2023 as per the Income Tax Portal and therefore such appellate order dated 09.06.2023 is illegal and bad in law. Further the written submission dated 10.06.2023 was filed by the appellant on 10.06.2023 i.e., well before completion of appellate proceedings and which were also not considered by the Ld. CIT(A) while passing the appellate order. Thus, the appellate order passed by the Ld. CIT(A) without considering the written submission of the appellant on record was in gross violation of principles of natural justice. Further, the Counsel for the assessee submitted that the assessee is an individual and is a person of small means, and therefore, in the interest of justice, the matter may be restored to the file of CIT for de-novo consideration, after giving due opportunity of hearing to the assessee.

7. On going through the facts of the instant case, we observe that both the assessment proceedings as well as appellate proceedings before Ld. CIT(Appeals) were concluded ex-parte. From the facts placed on record, we observe that during the course of assessment proceedings, the mother of the assessee/appellant was critically ill, who also later expired, and therefore, the assessee/appellant has given a plausible explanation for non-appearance before assessment proceedings. So far as appellate proceedings before CIT are concerned, looking into the quantum of additions, in the interest of justice, we are inclined to refer the matter back to the file of Ld. CIT(Appeals) for de-novo consideration, after giving due opportunity of hearing to the assessee/appellant to present the case on merits. Further, the assessee/appellant is also directed to promptly and duly comply with all notices of hearing issued by the Ld. CIT(Appeals) in the set aside proceedings and in case if there is any further non-ó appearance or non-compliance to notices issued by CIT, then in that case, the Ld. CIT(Appeals) would be at liberty to pass, appropriate orders, in accordance with law, on the basis of materials available on record.

8. In the result, the appeal of the assessee/appellant is allowed for statistical purposes.

This Order pronounced in Open Court on	20/05/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 20/05/2024
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

TRUE COPY

ITA No. 680/Ahd/2023
Munirabanu Mohammed Safi Shaikh vs. ITO
Asst. Year –2011-12

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आदेश क० त० प्रतः/ 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. क्षेत्रीय प्रमुख, आयकर अपील अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्डफाइल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपील अधिकरण, अहमदाबाद / ITAT, Ahmedabad