

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Shri Ramit Kochar, Accountant Member**

**ITA No. 518/Ahd/2024  
Assessment Year 2017-18**

Shri Nand Krishna Kumar Goswami, 38, Samarpan Bunglows, B/h Satyagrah Chavni, Bodakdev, Ahmedabad-380015 Gujarat PAN: AHFPG0778D (Appellant)	v.	The Income Tax Officer, Ward-5(2)(5), Aayakar Bhawan(Vejalpur) Pralhadnagar Road, Ahmedabad- 380015, Gujarat (Respondent)
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**Assessee by:** None(Adjournment Application  
filed)  
**Revenue by:** Shri Sanjay Jain, Sr. D.R.

Date of hearing : 08-07-2024  
Date of pronouncement : 08-07-2024

**आदेश/ORDER**

This appeal in ITA No. 518/Ahd/2024 for assessment year 2017-18 filed by the assessee before the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad has arisen from the appellate order dated 31-01-2024 in DIN & Order No.

ITBA/NFAC/S/250/2023-24/1060329405(1) passed by ld. CIT(A),NFAC, New Delhi u/s 250 of the Income-tax Act, 1961, which in turn has arisen from the assessment order dated 30-11-2019 passed by the learned Assessing Officer u/s. 143(3) of the Income-tax Act, 1961(Order No. ITBA/AST/S/143(3)/2019-20/1021434474(1)).

2. The grounds of appeal raised by the assessee in Memo of Appeal filed with the ITAT, Ahmedabad Bench, Ahmedabad, reads as under:-

*1. In law and in the facts and circumstances of the appellant's case, the honourable Commissioner of Income Tax (appeals) has grossly erred in passing the appellate order.*

*2. In law and in the facts and circumstances of the appellant's case, the honourable Commissioner of Income Tax (appeals) has grossly erred in confirming addition to the extent of cash deposited in bank account which was cash on hand of Rs. 13,50,000/- as unexplained investment u/s 69A of the Act*

*3 In law and in the facts and circumstances of the appellant's case, the honourable Commissioner of Income Tax (appeals) has grossly erred in not allowing one more opportunity of being heard for the sake of natural justice.*

*4 Your appellant craves to add, alter and amend all or any of the grounds of appeal. The learned assessing officer has grossly erred in point of law and facts.”*

3. The brief facts of the case are that the assessee has e-filed its return of income for the assessment year 2017-18 u/s. 139 of the Act on 31.07.2017, declaring total income of Rs. 7,42,790/-, which return of income filed by the assessee was processed by Revenue u/s. 143(1) of the Act. The case of the assessee was selected for framing scrutiny assessment under CASS. Notice u/s. 143(2) was issued by the A.O. dated 13.08.2018 , and thereafter notices u/s. 142(1) was issued by A.O. from time to time during the course of assessment proceedings. The assessee filed replies/submissions before the A.O., and stated that assessee is not engaged in any business activity , rather the assessee is partner in partnership firm M/s. Taj Builders and Taj Enterprises. The assessee stated before the AO that the assessee has not derived any income from other sources . The A.O. observed on the basis of SFT filed by the banks that the assessee has made huge cash deposit of Specified Bank Notes(SBN's) in the denomination of Rs. 500 and Rs. 1000 in his bank account during the demonetization period between 09.11.2016 to 30.12.2016. The assessee was asked by the AO to furnish various details in respect thereof. The assessee stated that the cash deposit during demonetization period was made out of

own cash on hand accumulated during the course of time, and was earned out of business activities/income from other sources. Thus, the assessee stated that the cash deposits were made out of disclosed sources of income. The assessee furnished copies of statements of bank accounts and cash book prepared for the purpose of explaining the source of cash deposit. Form the details furnished , the A.O. observed that the assessee has deposited cash of Rs.13,50,000/- on 13.11.2016 in his bank account with SBI, Pedder Road Branch, Mumbai. The AO. Further issued notices u/s. 142(1) and SCN to the assessee , as the AO was not satisfied with the reply of the assessee. The AO had observed that the assessee has claimed opening cash balance of Rs. 11,59,842/- in the cash book for the period 01.04.2014 to 31.03.2017, which is not supported by any evidences. It was observed by the AO that the assessee has claimed to have made withdrawals from the bank , while the assessee is already holding huge opening cash balance. Thus, the AO was of the view that the cash book submitted by the assessee is not supported with the evidences. The assessee in response thereof made submissions before the AO claiming therein that he was having opening cash balance of Rs. 12,25,742/- on 13.11.2016 i.e. date of cash deposit in the bank account, which was claimed by the assessee to be mainly from cash withdrawal from the bank and disclosed sources of income. The assessee submitted

copies of bank statement before the AO. The assessee submitted that the assessee has maintained cash book for his personal purposes although the assessee is not under obligation to maintain it . The assessee enclosed copy of cash book before the AO. The assessee submitted that source of cash is only from withdrawals from the bank. The assessee claimed that the assessee is filing its return of income regularly .The assessee claimed that cash book reflect all his cash transactions including personal transaction. The assessee submitted before the AO that the assessee is a senior citizen , and large amount of cash is kept for mental peace which is kept regularly by the assessee as the assessee is in the habit of keeping large cash in hand . The assessee submitted that due to demonetization of SBN's announced by GOI, the assessee under compulsion deposited cash with the bank account. The assessee submitted that the assessee reported cash deposit in the ITD portal , and acknowledgement was enclosed before the AO. The assessee submitted that the said cash in hand was disclosed in the return of income filed for the previous years which can be verified from the said return of income filed by the assessee with the Revenue for earlier years, and the said return of income were all filed prior to demonetization. The assessee claimed that the said source of cash deposits were from withdrawals from the bank and from disclosed sources. The above observations were rejected

by the A.O. wherein the AO observed that the assessee has only provided bank statement of SBI for financial year 2016-17 , and with respect to other banks also i.e. ING Vysya Bank and Kotak Mahindra Bank , the assessee submitted bank statements for only part period. The AO rejected the contentions of the assessee by holding that the cash book submitted is a self serving document. The AO observed that the claim/contentions of the assessee that the cash in hand was disclosed in the earlier years return of income filed by the assessee with Revenue prior to demonetization was not correct, and the assessee had infact misrepresented before the Revenue. The AO observed that the assessee has claimed that he is partner in Taj Builder and Taj Enterprises, but as per return of income filed by these partnership firms, it did not reflect the capital balance of the assessee with the said two firms. Thus, the AO rejected the theory of the assessee that the sources of cash deposits were from withdrawals from the assessee's bank accounts and also rejected the claim of the assessee that the cash deposits during demonetization was from opening cash in hand held by it as per cash book submitted from 01.04.2014 to 31.03.2017, as there were withdrawals from bank even after claim of the assessee that he is holding huge cash in hand, and the AO held the cash book submitted by the assessee to be a self serving document which cash book stood rejected by the AO, leading to additions to the

tune of Rs. 13,50,000/- being made by the AO to the income of the assessee on account of cash deposits in the bank during demonetization period being unexplained investment u/s. 69A of the Act.

4. Aggrieved, the assessee filed first appeal with ld. CIT(A) who dismissed the appeal of the assessee ex-parte in limine without deciding the issue's arising in the appeal on merits, by simply upholding the assessment order passed by the AO. The ld. CIT(A) issued four notices to the assessee i.e. on 28.01.2021 , 03.07.2023 , 17.07.2023 and 04.08.2023. The assessee sought adjournment w.r.t. notices issued by the AO, but finally the adjournment was denied by ld. CIT(A) w.r.t. notice issued on 04.08.2023 for compliance on 17.08.2023 , and an ex-parte appellate order in limine without adjudicating the grounds raised by the assessee was passed by ld. CIT(A) on 31.01.2024, by upholding the assessment order passed by the AO. The ld. CIT(A) was of the view that the assessee is not interested in pursuing its appeal, and the assessment order was upheld by ld. CIT(A) based on grounds of appeal, statement of facts and assessment order, as the ld. CIT(A) was of the view that the assessee has not submitted any documentary evidences to support/substantiate its contentions/claim w.r.t. cash in hand held by the assessee vide its cash book.

5. Still aggrieved, the assessee has filed second appeal with the Tribunal. None appeared on behalf of the assessee when this appeal was called for hearing before the SMC Bench. Adjournment application is filed which is rejected as no reasons have been specified for seeking adjournment. The Ld. Sr. D.R. relied upon the decision of authorities below but fairly submitted that Ld. CIT(A) has not decided the issues on merits as the assessee did not comply with the notices issued by Ld. CIT(A).

6. I have considered the contentions of the Ld. Sr. D.R. and perused the material on record. I have observed that the assessee filed return of income for the impugned assessment year u/s 139 on 31.07.2017 declaring total income of Rs. 7,42,790/-, which was processed by Revenue u/s. 143(1) of the Act. The case was selected by Revenue for framing scrutiny assessment under CASS. Statutory notices u/s. 143(2) and 142(1) were issued by the A.O. during the course of assessment. The SCN was also issued by the AO to the assessee. There was cash deposit of Rs. 13,50,000/- vide SBN's by the assessee in his bank account maintained by the assessee with SBI Pedder Road Branch, Mumbai, on 13.11.2016 i.e. the period when there was demonetization announced by GOI. Thus, the A.O. called for the explanation

from the assessee w.r.t. cash of Rs. 13,50,000/- deposited during demonetization period. The assessee has claimed that he is partner in Partnership firms namely Taj Builders and Taj Enterprises. It is claimed that there is no other sources of income by the assessee, and the assessee is a Senior Citizen. The assessee claimed that the said partnership firms as well the assessee is regularly filing its return of income with Revenue .The assessee claimed that he is not required to maintain books of accounts, but for personal reasons has maintained his cash book which was filed before the AO from 01.04.2014 to 31.03.2017 , and claim was made that there was opening cash balance of Rs. 11,59,842/-. The assessee has claimed that as on the date of deposit of cash with the bank on 13.11.2016, there was cash in hand of Rs. 12,25,742/- . The assessee claimed that all the sources of cash is by way of withdrawal from his bank accounts maintained by the assessee with SBI, ING Vysya Bank and Kotak Mahindra Bank , and the sources of cash deposits were from declared and disclosed sources of income. The assessee has claimed that he filed copies of all bank statements with the AO during assessment proceedings. The assessee also claimed that the said cash in hand was declared by the assessee in its earlier return of income filed with Revenue, which return of income were all filed before the demonetization. The assessee claimed that he being senior

citizen is habitually keeping large cash on hand , and due to demonetization the same was deposited by the assessee in its bank account. It is also claimed that the said cash deposit was duly declared by the assessee in ITD portal , and copy of acknowledgement was filed. It was claimed that the said cash in hand which was deposited in the bank was out of declared sources of income. The A.O. rejected the claim of the assessee by holding that only bank statement in part was submitted by the assessee and also the assessee misrepresented before the AO that the said cash in hand was declared in the preceding years return of income filed with the Revenue. Further, the AO was of the view that the cash book submitted before the AO by the assessee is an afterthought and the same was a self serving document, which stood rejected by the AO. The assessee filed first appeal with Ld. CIT(A) and the assessee raised as many as 7 grounds of appeal ,and statement of facts was also filed before Ld. CIT(A). The Ld. CIT(A) issued notices to the assessee as outlined in the preceding para's of this order. The assessee sought adjournment , but ld. CIT(A) refused to grant adjournment and effectively, the proceedings were started by ld. CIT(A) by issuance of notice on 03.07.2023 and the final notice was issued by ld. CIT(A) on 04.08.2023 i.e. within almost one month the hearing stood closed by ld. CIT(A). No doubt, there was first notice issued by ld. CIT(A) on 28.01.2021 i.e. during Covid 19 period but thereafter no

proceedings took place until issuance of notice on 03.07.2023 by ld. CIT(A). Thus, within a short span of 03.07.2023 to 04.08.2023 i.e. effectively one month , the hearing in appeal proceedings were closed by ld. CIT(A) despite assessee seeking adjournment and time to file reply. Further, the ld. CIT(A) did not decided the issues arising in the appeal of assessee on merits, and dismissed the appeal of the assessee ex parte in limine on the ground of non-prosecution by holding that the assessee is not interested in persuing its appeal. It is clearly breach of principles of natural justice and is travesty of justice, if it is further seen in the context thereof that the Ld. CIT(A) did not adjudicate the grounds of appeal raised by the assessee on merits as is required u/s 250(6), and ld. CIT(A) hastened to dismiss the appeal of the assessee for non prosecution and holding that the assessee is not interested in pursuing its appeal. Serious prejudice is caused to the assessee by dismissal of the appeal by ld. CIT(A) in an hastened manner. Even, ld. CIT(A) did not deem it necessary and/or appropriate to call for assessment records from the AO to verify the contentions of the assessee that the cash deposited in the bank account was from the disclosed sources from withdrawals from the bank accounts and that the cash on hand was declared and disclosed in the return of income filed with the Revenue by the assessee prior to demonetization , and the appeal of the assessee was dismissed by ld. CIT(A) by

simply upholding the assessment order. The ld. CIT(A) did not issued any summons to the assessee u/s 131 to enforce attendance, nor called for bank statement directly from the bank by invoking powers u/s 133(6) nor called the information directly from Taj Builders and/or Taj Enterprises by invoking powers u/s 133(6) or issuing summons to its partners u/s 131, rather hastened to dismiss the appeal of the assessee ex-parte in limine without deciding the issues arising in the appeal on merits in accordance with law. Even the AO did not call for bank statement directly from the bank by invoking powers u/s 133(6) ( the AO has claimed that the assessee has filed part bank statements while the assessee is claiming that complete bank statements were filed) , nor the partners of Taj Builders or Taj Enterprises were examined u/s 131 by the AO. 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 CIT(A) has power to make such inquiries as he thinks fit and may also direct AO to make such enquiries and report to ld CIT(A), as is provided u/s 250(4), and to adjudicate issues arising in the appeal before him on merits in accordance with law. There are other powers

vested with ld. CIT(A) as is provided under the 1961 Act. The ld. CIT(A) has not rebutted the claim of the assessee, but dismissed the appeal of the assessee on ground of non compliance with the notices issued by ld. CIT(A) by holding that the assessee is not interested in prosecuting its appeal , and simply upheld the additions as were made by the AO. 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, but the appellate order passed by ld. CIT(A) is a non speaking and non reasoned appellate order which is not in compliance with provisions of Section 250(6), and is liable to be set aside. 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, ex-parte 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 . 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. The assessee is also equally responsible for its woes. Under these facts and circumstances and fairness of both the parties, in the interest of justice, the appellate order of 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 appellate 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 appellate 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 matter is restored back to the file of Id. 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 in ITA No. 518/Ahd/2024 for assessment year 2017-18 is allowed for statistical purposes.

Order pronounced on 08.07.2024 at Ahmedabad in Open Court on the conclusion of hearing in the presence of Id. Sr. DR , and reduced to writing and signed on 16.07.2024

**Sd/-**  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated 16/07/2024**

**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