

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.1012/Ahd/2023
Assessment Year: 2012-13**

Abbasbhai Sajaudinbhai Barad, 3-102, Moti Barad Street, Piswada, Tal. Dholka, Ahmedabad – 382 265. [PAN – ANZPB 5033 C]	Vs.	The Income Tax Officer, Ward – 3(2)(1), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri S.K. Sadhwani, CA & Shri Nikhil Kashwani, CA	
Revenue by	Shri B.P. Makwana, Sr. DR	
Date of Hearing	02.04.2024	
Date of Pronouncement	07.06.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 18.10.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal :-

- “1. The Ld. CIT(A) has erred both in law and on facts in partly allowing the appeal by confirming the additions made by AO of Rs.10,79,010/- for cash deposits in SB account with Bank of India, Pisawada Br u/s 69A of the Act. out of total addition of Rs.40,79,010/- made by AO, Ld. CIT(A) has considered Rs.30,00,000/- as explained through agriculture operations, considering land holdings of appellant and his wife of about 15 acres out of about total 140 acres of agriculture land belonging to families of, appellant, his uncle and two brothers at village Pisawada, in disregard of affidavits of family members*

executed on oath/other evidences about sale produce of agriculture produce furnished by the appellant, without giving any adverse findings.

2. *The Ld. CIT(A) has erred both in law and on facts in partly allowing the appeal by confirming the additions made by AO of Rs.12,21,480/- for other credits made in SB account with Bank of India, Pisawada Br. u/s 68 of the Act out of total addition of Rs.14,55,941/- made by AO, Ld. CIT(A) has considered Rs.2,34,461/ as explained in disregard of evidences/confirmation explaining the source of other credits furnished by the appellant, without giving any adverse finding for not accepting the same.*
3. *Without prejudice to other grounds of appeal, Ld. CIT(A) & AO are unjustified and erred in fact in presuming all the above cash deposits/other credits in bank account as unexplained income in the hands of appellant only, in complete disregard of the evidences/affidavits furnished on record showing that above bank account with Bank of India is held in the joint names of appellant and his wife Smt. Kubraben Barad and that cash is deposited out of sale proceeds of agricultural produce from the cultivation of rice paddy (dangar), wheat, and vegetables on agriculture lands belonging to families of appellant, his uncle and two brothers.*
4. *Without prejudice to other grounds of appeal both the I. Tax Authorities are not justified in treating the whole amount of cash deposited out of sale of agriculture produce as income of appellant, without providing for the expenses for the agricultural operations and without considering the cash withdrawals/other debits in same bank account.*
5. *Without prejudice the other grounds of appeal Ld. CIT(A) has erred both in law and on the facts that reasons recorded by Ld. AO for issue of notice u/s 148 are just based on the ITS statement and NM cycle-2 letter, without independently processing the information or considering the replies already furnished by the appellant that he is farmer having agriculture income only not liable to file ITR. In terms of the CBDT circular no.40/2016 the reopening of case u/s 147 is feasible only when AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year and not merely, based on any Reason to Suspect.*
6. *Without prejudice to other grounds of appeal Ld. CIT(A) has erred both in law and on the facts in not appreciating that Ld. AO has not followed the due process of assessment prescribed by CBDT for framing the ex parte assessment order u/s 144A. That in terms of CBDT Instruction - F. No.*

225/363/2017)/05.03.2019, Ld. AO is required to seek directions of Range Head u/s 144A before framing the best judgment assessment.

7. *Without prejudice the other grounds of appeal, Ld. CIT(A) erred in law by not appreciating the fact that Ld. PCIT-3, Ahmedabad has not followed the due process of law before granting approval to the reopening, as required by the provisions of section 151 of the Act for issue of notice u/s 148. Office of Ld. PCIT has just filled in the word "Satisfied" at the designated blank space provided in the format for approval. Thus approval u/s.151 is granted as a mechanical ritual, without application of mind.*
 8. *Without prejudice the other grounds of appeal, both Ld. CIT(A) have erred in law by not appreciating that E-assessment Scheme 2019 notified on 12.09.2019 was applicable to the assessments u/s.143[3] only [vide notification No.61/2019/S.O.3264(E)]. The Faceless Assessment Scheme covering assessment u/s 144 was introduced through Notification 60/2020/S.O./2745(E)/dt. 13.08.2020 i.e. subsequent to framing of impugned assessment order. Thus the impugned assessment order passed u/s 144 on 30.10.2019 using E-assessment scheme is bad in law.*
 9. *The AO has erred both in law and on facts in initiating the penalty proceedings u/s. 271(1)(c) r.w.s 274 of the Act for concealment of income. The appellant prays that the proceedings for the initiation of penalty proceedings u/s. 271[1][c] be dropped.*
 10. *Appellant also craves leave to add, amend, alter, change, delete and edit the above grounds of appeal before or at the time of hearing of appeal."*
3. The assessee is a Farmer since last more than 40 years and owns agricultural land admeasuring 33.42 Hectors at village Pisawada jointly with other family members. The source of income is agricultural income from cultivation of rice paddy, wheat and vegetables. The assessee submitted before the Authorities that the assessee did not have any other income which is taxable and, therefore, was not liable to file return of income. During the relevant year, the assessee deposited cash of Rs.40,79,010/- into Savings bank Account with Bank of India Pisawada Branch held by him jointly with wife Smt. Kubaraben Abbasbhai Barad out of agricultural sale proceeds. As aper information received by the

Revenue Department, the Assessing Officer found that the assessee deposited cash as stated herein above but did not file any return of income. Notice under Section 148 of the Income Tax Act, 1961 was issued on 22.03.2019 and the same was duly served upon the assessee by Speed Post. the reason recorded for reopening of the assessment was given to the assessee. After issuing various notices, no response was received from the assessee, therefore, the Assessing Officer passed order under Section 144 read with Section 147 of the Act and made addition of Rs.40,79,010/- as unexplained cash deposits and Rs.14,55,941/- as unexplained credits.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) parlay allowed the appeal of the assessee.

5. The Ld. AR submitted that the Assuring Officer has passed the Assessment Order under Section 144 read with Section 147 of the Act under E-assessment Scheme 2019 notified on 12.09.2019 and the same is applicable to the assessments framed under Section 143(3) only. The E-assessment Scheme covering assessment under Section 144 of the Act was introduced through Notification 60/2020/S.O./2745(E) dated 13.08.2020 in assessee's case. The Assessing Officer initiated assessment by issuing notice under Section 142(1)[SCN] electronically in E-proceedings mode. The assessee did not directly receive the notices as the message alert was received on the mobile of the Accountant and, therefore, the assessee could not comply with the notices resulting the same into ex-parte assessment under Section 144 of the Act. The Ld. AR submitted that the Assessing Officer did not follow the procedure of service of notice through other mode of service prescribed in Income Tax Statute. Thus, E-proceedings facility and issuance of the notices was not received by the assessee and hence the assessment passed under Section 144 of the Act using E-proceedings faciality is bad in law and is unjustifiable. As regards the addition of Rs.40,79,010/-, the Ld. AR submitted that the assessee has given additional evidences and the CIT(A)

has accepted the explanation given for Rs.40,00,000/- and confirmed the addition to the extent of 10,79,010/- for cash deposit. The Ld. AR submitted that 50 acres out of about total 140 acres of agricultural land belongs to the family of the assessee, his uncle and two brothers and in fact the affidavit of the family members categorically mentions that the sale proceeds of agricultural produce furnished by the assessee are genuine and in fact there was no adverse finding given by the CIT(A). Hence, the entire addition should have been deleted. As regards the addition of Rs.14,55,941/-, the CIT(A) has considered Rs.2,34,461/- but the assessee has filed all the details regarding the confirmation as well as explained the source of other credit facilities furnished by the assessee but the same was disregarded by the CIT(A).

6. The Ld. DR submitted that the proceedings under Section 144 of the Act was rightly initiated and in fact the E-assessment Scheme was introduced in 2019 as notified in Notification No.61/2019/S.O./3264(E). As regards the addition of Rs.40,79,010/-, the CIT(A) has rightly confirmed the addition to the extent of Rs.10,79,010/- for cash deposits, after verifying the evidences. As regards addition of Rs.14,55,941/-, the CIT(A) has rightly confirmed the addition of Rs.12,21,480/- as the assessee has not established the source of other credit and has not given proper explanation about the confirmation.

7. We have heard both the parties and perused all the relevant material available on record. As regards to the E-assessment whether the same is bad in law which is set out in ground no.8. It is pertinent to note that the assessment scheme was notified on 12.09.2019 and the Assessing Officer has followed the procedure and, therefore, it is without prejudice ground which is not justifiable and hence ground no.8 is dismissed.

8. As regards ground no.1 related to addition, it was confirmed to the extent of Rs.10,79,010/- for cash deposits. The assessee in fact has given explanation of entire addition of Rs 40,79,010/- including his family

members' affidavit and other evidences about sale proceeds and agricultural produce. But the CIT(A) has not taken cognisance of the family arrangement as well as land holding of the agricultural produce in totality and, therefore, confirming the addition to the extent of Rs.10,79,010/- is not justifiable and the entire addition should have been deleted. Thus ground no.1 is allowed.

9. As regards ground no.2 related to confirming addition to the extent of Rs.12,21,480/-, it is pertinent to note that the assessee has given confirmation as well as source of other credit which was totally ignored by the CIT(A) and hence the addition made under Section 68 of the Act is not justifiable. Hence, ground no.2 is allowed.

10. As regard to ground no.3 to 7 the same are without prejudice grounds and mostly related to the issuance of notice but the CIT(A) has given opportunity to the assessee for filing additional evidences and has considered the additional evidences. The proceedings initiated under Section 148 of the Act also followed proper procedure prescribed under Section 148 of the Act and hence the said ground are not entertained at this juncture.

11. As regards ground no.9, the same is consequential and hence not adjudicated at this juncture.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 7th June, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 7th June, 2024

PBN/*

Copies to:

- (1) The appellant*
- (2) The respondent*
- (3) CIT*
- (4) CIT(A)*
- (5) Departmental Representative*
- (6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*