

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA No. 269/Ahd/2024
Assessment Year 2016-17**

Mr. Ketan Arvindbhai Patel, Satak Chakla, Dabhoulvali Bhagol, Village Sojitra, Dist: Anand, Gujarat- 387240 PAN: AOMPP9033J (Appellant)	v.	The Income Tax Officer, Ward-2, Anand, Gujarat (Respondent)
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Assessee by: Shri Kedar Vyas, A.R.
Revenue by: Shri N.J. Vyas, Sr. D.R.

Date of hearing : 27-06-2024
Date of pronouncement : 27-06-2024 (Order
signed on 8th July, 2024)

आदेश/ORDER

This appeal in ITA No. 269/Ahd/2024 for assessment year 2016-17 has been filed by the Assessee with Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad against the appellate order dated 20-12-2023 passed by Id. Commissioner of Income-Tax(Appeals), NFAC, Delhi (vide DIN

and Order No. ITBA/NFAC/S/250/2023-24/ 1058916708(1)), which in turn has arisen from the assessment order dated 06.12.2018 passed by Id. Assessing Officer u/s. 144 dated 06-12-2018(vide Order No. ITBA/AST/S/144/2018-19/1014058750(1)).

2. The grounds of appeal raised by the assessee in Memo of appeal filed with Income Tax Appellate Tribunal, Ahmedabad, Bench, Ahmedabad , reads as under:-

"1. Order is against Principle of Natural Justice. The impugned order by learned CIT(A) is in clear violation of principle of Natural justice. The order is dated 20/12/2023 which has not taken into consideration our detailed response on 08/12/2023 for Remand Report. Screen shot indicating sent reply is attached herewith. Remand report dated 17/07/2023 was given to assessee for making comment by notice u/s 250 issued on 21/11/2023 (After 4 month). Due date for answer was 29/11/2023. On 29/11/2023 the assessee had requested for adjournment till 10/12/2023. (Which was well within our right) On 08/12/2023 assessee had submitted his full reply. The Order is passed on 20/12/2023 So at the time of passing the order our detail Submission/reply was available on record yet the learned CIT(A) has not taken that into consideration which is clearly against the principle of Natural Justice.

2. The order is defective in Order dated on 20/12/2023 on page no 11 point no 4.3 CIT(A) has mentioned that no reply is furnished for remand report which is factually incorrect. In reply to remand report we have given point by point rebuttal of AO contentions and have also given information that our Gross agriculture Income is Rs.562564, Net Agriculture Income is Rs.343180 and income from other sources is Rs. 183373 (174850 Misc Income connected to Agriculture Activity+8523 Interest from saving bank account) which was asked by him. But learned CIT(A) has not taken any thing into consideration which is against the principle of Natural Justice and such order should be set aside.

*3. Order has overlooked legal provision of section 139(5)
In the impugned order in para 4.4 the learned CIT (A) has put much emphases on not filling revised return for the concern assessment year 2016-2017. But in doing so learned CIT(A) has totally overlooked the provisions of Section 139(5) which governs the scheme of Revised Return. The original return was filed on*

19/08/2017. In other words the original return was belated return u/s 139(4). Till Assessment year 2016-2017 Belated return were not allowed to be revised. The law does not expect us to do LEX NON COGIT AD IMPOSSIBILIA (Law does not compel you to do any thing which is Impossible) From assessment year 2017-2018 law permitted to revise the belated returns and accordingly returns for subsequent assessment year 2017-2018 and 2018- 2019 were revised by other tax consultant.

4. Change of Tax Consultant-

Here I would like to mentioned that due to mistake of tax consultant Pankaj Shah all this has happened Assesse has changed his consultant and Advocate has revised return for subsequent years. Change of Tax Consultant and declaration of previous tax consultant are also mentioned in original Appeal Memo (Form No 35)

5. Order is defective in law as it is against Guide lines of Limited Scrutiny
This case was selected for limited scrutiny through CASS to Verify only one issue- Agriculture Income as compared to the Total income. So the issue was to verify the large agriculture Income. The assessee was having his bank account jointly with his father. As We had nothing to hide we had given copy Bank Pass Book. The learned CIT(A) on basis of Remand Report has stated that Rs.57,67,192/- has been credited in this joint account which remains unverifiable. This clearly shows that the learned CIT(A) has travelled beyond the scope which was flagged in the limited scrutiny which is clearly against the guide lines of limited scrutiny. It seems that this has diverted main cause. The learned CIT(A) has issued his order on this point which was just not the issue under consideration. The amount deposited in Saving Bank Account are realization amount of various deposits of father of assessee (With Deposit nos mentioned

6. Not a Speaking Order

The learned CIT (A) is expected to evaluate the evidences independently, draw his own conclusion and form an independent opinion and issue a speaking order. In the Impugned order the learned CIT (A) has entirely relied on the remand report and has not evaluated some of the very crucial ground like

1/ Breach of territorial jurisdiction (Ground no 1).

2/ Refusal to grant time after changing to new tax consultant (Ground 3)

3/Absence of IT Practitioner (Ground No 2)

Thus the learned CIT(A) has not just touched some of the important grounds in the appeal memo (Which were supported by Apex Court's judgments also) so the order is defective in law and liable to be set aside."

3. The brief facts of the case are that the assessee filed return of income on 19-08-2017 declaring total income of Rs. 1,74,850/-. The same was processed by CPC u/s. 143(1). The case of the assessee was selected for framing limited scrutiny through CASS to verify the issue of 'Large agricultural income as compared to total income'. Statutory notices u/s. 143(2) and 142(1) were issued by the AO wherein the assessee was asked to submit details and evidences to substantiate agricultural income, but the assessee did not reply to the aforesaid notices. Show cause notice for penalty u/s 271(1)(b) read with Section 274 dated 13.10.2018 was issued by the AO to the assessee , but the assessee did not reply to the said show cause notice. Further a reminder was issued by the Assessing Officer on 14-11-2018 , but the assessee did not respond to the said reminder notice also. Finally, the show cause notice was issued by the Assessing Officer on 20-11-2018 to the assessee , and the assessee was requested to show cause as under:-

"Please refer to the assessment proceedings in your case for the above mentioned assessment year. In respect of this, vide this office letter dated 22/10/2018, you were requested to furnish certain details/evidences/explanation. You were required to respond this letter, on or before 26/10/2018. As you had not furnished the details called for, a reminder letter was also issued on 14/11/2018. However it seems that you have not responded till date. Considering the time barring nature of your assessment and your non-compliant attitude, the undersigned has no

option but to finalize your assessment as per the provision of section 144 of the I. T. Act. However, before taking such extreme action, you are being awarded an opportunity to submit as under:

"As You have not furnished the details called for and substantiated your claim of the exempt income of Rs,25,80,000/- claimed as Agriculture Income should not be considered as your income from unexplained sources and be added to your returned income under the head, Income from Other Sources"

Your reply should reach this office on or before 26/11/2018. Please note that if you do not reply to this notice also, it will be presumed that you have nothing to submit and your assessment will be finalized on basis of material available on record and in the manner mentioned above."

3.2 But the assessee again did not responded to the aforesaid show cause notice dated 20.11.2018. At this stage , when the matter was getting time barred, the assessee requested to provide more time, by submitting before AO as under:

"Sir, First of all deep sorry for not answering all these notices and not making any submission. I have received your notice dated 20.11.2018 on 25.11.2018. Only Now I have come to know that my legal representative has not made any submission and has not responded to your notices. I have given him all the bills and other expenditure details to submit before you. Today after great difficulty we have obtained our e filing portal password from him. On opening the account we have come to know the real picture . I have changed him. I assure that I have all the evidences and documents to prove my exempt income for the said previous year 2015-16. Since all the documents are with him we are trying to get them back from him. Under this circumstances I humbly request you to provide me time of 7 days (upto 9th December) to prove my innocence and genuineness of my agricultural activity. For the sake of Natural Justice kindly consider my request and give me time of 7 days"

3.3 The Assessing Officer observed that the assessee is adopting a strategy to delay the matter so that the Assessing Officer does not get the chance to verify/investigate. The Assessing Officer framed the assessment order vide

order dated 06th December, 2018 passed u/s 144 by holding that the assessee has failed to prove genuineness of the agricultural income of Rs. 25,80,000/- which stood added by the Assessing Officer to be the income of the assessee from unexplained sources under the head 'Income from other sources'.

4. Aggrieved, the assessee filed first appeal with Id. CIT(A). During appellate proceedings before Id. CIT(A), the assessee submitted its written submissions. The assessee also challenged the territorial jurisdiction of the AO, Anand to frame assessment against the assessee, while as per the assessee, AO, Petlad had jurisdiction to frame assessment against the assessee. The assessee also filed additional evidences before the Id. CIT(A) under Rule 46A of the Income-tax Rules, 1962. The Id. CIT(A) called for Remand Report from the AO. The Assessing Officer furnished the Remand Report before the CIT(A) as under:-

"In this case, assessment was completed u/s. 144 on 06-12-2018 after giving the assessee an opportunity to be heard. But for the reasons known to him, assessee has not replied to any of the notices. Later on 04th Feb, 2020, the same was rectified and the demand payable was increased to 12,91,484/-.

This is a case where additional evidences are produced under Rule 46A (1) of the Income tax Rules, 1962 has been submitted at the doorsteps of CIT(A) which could have been made available to the faceless assessing officer. Still, the remand report on issues raised vide Form No.35 and assessee's submission is submitted as under:

1. The assessee has submitted in Form No. 35 that, his only source of Income is 'Farming'. However, in the returns of income filed by the assessee, he has declared Income from Other Sources also (amounting to Rs. 1,83,373, including interest other than interest on securities amounting to Rs. 8,523/-.

2. The assessee has stated that the person named Shri Pankajbhai Shah who was entrusted by him to file the returns of income, had fled the returns with very high and inflated Income. He has stated that all the Notices issued by the department had been handed over to the same person, however he had not responded or replied to pay of the notices. The assessee has also stated that he had come to

know of the non-submission of responses only when he was issued with the final show cause notice for assessment. As per column 12.1 of Form 35, the assessee has submitted a declaration by Shri Pankajbhai Shah, the person who he entrusted his return and assessment proceedings with, however, no such attachment is shown as filed by the assessee along with Form No.35 or no such attachment is available in ITBA as uploaded by the CIT(Appeals). Hence, it is not able to be commented on.

2.1 This office has verified the letter issued by Shri Pankajbhai Shah on a plain paper that, the income shown in the return in Part-B-TI is very high but not made any statement that what was the original amount of Agricultural. Further, since Shri Pankajbhai Shah has not provided any details regarding his address or any contact e-mail id or mobile number, nothing could be ascertained further. The declaration made available to NeFAC, CIT(A) is also not attested by a notary too. In such a condition, this office can't vouch for its validity And this office strongly object that, the same must not be entertained.

3. As per para 1 of the assessee's submission filed in response to posting notice u/s 250 of the Income-tax Act, issued on 28.12.2020, the assessee has challenged that the Assessing Officer has breached the territorial Jurisdiction of the case and detailed submission is said to have made in Form No. 35. However, no such ground is raised as per Form No. 35. The assessee is permanently residing in Sojitra, Anand District. During the period of completion of assessment, the cases with names starting by the Alphabet "K of Anand district falls within the territorial jurisdiction of Income tax Officer, Ward-2, Anand. Hence, there is no point in challenging the jurisdiction of the Assessing Officer, which could be mainly a mechanical reply by the assessee thus no comments are offered.

4. As per grounds 2 and 3 mentioned in the aforesaid letter, the assessee has stated that the following documents are submitted for consideration - (i) Bank pass book copy (Joint Account with Father), (ii) Land records indicating family land holding, (iii) Bills of Agriculture Income, and (iv) Declaration by Shri Pankajbhai Shah. However, why these details were submitted by the assessee has not been made clear The bills submitted by the assessee has been verified it is quite clear that these are bills created against now as they are freshly obtained from Radha Kishan Rice Mills & Pulse Mills. An attempt was made to obtain the details from Radha Kishan Rice Mills also remained futile and thus the bills amounting to Rs. 5,62,564/- is to be treated as fake and a created one. Again, Assessee has not claimed what should be his agricultural income even in the submission and just produced some bills to the CIT(A) to verify. This shows total negligence on the part of the assessee towards being an honest tax payer.

5. The assessee has stated that for the subsequent two assessment years, he had revised his returns of income as they also have been filed by Shri Pankajbhai

Shah with high and inflated income. This aspect is verified and found correct as under:

	AY 2017-18		AY 2018-19	
	Original R/I	Revised R/I	Original R/I	Revised R/I
Date of Filing	27-03-2018	04-12-2018	27-05-2018	04-12-2018
Total income (Rs.)	2,01,780	1,72,410	2,27,370	47,030
Agricultural income (Rs.)	28,90,000	4,20,406	32,10,000	3,78,450

6. *The assessee has stated that, he had no source of income other than farming and in Form No. 35, he has stated that, "in no way a farmer having 20 vigha of land can have agriculture income of Rs. 25,80,000/- as shown in IT return. To verify this contention, the details of crops cultivated by the assessee and his income and expenditure statement are essential, however, the assessee had not provided any such details in the return of income, Rs. 8,523/- is shown as Interest income and Rs. 1,74,850 is shown as "Other Income, the source of which is not mentioned. The assessee had not provided his statement of total income for the year, for verification*

7. *In Form No.35, the assessee has stated that he was holding 20 vigha of land (i.e. approximately 12 Acres) Land records indicating family land holding are attached to Form No. 35. The same has verified, but that doesn't give any value to the fact that assessee has what amount under the object head "agricultural Income". Not even once Assessee has quantified the details except to say that how can I earn 25,80,000 from 20 vigha land. In fact, it is not the duty of the department to say about it when the assessee himself has entered the amount in ITR. Assessee vide one of the ground clearly says that his absence at the time of Assessment was due to the fact that his legal representative was missing in action. What debarred the assessee now at the first appellate stage is anyone guess. Assessee has made 20% of tax payable and feels that, he can get immunity from paying any further tax at any time.*

8. *The bank account statement provided by the assessee is of an account maintained with Union Bank of India, jointly owned by him along with his father. Total credits in this bank account during the period from 01.04.2015 to 31.03.2016 comes to Rs.57,67,192. As stated by the assessee, his father has individual source of income, however, he has not stated whether the credits in this bank account belongs only to him or along with his father Hence, this aspect is also not verifiable.*

In view of the above, it is clear that assessee has neither co-operated during the assessment proceedings nor has produced enough evidences to overturn the addition made in the order, nor assessee has stated even now what should be the correct agricultural income during the assessment proceedings even after giving substantial time and opportunity. Assessee in his application has stated that he is a farmer and he has no knowledge of English and it would be injustice if proper opportunity is not given. Though I have personal sympathy towards the individual since there is no strong evidences other than the fact that, assessee has no land to generate such a huge agricultural Income. It is, prayed to your honour that the Grounds of Appeal of the assessee against the assessment may kindly be not entertained and rejected and the order passed by the Assessing Officer may, kindly be upheld"

4.2 The Ld. CIT(A) provided copy of Remand report to the assessee, and gave an opportunity to the assessee to submit his comments on the remand report , but the CIT(A) observed that the assessee has not submitted the same, and the ld. CIT(A) dismissed the appeal of the assessee vide appellate order dated 20.12.2023, by holding as under:-

"4.4. The issues were considered. Relevant assessment order, written submissions, remand report, relevant provisions of law were carefully perused. On perusal of the assessment order, it was found that the appellant declared Rs.25,80,000/- as agriculture income. The details/evidences etc. were sought during the assessment proceedings, but the appellant could not submit the same. During the appellate proceedings, a remand report received from the AO on additional evidence adduced states that Rs.57,67,192/- was found to be credited during F.Y. 2015-16 in the joint Union Bank Account of the appellant and his father. These deposits were found unverifiable by the AO. The important issue is that the appellant revised the figures of agriculture income in the revised return of income for subsequent years. But, for the year under consideration, the agriculture income was not revised. The reasons for the same were not given by the appellant. The remand report states that the appellant in his application stated that he is a farmer and he has no knowledge of English and it would be an injustice if proper opportunity is not given. The appellant was given ample opportunity to furnish evidence of correct agriculture income. However, the same was not furnished even during the appellate proceedings.

Taking pleas about the mistakes of his Tax practitioners during the, filing of his return is not acceptable as the same was revised through revised returns for subsequent years. But, the return for the A.Y. 2016-17 was not revised. Moreover,

even during the appellate proceedings, the appellant did not declare the so-called correct figure of agriculture income with which the figure of Rs.25,80,000/- he wanted to revise. This shows that the appellant has no concrete documentary evidence in this regard. In the absence of any material fact or any documentary evidence, there are no reasons to negate the findings of the AO in the assessment order. Hence, I am not inclined to interfere with the decision of the Assessing Officer. Accordingly, the above grounds of appeal are dismissed.”

5. Aggrieved , the assessee has filed second appeal with Tribunal. The assessee has filed paper book containing 78 pages which is placed on record in file. At the outset ld. counsel for the assessee submitted that the Assessing Officer has passed an assessment order dated 06-12-2018. It was submitted that the assessee has sought adjournment before the AO by filing request for adjournment on 02-12-2018 for a period of seven days i.e. upto 09th December, 2018 , and a copy of screen shot of ITBA seeking aforesaid adjournment is placed on record(Page 10/PB). The ld. counsel for the assessee submitted that the assessing officer did not grant the opportunity of 7 days i.e. up to 9th December, 2018, but hastened to pass an assessment order on 06-12-2018. The assessee submitted that the assessee filed additional evidences under Rule 46A of Income-tax Rules, 1962 before ld.CIT(A). Remand report was called by ld. CIT(A) from the AO. The copy of Remand Report was furnished to the assessee by ld. CIT(A). The assessee has filed comments before ld. CIT(A) w.r.t. Remand report of the AO on 08th December, 2023, but ld. CIT(A) has observed in its appellate order dated 20.12.2023 that the assessee has not given any comments on remand report which is factually incorrect, because the assessee has given response to the remand report on 08.12.2023 which is placed along with screen shot of ITBA in paper book at page 56-63. The ld. Counsel for the assessee also took us through the paper book to submit that the assessee is duly engaged in

the agricultural activity. It was submitted that it is due to mistake of the then ld. Counsel for the assessee that large agricultural income was shown without knowledge of the assessee. The net agricultural income is Rs. 3,43,180/- which is stated in response to Remand Report(Page 61/PB) , but the then ld. Counsel who filed Return of income showed agricultural income of Rs. 25,80,000/- erroneously. The Response to Remand Report is not considered by ld. CIT(A) while passing appellate order. The ld. Counsel for the assessee also submitted that since the proper opportunity is not provided by the CIT(A) as even the response to remand report has not been considered as well ld. AO did not provide proper and adequate opportunity as the adjournment application was filed on 02.12.2018 to grant adjournment till 09.12.2018 but the AO framed assessment order on 06.12.2018, the matter can go back to the file of ld. AO for framing denovo assessment. The assessee has filed copy of ITBA e-filing acknowledgement in which reply to remand report are placed as well adjournment filed on 02.12.2018 before the AO for seeking time till 09.12.2018 in giving reply, but the AO framed assessment on 06.12.2018. The ld. Sr. DR on the other hand submitted that matter can be set aside to the file of AO for denovo assessment.

6. I have considered rival contentions and perused the material on record. I have observed that the assessee filed return of income declaring income of Rs. 1,74,850/-. The case of the assessee was selected for framing limited scrutiny on the ground that the assessee has shown large agricultural income as compared to total income , during the assessment year under consideration. The assessee could not file details before the A.O. as it is claimed by the assessee that due to inaction by his counsel in filing

submissions before the AO as well misrepresentation made by his counsel , the submissions could not be filed before the AO. The assessee claimed that once he came to know of the same, the assessee immediately took up the matter and changed the counsel. The assessee claimed that he sought adjournment before the AO by filing a request letter on 02-12-2018 seeking adjournment for 7 days i.e. upto 09.12.2018 , but the A.O. did not gave adjournment but proceeded to frame assessment order on 06-12-2018 wherein the agricultural income of Rs. 25,80,000/- was held to be non-genuine and unexplained and stood added to the income of the assessee. The assessee filed first appeal with CIT(A). The assessee filed submissions before Id. CIT(A) as well additional evidences u/r 46A. The Id. CIT(A) called for remand report from the AO. The Id. CIT(A) gave copy of remand report to the assessee. The assessee filed response to Remand report on 8th December, 2023, but the same was not considered by the CIT(A) while passing appellate order dated 20.12.2023. The CIT(A) had given time to the assessee to file his response to the remand report till 29th Nov, 2023 and the assessee sought adjournment on 29.11.2023 and finally the assessee filed response to the remand report on 8th December, 2023. The appellate order passed by Id. CIT(A) is dated 20-12-2023 in which CIT(A) has stated that the assessee has not filed response to the Remand Report of the AO. The assessee has challenged before Id. CIT(A) the territorial jurisdiction of the AO, Anand to frame assessment, because as per the assessee, AO, Petlad has jurisdiction to frame assessment against the assessee. The Id. CIT(A) has not adjudicated this legal ground. The Id. CIT(A) has decided the appeal without considering replies of the assessee to Remand Report of the AO. During assessment, the assessee filed adjournment application on

02.12.2018 seeking adjournment till 09.12.2018 which was declined by the AO , and the assessment order was framed on 06.12.2018 although matter was getting time barred on 31.12.2018. Under the facts and circumstances and in the interest of justice and natural justice, I am of the considered view that the assessee was not granted proper opportunity of being heard by both the assessing officer as well as CIT(A) and the orders were passed in haste, and clearly it is visible that there is a breach of principles of natural justice on the part of the authorities, as the assessing officer refused to grant adjournment till 09-12-2018 but proceeded to pass assessment order on 06-12-2018, although in the application dated 02.12.2018 the assessee has elaborately explained reasons for non compliance of the notices issued by the AO on the earlier occasions. Similarly assessee filed response to Remand Report before the ld. CIT(A) on 8th December, 2023 but the said reply filed by the assessee was not considered by ld. CIT(A) while framing the appellate order dated 20-12-2023. It will be appropriate and proper in the interest of justice as also that both the parties are at consensus ad-idem that the matter can go back to the file of the AO for denovo assessment. I have also observed that the assessee has raised the issue of challenge to the territorial jurisdiction of the assessing officer to frame which has not been adjudicated by the ld. CIT(A). Thus, matter is remanded back to the AO for de-novo assessment, both on legal as well as factual aspects after giving proper opportunity to the assessee in accordance with law. The ld. AO shall pass speaking and reasoned order on the legal as well as factual matters raised by the assessee. The assessee is also directed to comply with the directions/notice of hearings issued by ld. AO. In case of the failure of the assessee to comply with directions/notices issued by the AO, the ld. AO

shall be free to pass assessment order exparte. I clarify that I have not commented on the merits of the issue arising in this appeal. In the result 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 27-06-2024 at the Conclusion of hearing and reduced to writing and signed on 08.07.2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated 08/07/2024

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