

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, 'एस. एम. सी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC " BENCH, AHMEDABAD

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

ITA No.41/Ahd/2024
Assessment Year : 2017-18

Sakina Ahmedali Kantavala 122 Kutbi Mohalla 1/N Kalupur Darwaja Kalupur Ahmedabad - 380 001 Gujarat	Vs	The Income Tax Officer Ward-1(2)(4) Ahmedabad
PAN:EQEPK 9096 J		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.K. Sadhwani, AR
Revenue by :	Shri N.J. Vyas, Sr.DR

सुनवाई की तारीख/Date of Hearing : 16 /05/2024
घोषणा की तारीख /Date of Pronouncement: 28 /05/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

The present appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "the CIT(A)"] dated 28.11.2023, arising in the matter of assessment order passed u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (AY) 2017-2018.

2. Following grounds of appeal are taken by the assessee:

- 1.0 *The Ld. CIT(A) has erred both in law and on facts in deleting half of addition made for cash deposits/other credits, of Rs. 10,00,505/- out of total addition of Rs. 20,01,010/- made by AO u/s 69A of the Act for, cash deposits of Rs. 14,10,000/- in two SB accounts jointly held with her 3 siblings [i.e. Rs. 10.00 lakhs in Abad Mer. Co-op Bank and Rs. 4.10 lakhs in Bank of Baroda] and Rs. 5,91,010/- for other credits in A'bad Mer. Co-op Bank by erroneously holding that entire cash deposits/credits belonged to appellant and amounts deposited are income of only one ass. yr. 2017-18. Both the Ld. Authorities have disregarded the submissions/explanation evidences furnished by of appellant that cash was deposited in joint bank accounts held in the name of family members, out of savings of family since last more than 50 years, as they were required to deposit old currency notes of Rs.500/1000 during demonetization period [between 09.11.2016 to 30.12.2016]. Appellant is aged about 57 years and had contributed Rs.2.50 lakhs only out of her savings from Embroidery, Crochet work & art work done.*
- 1.1 *Without prejudice to other grounds of appeal Ld. CIT (A) has erred both in law and facts in not appreciating the fact that the total cash deposited was out of savings of the family for more than 50 years which were held in cash to meet the medical emergencies & other contingencies of family members. All of them were aged between 57 to 75 years and unmarried, having no other dependent. On sudden declaration of demonetization savings held in demonetized currency were required to be deposited in joint bank accounts held in their names. The Ld. AO is unjustified in treating the total cash deposits of Rs.14,10,000/- in both joint bank accounts held in name of 4 family members, as unexplained investment belonging to the appellant only. Both the Ld. Authorities have disregarded the fact that bank accounts are held in jt. names of [a] Appellant herself [b] Mr. Shabbir Kantavala (PAN: ABEPK2532L) [c] late Mr. Yusuf Ahmedali Kantavala (PAN: ABEPK2533M) of Khatija Kantavala, who are separate assessable entities. Shabbir Kantavala and Late Yusuf Kantavala were assessed to I. Tax Act for more than 50 years.*
- 1.2 *Ld. CIT[A] has not appreciated the fact that, Ld. AO is unjustified and erred in law in making the addition for other credits of Rs. 5,91,006/- u/s 69A in Abad Mer. Co-op Bank, just by summation of credit entries without considering the nature of credit shown in bank passbook that credits of Rs. 9700/30.09.16 and Rs. 27608/31.3.17/ are for SB interest. And other 12 credits of Rs. 553698/- on 22.6.2016 are out of maturity proceeds of old FDRs held in names of appellant & her two brothers and not through RTGS/NEFT/Cheques as stated in SCN/ass. order by Ld. AO.*
- 1.3 *Ld. CIT[A] is unjustified and erred both in fact & law by not appreciating the fact, that same Ld. AO wd. 1[2][4] has also made, same addition of Rs.10 lakhs for cash deposit in the same Jt. account of Abad. Mer. Co-op Bank in the total income of other joint holder & brother of appellant Mr. Shabbir Kantavala [PAN: ABEPK2532L], vide ass. order passed u/s 144 on 11.12.2019 i.e prior to framing*

ass. order in appellant's case. Thus, there is double addition of same sum of Rs.10 lakhs cash deposit.

2. *Ld. CIT (A) has erred both in law and facts in not appreciating the fact that Ld. AO has passed the assessment order u/s 144, presuming that assessee has not filed ITR, though appellant filed the ITR in compliance of notice u/s 142(1) vide Ack. no. 174045450240919/dt. 24.09.2019 and furnished the information/explanation vide submissions dt. 02.09.2019 [filed on 06.09.19], 10.09.2019 [filed on 01.10.2019] & 11.12.2019 about the source of deposits in bank accounts. Ld. AO has passed the 144-assessment order without considering the submission/explanation of appellant. Ld. CIT[A] is unjustified and erred in law in disregarding the affidavit of family members, executed on oath, explaining source of cash deposits in bank account, filed during appellate proceedings.*
3. *Ld. CIT (A) has erred both in law and facts in not appreciating the fact that Ld. AO has passed the assessment order u/s 144 without issuing statutory notice as required u/s 143(2) of the Act, by presuming that assessee has not filed ITR. The appellant filed ITR in compliance of notice u/s 142(1) vide ack. no. 174045450240919/dt. 24.09.2019. Thus, the assessment order passed u/s 144, without issuing notice u/s 143(2) shall be treated as null & void.*
4. *Ld. CIT (A) has erred both in law and fact in not appreciating the fact that Ld. AO has not followed the due process of assessment prescribed by CBDT for framing of ex-parte assessment order u/s 144. The ex parte assessment order passed u/s 144 is not accompanied by directions u/s 144A of range head, as required in terms of CBDT instructions vide F. No. 225/363/2017-ITA-II/dt. 05.03.2019 [para 2.3]. Ld. AO has not responded to the request letter of appellant filed on 11.03.21, seeking copy of directions u/s 144A given by Range Head.*
5. *Ld. CIT(A) has erred both in law and on facts in confirming the above addition made by AO u/s 69A as unexplained investment from undisclosed sources rws 115BBE, in complete disregard of explanation about of source of deposits/other credits furnished by appellant during ass. proceedings, without giving any adverse findings, just based on information received by his office under "Operation Clean Money". Appellant was not liable, to maintain books of account and file ITR.*
6. *Ld. CIT(A) has erred in law & fact, in not appreciating the fact that E-assessment Scheme 2019 notified on 12.09.2019 was applicable to the assessments framed u/s 143(3) only and not to the assessment made u/s 144 [vide notification No 61/2019/5.0.3264 (E)]. Subsequently, wef 13.08.2020, assessments u/s 144 were covered under Faceless Assessment Scheme vide Notification No. 60/2020/S.0./2745(E)/dt. 13.08.2020 i.e. subsequent to framing of impugned assessment order u/s 144 on 17.12.19. Thus, the impugned assessment order passed u/s 144 on 17.12.2019 using E-assessment scheme is bad in law.*

7. *Ld. CIT[A] is unjustified & erred in law in not appreciating the fact that Ld. SCN issued by Ld. AO on 03.09.2019 was not supported by the reasons/evidence in disregard of CBDT instruction No. 20/2015 | vide para 4 of instruction]. SCN is just founded on the information gathered under 'Operation Clean Money' revealing that appellant has deposited cash in old currency notes, without making any independent enquiries into the information received.*
8. *Ld. AO has not afforded opportunity of oral/personal hearing before disregarding/disbelieving the explanations about source of cash deposits/other credits furnished by the appellant in compliance of SCN. Ld. CIT [A]-NFAC has erred both in the law and on the facts in not affording the opportunity of oral hearing through VC, though specifically requested by the appellant, as required by the principles of natural justice.*
9. *The Ld AO has erred in law in initiating the penalty u/s 271AAC(1) & 271F of 1. Tax Act. The appellant was not liable to file ITR, hence proceedings for initiation of penalty proceedings u/s 271AAC(1) & 271F be dropped.*
10. *The appellant craves leave to add, amend, alter, edit, delete, modify, change all or any of the above grounds of appeal those are independent and without prejudice to each other, at the time of or before the hearing of the appeal.*

Facts of the case:

3. The assessee, aged about 57 years is doing some embroidery, crochet work and sundry art work since last more than 40 years having income below the taxable limit and, hence, was not liable to file return of income. On the basis of data analytics and information gathered during "Operation Clean Money", it was revealed that assessee deposited cash of Rs.10,00,000/- and Rs.4,10,000 in two different bank accounts during the demonetization period in old currency of Rs.500/- and Rs.1000/-. In both these bank accounts, assessee was one of the joint-account holders along with other family members. All of the family members are senior citizens. A notice u/s 142(1) of the Act was issued to the assessee asking to prepare and file true and correct return of income.

3.1. The assessee filed the return of income in response to the notice u/s. 142(1) of the Act on 24.09.2019 vide acknowledgment No. 174045450240919 declaring the total income of Rs.40,000/-. The assessee also furnished the information as called by the AO on 2.9.2019 stating that she is not having any business income and that the cash deposited in the joint bank account includes personal savings and cash withdrawals of two brothers, who are assessed to tax and also having taxable share of business income. In support of the same, the assessee also submitted the copies of return of income for last three years of her bothers.

3.2. The AO without taking into consideration the submission made by the assessee and the return of income filed by the assessee, passed order u/s. 144 of the Act adding Rs.20,01,006/- u/s 69A of the Act being unexplained Money. This amount is represented by cash deposit of Rs.14,10,000/- and other credit of Rs.5,91,006/-. The AO assessed the income u/s.115BBE of the Act at the rate of 60% and also initiated penalty proceedings u/s 271AAC and 271F of the Act.

4. The Assessee filed an appeal against the order of the AO before CIT(A), who sustained half of the addition on account of cash and other deposits in both bank accounts in the hands of the assessee. The Ld.CIT(A) recorded following observations and reasons before passing such order u/s. 250 of the Act:

- a. Adequate opportunities have been provided during the course of the assessment proceedings to the assessee.

- b. Assessee apparently gave summary and generic response and had not availed opportunity to offer satisfactory explanation about the genuineness of the cash credits.
- c. No further details were provided except name of the members in the family, their age, relation and names.
- d. The cash was deposited in the joint bank accounts which was kept to meet sudden medical emergencies, accumulated cash balance of more than 40 years. All of the relatives were unmarried, old-aged and not keeping good health.
- e. No documentary evidence to explain facts were produced.
- f. It is unfair to hold that the entire deposits belong to the appellant and to be taxed under section 69A of the Act in her hands alone.

On grounds of appeal:

5. Since all the grounds raised by the assessee are primarily relating to addition u/s. 69A of the Act, we deal with all of them together. The counsel for the assessee, during the course of hearing before us, put forward following points:

- a. Both the AO and the Ld.CIT(A) have not taken note of the fact that the assessee has filed return in response to notice u/s.142(1) of the Act.
- b. Since return of income is filed in response to notice u/s.142(1) of the Act, the AO should have issued notice u/s.143(2) of the Act within stipulated time period and in absence of which the assessment order is null and void. He placed his reliance on the judgment of Hon'ble Gujarat High Court in case of CIT Vs M/s. Panorama Builders Pvt. Ltd. (ITA No.435 of 2011) [2014] 45 taxmann.com 159.

- c. The AO passed the assessment order u/s.144 of the Act without considering the fact that the return of income is filed and required information is provided.
- d. The AO has not considered the facts that the cash deposited in the joint bank account does not belong to the assessee only. Cash also belongs to other family members who are senior citizens and independent assessable units. Brothers of the assessee are assessed to tax and the cash is kept for medical emergencies.
- e. The AO has not followed the SOP/instructions u/s.144A of the Act vide F.No.225/363/2017-ITA-II dated 5.3.2019 in respect of assessment u/s.144 of the Act.
- f. The AO has applied the scheme of deeming fiction in section 69A of the Act inappropriately and invoked section 115BBE of the Act wrongly. The counsel for the assessee placed the reliance on the judgement of Hon'ble Gujarat High Court in case of Fakir Mohmed Haji Hasan Vs. CIT (2001) 247 ITR 290.
- g. The Ld.CIT(A) has not considered the fact that out of Rs.10,00,000/- deposited in The Ahmedabad Mercantile Co-op. Bank, Relief Road Branch A/c. No. 066002001008525, Rs.5,00,000/- were belonging to Shabbir Kantawala, brother of the assessee and Rs.4,00,000/- were belonging to Yousuf Kantawala, deceased brother of the assessee.
- h. While giving relief of half amount deposited in the assessee's bank account, the Ld.CIT(A) has not considered the fact that Rs.5,91,006/- credited to The Ahmedabad Mercantile Co-op. Bank, Relief Road Branch A/c. No. 066002001008525 were relating to maturity proceeds of deposits and they were not cash deposits.
- i. The Ld.CIT(A), while deciding the matter has not considered the confirmation letters and Affidavit filed by the relatives which is having evidential value.

6. The Ld.DR, on the other hand, relied upon the orders of the Ld.CIT(A) and AO stating that the explanations offered by the counsel for the assessee is only a story without any documentary evidence.

7. We have heard the contentions of both the parties and perused the materials available on record. The AO has not issued notice u/s 143(2) of the Act. The decision of Hon'ble Gujarat High Court relied upon by the assessee in case of CIT Vs M/s. Panorama Builders Pvt. Ltd. (supra) is not applicable as the facts are different.

7.1. However, u/s.144 of the Income Tax Act, 1961, an Assessing Officer (AO) can make a best judgment/assessment, if an assessee:

- a. Fails to file a return under section 139(1) of the Act or in response to a notice under section 142(1) of the Act.
- b. Fails to comply with all the terms of a notice issued under section 142(1) or 142(2A) of the Act or fails to comply with a direction issued under section 142(2A) of the Act.
- c. Fails to comply with the terms of notice u/s.143(2) of the Act, when a return is filed.

7.2. When assessee has filed the return of income and responded to the notice of the Assessing Officer, the conditions for invoking Section 144 of the Act are not met. Therefore, the assessment made by the AO u/s.144 of the Act, would not sustain. Various judicial decisions have held that invoking Section 144 of the Act is improper, if the assessee has filed a return

of income and complied with the notices. The courts have quashed such assessments, emphasizing that best judgment assessments are intended only for cases where the assessee fails to file returns or comply with statutory notices. In the present case, the assessee has furnished the details of cash deposits, during the course of the appellate proceedings. The Affidavits of relatives confirming that the cash deposited in the bank account of the assessee belongs to them were also produced before the Ld.CIT(A). The assessee also produced the return of income of the relatives.

7.3. It is also observed that the deposits totalling to Rs.5,91,006/- is not relating to cash deposit and it is related to the maturity proceeds of the fixed deposits.

7.4. We have also noted that there is an addition of Rs.10,00,000/- on substantive basis in the hands of Shabbir Kantawala, brother of the assessee and the said Rs.10,00,000/- is the same amount deposited in the joint bank account held by the assessee. Looking at the facts of the case, we are of the opinion that the Ld.CIT(A) was not correct in upholding the half of the assessment in the hands of assessee u/s.69A of the Act. Affidavits, if credible and corroborated by other evidences, can be sufficient to explain the source of cash deposits. Neither the AO nor the Ld.CIT(A) has provided concrete reasons or evidences to reject the Affidavits and the explanation provided by the assessee. Mere suspicion or conjecture is not sufficient to sustain an addition under Section 69A of the Act. We, therefore, set aside the order of Ld.CIT(A) and delete the entire addition made u/s.69A r.w.s 115BBE of the Act, in the hands of the assessee by the AO. Accordingly,

proceedings for initiation of penalty proceedings u/s. 271AAC(1) & 271F of the Act be dropped.

8. In the result, the appeal of assessee is allowed.

Order pronounced in the Open Court on 28 May, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER True Copy

Sd/-
(MAKARAND V.MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad, Dated 28/05/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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)
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