

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 907/Ahd/2023
(Assessment Year: 2011-12)

Dipen Hasmukhbhai Shah, 1008/1, Khijada Pole, Raipur, Ahmedabad-380001	Vs.	Income Tax Officer, Ward-1(3)(1) (New), (I.T.O., Ward-1(3)(2)) Ahmedabad
[PAN No.BEZPS7354K]		
(Appellant)	..	(Respondent)

Appellant by :	Shri M. K. Patel, A.R.
Respondent by :	Shri Purshottam Kumar, Sr. D.R.
Date of Hearing	13.06.2024
Date of Pronouncement	24 .06.2024

ORDER

The appeal filed by the assessee is against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi on 14.09.2023 for A.Y. 2011-12.

2. The grounds of appeal raised by the assessee are as under:

“1. That on facts, and in law, the learned NFAC and AO has grievously erred in law, and on facts in not affording reasonable and sufficient opportunity of hearing, and in deciding the appeal ex-parte.

2. That on facts, and in law, the learned NFAC-CIT(A) has grievously erred in confirming the re-opening of assessment u/s 147 of the Act, which is on erroneous facts, and hence invalid and void ab-initio.

3. That on facts, and in law, the learned NFAC-CIT(A) has grievously erred in confirming the addition of Rs.11,00,021/- made @ 18.71 of Rs.58,79,325/- as undisclosed income of the appellant, ignoring the fact that the said receipts are not in the nature of taxable income of the appellant.

4. The appellant craves liberty to add, alter, amend any ground of appeal.”

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3. The assessee has not filed return of income for A.Y. 2011-12 under Section 139(1) of the Act. After receiving the information, the case was reopened and notice under Section 148 of the Act was issued on 24.03.2018. In response to the notice under Section 148 of the Act the assessee filed return of income on 05.05.2018 declaring Rs. 89,047/-. Subsequently, the reasons were recorded for reopening was provided to the assessee vide letter dated 20.07.2018. In absence of the response to show-cause notice the Assessing Officer proceeded on the basis of Section 144 of the Act. The Assessing Officer observed that the assessee run a business in the name and style of M/s. Rushabh Corporation and during the year it was found that the assessee was operating current account with Development Credit Bank Ltd. The total deposit entries in this account was Rs. 70,18,637/- out of which represent return cheque entries / LIC receipts are found to be to the tune of Rs. 12,93,867/- which was reduced and final receipt was arrived at Rs. 57,24,770/- which includes the receipt of M/s. Aarvee Denims and Exports Ltd. The contract receipt of Rs. 39,436/- from Heritage Board Pvt. Ltd. and Rs. 1,15,119/- from Sabarmati Gas Ltd. as appearing in ITS/AIR statement does not reflect in the said bank account of the assessee totaling to RS. 1,54,555/-. The assessee also incurred loss of Rs. 17,124/- which was neither allowed to be set off nor allowed to be carried forward. Thus, the Assessing Officer made addition of Rs. 11,00,021/- being 18.71% of the total receipt and assessed the same as income of the assessee.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismiss the appeal of the assessee.

5. The Ld. A.R. submitted that the assessee has not received the hearing notices and the CIT(A) pass ex-parte order without giving opportunity of

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hearing to the assessee / legal heir of the assessee to contest the matter on merits. Therefore, the Ld. A.R. submitted that the matter may be remanded back to the file of the CIT(A) for proper adjudication of the issues on merit after giving hearing to the assessee.

6. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) though issued the notices and mentioned the same in the order but related to service of these hearing notices no observation is made by the CIT(A). The order of the CIT(A) is ex-parte, therefore it will be appropriate to remand back the matter to the file of the CIT(A) for proper adjudication of the issues contested by the assessee before the CIT(A) on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

This Order pronounced in Open Court on 24/06/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

True Copy

Ahmedabad; Dated 24/06/2024
TANMAY, Sr. PS

ITA No. 907/Ahd/2023
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Asst. Year-2011-12

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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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad