

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.440/Ahd/2024
Assessment Year : 2017-18

The Dy.CIT Central Circle-1(3) Ahmedabad	Vs	Shankarlal Thakordas Narsingani Dodha Highway Roadbhagat Nagar Society Godhra Panchmahal-389 001 (Gujarat)
PAN: ABIPN 3752 B		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
------------------------	--	--------------------------

Assessee by :	Shri Sakar Sharma, CA
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 03/06/2024
घोषणा की तारीख /Date of Pronouncement: 10/06/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

This appeal by the Revenue is directed against the order dated 18-12-2023 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad (hereinafter referred as " the Ld.CIT(A)"), in relation to the assessment order passed by the Assessing Officer (hereinafter referred as "the AO") under Section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred as "the Act") for the Assessment Year (AY) 2017-18.

2. The grounds of appeal raised by the Revenue are as follows:

- “1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the addition of Rs.3,85,80,075/- made on account of unexplained credit, without discussing the case on merits.*
- 2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in treating the order passed by AO u/ s.143(3) r.w.s.263 of the Act as bad in law, considering the decision of Hon'ble ITAT treating the revision order passed by Pr. CIT set aside deleting the addition of Rs.3,85,80,075/- made on account of unexplained credit, without discussing the case on merits.”*

Facts of the case:

2. The assessee filed his return of income on 14-09-2017 declaring total income at Rs.48,77,660/-. Thereafter, the case was selected for scrutiny under CASS. The assessment u/s.143(3) of the Act was finalised determining the total income at Rs.1,25,93,670/-. Thereafter, the said case was examined by the Pr.CIT-I, Vadodara and it was found that the assessee has made cash deposits amounting to Rs.3,85,30,075/- during the demonetisation period of 09-11-2016 to 30-12-2016 in its two bank accounts. The assessment u/s.143(3) r.w.s. 263 of the Act was completed by the AO after adding Rs.3,85,30,075/- to the total income as per original return of income.

3. The assessee challenged this addition before the Ld.CIT(A). The Ld.CIT(A) dismissed the appeal, primarily relying on the fact that the ITAT, in its order dated 09-06-2023 in ITA No.184/Ahd/2022 (the “earlier ITAT order”), had already set aside the order of the Ld.PCIT passed under Section 263 of the Act.

4. Aggrieved by the order of the CIT(A), the Revenue has now preferred this appeal before us.

On the grounds of appeal:

5. We have heard the Ld.Departmental Representative (DR) and the Ld.Authorized Representative (AR) of the assessee and have perused the material available on record.

5.1. The primary contention of the Ld.DR is that the Ld.CIT(A) has erred in dismissing the appeal by solely relying on the earlier ITAT order without independently examining the merits of the case. It is argued that the addition made by the Ld.AO under Section 68 of the Act was justified based on the facts and circumstances of the case.

6. On the other hand, the Ld.AR submitted that the issue of unexplained cash deposits has already been thoroughly examined and adjudicated by the ITAT in the earlier order, and the Ld.CIT(A) was right in dismissing the appeal of the Revenue on this basis.

7. We have carefully considered the rival submissions and perused the materials on record. We find that the ITAT, in its order dated 09-06-2023 in ITA No.184/Ahd/2022 while dealing with the order of the Ld.PCIT under Section 263 of the Act, had thoroughly discussed the issue of unexplained cash deposits and had concluded that the addition was not justified. The relevant excerpts from the ITAT's order are as follows:

“10. It is evident from the above that the assessee had clearly demonstrated that the entire cash deposited during demonetization could not be treated as unexplained; that its scale of business operations was huge and nature of business was such that 90% of its sales was done in cash, and even prior to demonetization, the assessee had made huge cash sales commensurate to the sale made during the demonetization period. All these explanation given by the assessee was rightly taken note of by the AO and finding anomaly to the extent of substantial increase in sales during the demonetization period, he considered it fit to treat 20% of the sales as unexplained credits. The ld.Pr.CIT’s view that entire cash deposits during this period is to be treated as unexplained, is contrary to the facts on record, wherein the assessee has demonstrated the factum of huge turnover prior to and post demonetization in the preceding year, and even in the succeeding year, and also factum of majority of the sales being in cash. Therefore, there was no occasion at all for the AO to treat the entire cash deposited during the demonetization period, as unexplained credits. The facts on record could not have led to the inference that entire sales made by the assessee during the demonetization period were bogus. In fact, the inference drawn by the AO, that only a portion of it could be treated as bogus/unexplained, was not incorrect. Therefore, we hold that the ld.Pr.CIT’s finding of error is based on incorrect appreciation of the facts before it, and his finding that the assessee had not been able to substantiate its explanation for cash sales completely is also not correct. In fact, as rightly found by the AO, to a great extent his explanation was substantiated that the majority of sales made by the assessee was in cash, but it was only vis-à-vis abnormal incremental sales made during the demonetization period, the AO refused to agree with the assessee.

Also the finding of the ld.Pr.CIT therefore that the AO completely disagreed with the assessee regarding its explanation and found the explanation of the assessee to be unsatisfactory for the entire cash deposits, is also incorrect. As noted above, the AO was dissatisfied not with the explanation of the entire cash deposits, but only partially in view of the abnormal increase in the sales shown by the assessee during that period.

11. In view of the above, the finding of the ld.Pr.CIT that the entire cash deposits during the demonetization ought to have been treated as unexplained credit under section 68 of the Act, we hold, could not have been inferred from the facts on record, and there is no error as such in the order of the AO in this regard. The order passed by the ld.Pr.CIT under section 263 of the Act holding the assessment order erroneous so as to cause prejudice to

the Revenue is therefore not sustainable in law and is set aside. The grounds raised by the assessee are allowed in above terms."

7.1. In view of the above, we find that the Ld.CIT(A) has correctly relied on the binding precedent set by the earlier ITAT order. There is no infirmity in the order of the Ld.CIT(A) in dismissing the appeal of the Revenue. The issue has already been adjudicated on merits by the ITAT, and the same cannot be re-agitated without any new facts or evidence.

7.2. In the light of the foregoing, we uphold the order of the Ld.CIT(A) and dismiss the appeal filed by the Revenue.

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

Order pronounced in the Open Court on 10 June, 2024 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad, Dated 10/06/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, SK. 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)-
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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