

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. 1115/Ahd/2023
Assessment Year : 2011-12

Harichandrasinh Dharmendrasinh Zala 524-C, Kaliyabid, Bhavnagar, Gujarat-364002	Vs	Income Tax Officer Ward-1(2), Bhavnagar
PAN: AAIPZ1959K		

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

सुनवाई की तारीख/Date of Hearing : 16/05/2024
घोषणा की तारीख /Date of Pronouncement: 30/05/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre (NFAC) (hereinafter referred as "CIT(A)"] dated 30.10.2023 for the assessment year 2011-12, wherein the CIT(A) partially confirmed the addition made by the Assessing Officer (hereinafter referred as "AO") under Section 144 of the Income Tax Act, 1961(hereinafter referred to as "the Act").

2. Assessee has taken following grounds of appeal:

1. *The ld. CIT(A)-6, Ahmedabad is erred in law and on facts by confirming addition of Rs. 28,36,415/- out of Rs. 34,94,179/- made by AO on account of cash credit entries and other receipts in bank, treating the same as income from undisclosed sources.*
2. *The appellant leave to add, amends, delete or alter one or more grounds of appeal.*

Facts of the Case:

3. The assessee was not filing his return of income. On the basis of information received from ITS data, it was observed that the assessee has made a cash deposit of Rs.28,77,000 in his bank account with State Bank of India, Bhavnagar Branch. The case was re-opened by issuing notice u/s 148. Since the assessee failed to furnish the details as required by the notice u/s 142(1) of the act, the AO completed the assessment under Section 144 of the Act adding all the credit entries in the assessee's bank account including cash deposits amounting to Rs. 34,94,179/- as unexplained money under Section 68 of the Act.

4. On appeal, the CIT(A) considered the additional evidence filed by the assessee, including the profit and loss account, 7/12 extracts, and bank passbook, which supported the claim of agricultural income. The CIT(A) after seeking remand report from the AO granted partial relief by excluding the amount related to the receipt from the sale of agricultural produce but upheld the remaining addition.

5. The Counsel for the assessee contended before us that the AO has not considered the cash flow statement submitted to him in which cash withdrawals are also reflected. He further stated that the cash deposits are

from known sources and explained to the AO. Cash book and the cash flow statement is not considered by the AO while preparing the remand report. Since the CIT(A) has decided the matter on the basis of remand report of the AO, all the details already provided to AO were not fully considered by the CIT(A).

6. The counsel for the assessee placed reliance on the decision of the coordinate bench in case of ITO Vs. Murlidhar Ice-cream and Sweet Parlour (ITA No.531/AHD/2012) in which it was held that where there are deposits and withdrawals entries in the bank account, it would be presumed the amount withdrawn was available with the assessee for depositing the same. Therefore, it cannot be concluded that the entire deposits were from unexplained source.

6.1. The AR requested that the matter be remanded back to the AO for a fresh examination of all submitted details. The Departmental Representative did not object to the same.

7. We have heard the submissions of both sides and reviewed the material on record. It is observed that the addition was primarily due to non-compliance by the assessee during the assessment stage. The CIT(A) has given partial relief based on the evidence relating to agricultural income.

8. In the interest of justice and to provide a fair opportunity to the assessee, we deem it appropriate to set aside the order of the CIT(A) and remand the matter to the AO. The AO is directed to re-examine the case, taking into account all the evidence provided by the assessee, including the profit and loss account, 7/12 extracts, cash book and cash flow statement,

and any other relevant documents. The AO should pass a fresh assessment order after giving the assessee a reasonable opportunity to be heard.

9. The assessee is directed to cooperate with the AO during the reassessment proceedings and furnish all necessary documents and explanations promptly.

10. In light of the above, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 30 May, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER True Copy
Ahmedabad, Dated 30/05/2024

Sd/-
(MAKARAND V.MAHADEOKAR)
ACCOUNTANT MEMBER

Rajesh

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

आदेशानुसार/ BY ORDER,

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