

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 592 /Ahd/2023
Assessment Year 2016-17**

The ITO, Ward-7(2)(1), Ahmedabad (Appellant)	Vs	Karan Jayeshkumar Shah, Ahmedabad PAN: BKPPS3005P (Respondent)
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**Assessee by: Shri Shalibhadra Shah, A.R.
Revenue by: Ms. Saumya Pandey Jain, Sr. D.R.**

Date of hearing : 28-05-2024
Date of pronouncement : 07-06-2024

आदेश/ORDER

PER : NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:-

This appeal is filed by the Revenue against the order of National Faceless Appeal Centre [NFAC], Delhi (in short 'CIT(A)') dated 16/06/2023 for the assessment year 2016-17.

2. The brief facts of the case are that the assessee is an individual and filed his return of income for assessment year 2016-17 on 31-03-2018 declaring total income of Rs. 2,60,980/-. The case was selected for limited scrutiny under CASS to examine the cash deposit during demonetization period. The Assessing Officer found that the assessee was maintaining bank account with 'The Ahmedabad Mercantile Co-operative Bank Ltd.' being account no. 066007311000527 in the joint name of Shri Karan Jayeshkumar Shah and Shri Manoj P. Doshi in which cash deposit of Rs. 2,78,37,719/- was made during the financial year 2015-16. In the course of the assessment inquiries were made by the Assessing Officer in respect of these cash deposit. However, there was no compliance by the assessee. The assessment was completed ex-parte u/s. 144 of the Act on 26-06-2018 and entire cash deposit of Rs. 2,78,37,719/- was treated as unexplained and deemed income for the assessee u/s. 69 of the Act. Apart from that another addition of Rs. 59,756/- was made in respect of accrued interest from the said bank account. Aggrieved with the order of the Assessing Officer, the assessee had filed an appeal before the first appellate authority which was decided vide the impugned order. The addition of Rs.2,78,37,719/- on account of unexplained cash deposit was deleted by the Id. CIT(A) and on issue of addition of interest income also part relief was allowed. Now, the Revenue is in appeal before us against the order of Id. CIT(A).

3. The Revenue has taken the following grounds in this appeal:-

“(a) The Ld CIT (A) has erred in law and on facts in deleting the addition of Rs. 2,78,37,719/ made by the AO u/s 68 of the IT Act on account of unexplained cash deposits.

(b) The Ld CIT (A) has erred in law and on facts in deleting the addition of Rs. 59,756/ made by the AO being Bank Interest as income from other sources.

(b) On the facts and circumstances of the case Ld CIT(A) ought to have upheld the order of the Assessing Officer

(c) The appellant craves leave to add, alter and/or to amend all or any of the ground before the final hearing of the appeal.”

4. Ms. Saumya Pandey Jain, Id. Senior D.R. submitted that the Id. CIT(A) had admitted additional evidences and deleted the addition on account of cash deposits without allowing proper opportunity to the Assessing Officer. She submitted that the assessee didn't properly explain the reason for non-compliance before the Assessing Officer nor the contents of the additional evidences filed before the CIT(A) were properly verified. Shri Shalibhadra Shah, the Id. A.R. on the other hand submitted that the Id. CIT(A) had decided the matter after calling for the remand report from the Assessing Officer and on proper appreciation of facts of the additional evidences filed before him.

5. We have carefully considered the rival submissions and the materials brought on record. It is found that the assessee had properly explained the reason for non-compliance before the Assessing Officer. It was submitted that the assessee had approached the Assessing Officer along with the physical submission but he was advised to file all the details/submissions on e-filing portal. As the assessee could not make the compliance on the e-filing portal, the assessment was completed ex-parte. It is also found that the additional evidences filed before the CIT(A) were forwarded to the Assessing Officer calling for the remand report. The CIT(A) has stated in

his order that though remand report was submitted by the Assessing Officer, no specific comment was made on the additional evidences filed before the assessee. The finding as recorded by the CIT(A) is found to be as under:-

5.2 It can be seen from the facts/submission reproduced above that the appellant contended that the said deposit does not belongs to him. The appellant claimed to have worked for the Firm Sambhav Sales. The account of the "Sambhav Sales" was opened on the name of the appellant and in the same account the cash deposit of Rs 2,78,37,719/-was made it was further stated that the Sambhav Sales has duly shown these transactions in their financial statements and duly offered the income arises from them in order to substantiate, the appellant has fled written submissions/additional evidences in the form of copy of Balance Sheet, Statement of Income Tax Audit Report for the Firm Sambhav Sales. The additional evidences were forwarded to the jurisdictional assessing officer and the assessing officer was directed to offer its comment in the form of a Remand Report. In response the remand report is submitted by the assessing officer in the remand report, the assessing officer did not offer specific comments about the submissions/additional evidences, but has just remarked that the additional evidences furnished by the appellant should not be entertained during the appellate proceedings"

6. In view of the above facts the Revenue cannot take a plea that Id. CIT(A) had admitted the additional evidences without allowing any opportunity to the Assessing Officer. The Id. CIT(A) had forwarded all the evidences to the Assessing Officer but no specific comment was given on such additional evidences in the remand report. Thereafter, the Id. CIT(A) has examined the additional evidences on merits and allowed the relief to the assessee.

7. The Id. CIT(A) has given the following finding while relief to the assessee on this ground:-

"5.4 All the additional evidences (Copy of Balance Sheet. Statement of Income. Tax Audit Report for the Firm Sambhav Sales) furnished by the appellant were taken due cognizance off. It could be seen in the audit report that the above bank account (No: 67007311000527) of "The

066007311000527 of the assessee was to the account of “Sambhav Sales”. A copy of balance sheet of Sambhav Sales is also available at page no. 206 of the paper book from which it is found that the closing balance of Rs. 1780 in the bank account no. “527” in the name of the assessee appears in the balance sheet of Sambhav Sales. In view of these evidences, the findings of the Id. CIT(A) that the cash deposit appearing in the bank account no. 527 belonged to the firm Sambhav Sales and not to the appellant is found correct.

9. In view of the above facts we do not find anything wrong with the order of the Id. CIT(A). He has correctly appreciated the evidences brought on record and has rightly concluded that the cash deposit in the account of the assessee belonged to the firm Sambhav Sales. We, therefore, upheld the order of the Id. CIT(A) deleting the addition of Rs. 2,78,37,719/- in respect of cash deposits. The ground taken by the Revenue is dismissed.

10. The next ground taken by the Revenue is in respect of addition of Rs. 59,756 in respect of accrued interest. The Id. CIT(A) has restricted the addition to Rs. 6,294 on the basis of certificate from the bank. A copy of the said certificate has been brought on record. It is found that the principal amount of deposit was Rs. 59,756/- on which interest of Rs. 6294/- was paid by the bank during the period 01-04-2015 to 31-03-2016. The Assessing Officer had wrongly considered the principal amount of deposit as interest received whereas the actual interest received by the assessee during the year was Rs. 6294/- only. Therefore, the order of the CIT(A) on this issue is also upheld.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 07-06-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad : Dated 07/06/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद