

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA No. 545/Ahd/2024
Assessment Year 2010-11**

Gopalkrishna Naginbhai Patel, Dharmaj, Chandan Chowk Petlad, Anand-388430, Gujarat PAN: AUAPP2952N (Appellant)	v.	The Income Tax Officer, Ward-1(3)(1), Ahmedabad (Respondent)
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Assessee by: Shri B.T. Thakkar, A.R.
Revenue by: Shri N.J. Vyas, Sr. D.R.

Date of hearing : 24-06-2024
Date of pronouncement : 24-06-2024

आदेश/ORDER

This appeal in ITA No. 545/Ahd/2024 for assessment year 2010-11 has been filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad against the appellate order dated 8th May, 2023 passed by Id. Commissioner of Income-tax(Appeals), National Faceless Appeal Centre(NFAC), Delhi(DIN & Order No.ITBA/NFAC/S/250/2023-24/1052644110(1))

, which in turn has arisen from the assessment order dated 26-09-2017 passed by Assessing Officer u/s. 143(3) r.w.s. 147 of the Act.

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

- “1. Issue of notice u/s 148 merely on AIR information without any further enquiry being unlawful the proceedings are without jurisdiction and hence the assessment order be declared void ab-intio.*
- 2. Addition of Rs. 11,00,000/- made as unexplained cash being unjust and unlawful be deleted now.*
- 3. Commissioner of Income Tax(Appeals) NFAC, Delhi erred in law and facts by passing ex parte order without considering the statement of facts submitted alongwith appeal memo. Their being no unexplained cash the addition of Rs. 11,00,000 being unjust and unlawful and the same may please be declared so.*
- 4. Your application prays to add, alter or delete ground of appeal at the time of hearing.”*

3. The brief facts of the case are that the assessee has not filed return of income for the impugned assessment year u/s. 139 of the Act. On the basis of information available with the department, it was noticed by the Assessing Officer that the assessee had deposited amount of Rs. 11,00,000/- in saving bank account during the financial year 2009-10 relevant to impugned assessment year. Therefore, source of cash deposit in bank was subjected to verification by the Assessing Officer. The case was reopened and reasons were recorded on 29-03-2017 by the AO, u/s. 147 of the Act , and subsequently notice u/s. 148 dated 29th March, 2017 was issued to the assessee

by the Assessing Officer which was claimed by AO to have been duly served upon the assessee on 31st March, 2017. In response to the notice u/s. 148, the assessee filed return of income on 01st May, 2017 declaring total income of Rs. 1,35,622/- and agricultural income of Rs. 3,62,540/-. Subsequently, the AO issued statutory notices u/s. 143(2) and 142(1) to the assessee. The assessee submitted in its reply filed before the AO that the assessee is an agriculturist and also having income from sale of milk. The assessee also claimed that the assessee is doing miscellaneous business of trading and small works. The assessee claimed that assessee had deposited cash of Rs.11,00,000/- out of agricultural income and other income as reflected in the computation of total income, the copy of which was enclosed by the assessee before the AO. The assessee also claimed that assessee has shown income u/s. 44AD , as the assessee's turnover is within specified limit u/s. 44AB. It was submitted that assessee is not liable to maintain books of accounts. The Assessing Officer rejected the contention of the assessee. The Assessing Officer issued show cause notice dated 16.08.2017 to the assessee which was not complied with by the assessee. The Assessing Officer observed that the assessee has not disclosed correct and true source of cash deposit to Rs. 11,00,000/-. Since the limitation period for framing assessment was approaching and no reply was received from the assessee, the

Assessing Officer treated the deposit of Rs. 11,00,000/- with Dharmaj Peoples Co-operative Bank as unexplained/unaccounted cash deposits of the assessee for the year under consideration , and addition of Rs. 11,00,000/- was made by the Assessing Officer.

4. Aggrieved, the assessee filed first appeal with ld. CIT(A) who claimed to have issued seven notices of hearing to the assessee but there was no compliance on the part of the assessee. The ld. CIT(A) did not refer in its order as to the mode of issuance of notice and service thereof of the aforesaid notices, and the appeal of the assessee was dismissed by ld. CIT(A) by an ex-parte cryptic non speaking appellate order without discussing the issues on merit, by holding as under:-

“In this case notices for hearing have been sent to the appellant on 26.12.2020, 23.01.2021, 22.07.2021, 01.10.2021, 03.04.2023, 11.04.2023 and 25.04.2023. The appellant has not responded to these notices. It is apparent that the appellant is not interested in pursuing the impugned appeal before me. On merits also there is nothing on record to support the issues raised in this appeal.

Hence, in view of the above reasons, this appeal is dismissed.”

5. Aggrieved , assessee filed second appeal with the Tribunal. At the outset, ld. counsel for the assessee submitted that the appeal of the assessee with Tribunal has been filed belatedly by 265 days as the appellate order of the ld. CIT(A) was passed on 8th May, 2023 and the appeal ought to have furnished by the assessee on or before 07-07-2023 as provided

u/s. 253(3) of the Act, but the appeal was filed on 27th March, 2024. The assessee has filed an application praying for condonation of delay and affidavit to that effect is also now filed(for which liberty was granted by the Bench) and which are placed on record in file. It was explained by the ld. counsel for the assessee in the application as well affidavit praying condonation of delay in filing this appeal with ITAT , that the assessee has not received the notices issued by the CIT(A) as the email ID given by the assessee was that of C.A. Shri Vikas Jain and the said CA did not communicated to the assessee about the notices being issued by the CIT(A) w.r.t. hearing before the ld. CIT(A). It was also submitted that the order was passed by ld. CIT(A) on 8th May, 2023 and the same was also not communicated by the said CA to the assessee , and the CIT(A) might have sent the notices as well as the appellate order to the email address of the CA, Vikas Jain, as given in Form No. 35 but the said notices and appellate order were not communicated to the assessee by the said CA. The said application as well affidavit are placed on record in file. The assessee has also produced letter issued by Bank of Baroda dated 22nd March, 2024, (DHARMA/GEN/O&S/2023/10/17/1) in which the bank has stated about the attachment order dated 06.10.2023(ITBA/COM/F/17/202324/1056825925) issued by the Income Tax Department attaching the bank account of the assessee, wherein the bank account of the

assessee was attached and the assessee , which was notified by the Bank to the assessee vide communication dated 22.03.2024. Thus it is claimed that assessee came to know about the appellate order passed by ld. CIT(A) only when the bank account was attached by the Income Tax Department and communicated to the assessee by the Bank on 22.03.2024. The assessee claimed that it immediately took steps to file appeal of the assessee with ITAT which was then filed on 27.03.2024. Thus, the assessee prayed that the delay in filing this appeal with ITAT be condoned and the appeal be heard on merits. The ld. DR submitted that the appeal was filed belated, but ld Sr. DR left the matter to the discretion of the Bench regarding condonation of delay. I have considered the contention of both the parties and perused the material on record. I have observed that the ld. CIT(A) issued the notices to the assessee but there is no mention about the mode of issuance of notice as well service of the notices in the impugned appellate order. Reference is drawn to the provisions of the section 282. It is incumbent on Revenue to serve the notice of hearing on the assessee. The assessee has filed an affidavit as well in an application filed praying for condonation of delay that the chartered accountant, Shri Vikas Jain, email ID was given in Form No. 35 , and said CA did not hand over notices as well appellate order of ld. CIT(A) to the assessee . The assessee came to know of the appellate

order passed by Id. CIT(A) only when the assessee was notified by Bank of Baroda about the attachment of bank account of the assessee by Income tax department on 22.03.2024 and then immediately steps were taken to file the appeal and the appeal stood filed with ITAT on 27th March 2024 i.e. within 5 days. Keeping in view the entire facts and circumstances of the case and in the interest of justice, I hold that the assessee has shown sufficient and reasonable cause for filing this appeal belatedly by 265 days beyond the time stipulated u/s 253(3) of the 1961 Act . I donot find any malafide on the part of the assessee in filing this appeal belatedly by the assessee by 265 days. If the technicalities are pitted against the substantial justice, the courts will lean towards advancement of substantial justice unless the malafide is at writ-large on the part of the assessee. I do not find any malafide on the part of the assessee in filing this appeal belatedly as assessee is not likely to gain by filing this appeal late beyond the time prescribed u/s 253(3). I condone the delay of 265 days in filing this appeal belatedly by the assessee before ITAT beyond the time stipulated u/s 253(3), and I proceed to adjudicate this appeal on merit. Reference is drawn to the decision of Hon'ble Supreme Court in the case of **Collector of Land Acquisition, Anantnag v. Mst. Katiji (1987 AIR 1353(SC))**. Thus, I admit this appeal and proceed to adjudicate this appeal on merit.

6. On merits, the ld. Counsel for the assessee submitted that the ld. CIT(A) has passed a cryptic non speaking non reasoned order ex-parte in limine without deciding the issues in appeal on merits. The ld. Counsel for the assessee submitted that the appellate order passed by ld CIT(A) is not in compliance with the provisions of Section 250(6). The prayers were made to set aside the appellate order passed by ld. CIT(A) and restore the matter back to the file of ld. CIT(A) for fresh adjudication of the issues on merits in the appeal. The ld. Departmental Representative on the other hand submitted that the notice has been issued to the assessee by ld. CIT(A) , but the assessee did not comply with the directions of ld. CIT(A). The assessee has specifically raised ground no. 3 before the Tribunal in which it is specifically stated that the ex-parte order has been passed by ld. CIT(A) without considering the statement of fact filed by the assessee before ld. CIT(A). Ld. Departmental Representative could not controvert the said position and further submitted that matter can go back to the file of ld. CIT(A) for fresh adjudication. The ld. Sr DR fairly submitted that the appellate order passed by ld. CIT(A) is cryptic non speaking order without deciding the issues on merits and the same can be set aside to the file of ld. CIT(A) for denovo adjudication of the appeal of the assessee.

7. I have considered the contention of both the parties and perused the material on record. I have observed that ld. CIT(A) has passed a cryptic non speaking non reasoned order ex-parte in limine without deciding the issues in appeal on merits. I observed that ld. CIT(A) has dismissed the appeal of the assessee by upholding the assessment order passed by the AO, as assessee did not comply with the notices issued by ld. CIT(A). The ld. CIT(A) has not specified the mode of issuance of notice of hearing nor specified that the notices issued were served on the assessee. The proceedings were conducted by ld. CIT(A) under faceless scheme of adjudication of appeal. The ld. CIT(A) has simply confirmed the order of the Assessing Officer, and dismissed the appeal of the assessee on the grounds that the assessee has not responded to the notices of hearing issued by ld. CIT(A). However, ld. CIT(A) has not given his independent reasoning on merits of the issue arising in the appeal while dismissing the appeal of the assessee. I have observed that the ld. CIT(A) has passed appellate order without deciding the issues on merit. The power of ld. CIT(A) are co-terminus with the power of Assessing Officer which even includes power of enhancement(Section 251(1)(a)). The ld. CIT(A) is required to adjudicate the issues on merit in accordance with law , as is provided u/s. 250(6). The ld. CIT(A) has to state point for determination, his reasons for decision and the decision thereof as provided u/s 250(6). The

assessee in statement of fact filed before Id. CIT(A) has claimed that he is agriculturist, and is also doing business of selling milk and doing business of trading. The assessee has also claimed that the addition of Rs. 11,00,000/- was made on account of cash deposits in the bank out of which cash of Rs. 6,00,000 was withdrawn from the bank and was re-deposited in the bank of earlier cash withdrawals. The assessee has also claimed that cash deposits were from past savings .The assessee also challenged on legal ground as to reopening of the assessment by Revenue u/s 147 of the Act. The assessee has also stated that he has availed presumptive scheme of taxation u/s 44AD. The Id. CIT(A) did not decided on these and other issues raised by the assessee in its appeal filed with Id. CIT(A). The powers of Id. CIT(A) are co-terminus with the powers of the AO including power of enhancement(Section 251(1)(a). The CIT(A) has power to make such inquiries as he thinks fit and may also direct AO to make such enquiries and report to Id CIT(A), as is provided u/s 250(4). The CIT(A) could have issued summons u/s. 131 to the assessee or could have called for information from third parties u/s. 133(6) , in case there is non-compliance on the part of the assessee. The Id. CIT(A) could have called for the assessment records, before adjudicating appeal of the assessee. There are other powers vested with Id. CIT(A) as is provided under the 1961 Act. The Id. CIT(A) has not rebutted the claim of the assessee, but

dismissed the appeal of the assessee on ground of non prosecution. The ld. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as ld CIT(A) is required to pass reasoned and speaking order on merits in accordance with law. The appellate order passed by ld. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by ld. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issue are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of ld. CIT(A) in deciding the issues. If the ld. CIT(A) simply dismiss the appeal merely because the assessee did not appear before ld. CIT(A) or did not comply with the notices of hearing in limine without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also higher appellate authorities will be deprived to see what weighed in the mind of the ld. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues

on merits and shall be a non speaking order. In the present case, it is observed that ld. CIT(A) has dismissed the appeal of the assessee ex-parte without deciding the issues arising in the appeal before him on merits by passing a cryptic non speaking and non reasoned order, and hence the appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely stating the assessment order passed by AO is upheld , and that the assessee has not submitted details/documents or the assessee did not appear/or complied with notice of hearing, is not sufficient to dismiss the appeal of the assessee in limine without deciding the issues arising in the appeal on merits . It is equally true that the assessee also did not complied with the notices issued by ld. CIT(A) and did not file the requisite details/documents to support his contentions. Under these facts and circumstances and fairness to both the parties, and in the interest of justice, the appellate order passed by ld. CIT(A) is set aside and the matter can go back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. The ld. CIT(A) shall pass the order in compliance with the provision of section 250(6) of the Act on merit in accordance with law, in set aside proceedings ,after giving opportunity to both the parties in compliance with principles of natural justice. The assessee on his part is also directed to

comply with the direction/notices of CIT(A) , and in case of failure of the assessee, the ld. CIT(A) shall be free to pass such order as deemed fit ex-parte in accordance with law on merits and after complying with the provisions of section 250(6) of the Act. Thus, the appeal of the assessee is allowed for statistical purposes and the matter is restored back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law. I clarify that I have not commented on the merits of the issues in the appeal. Thus, the appeal of the assessee is allowed for statistical purposes. I order accordingly.

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

Order pronounced in the open court on 24-06-2024
at the Conclusion of the hearing and reduced to writing and
signed on 26th June, 2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated :26/06/2024

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