

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.709, 710 to 712/Ahd/2024
Assessment Year : 2014-15 to 2017-18

Dinesh Dhirajlal Shah B/15, Padmavati Apartments Vikas Gruh Road Paldi, Ahmedabad. PAN : ADKPS 5775 P.	Vs	ITO, Ward-5(3)(1) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri Hardik Vora, Advocate
Revenue by:	Shri Krishikesh Hemant Patki, Sr.DR

सुनवाई की तारीख/Date of Hearing : 16/07/2024
घोषणा की तारीख /Date of Pronouncement: 23/07/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

These are four appeals filed by the assessee against the orders of the Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, New Delhi dated 19.2.2024 and 22.02.2024 under section 250 of the Income Tax Act, 1961 ("the Act" for short) for the assessment year 2014-15 to 2017-18

2. We note that all the appeals under challenge before the Tribunal are against the *ex parte* orders, raising a common issue in all i.e. against the addition made by the AO and confirmed by the Id.CIT(A) under section 68 of the Act. The addition in all the years relate to loans taken by the assessee from M/s 'Orange Tradex P.Ltd.' remaining unexplained. The quantum so added in all the years being as under:

Asst.Year 14-15 : Rs.1,58,19,116/-

Asst.Year 15-16	:	Rs.28,38,00,513/-
Asst.Year 16-17	:	Rs.75,35,00,296/-
Asst.Year 17-18	:	Rs.1,09,87,49,675/-

3. The facts leading to the addition, it was common ground, were identical. For the sake of convenience therefore the facts emerging out of the orders of the Revenue authorities for A.Y 14-15 are being elucidated. The assessee is an individual engaged in business of trading in chemical in the name of firm named "Arihant Corporation". He filed his return of income for the year under consideration declaring total income at Rs.2,00,918/-. The case of the assessee reopened u/s.147 of the Act and notice under section 148 of the Act was issued. The reason for reopening of the case of the assessee was that the Department had information that the assessee had received accommodation entry from paper/dummy company controlled and managed by 'Orange Tradex P.Ltd.' amounting to Rs.56,06,383/- for the year under consideration. In response to the notice under section 147 the assessee failed to file his return of income. The assessee furnished audited report and computation of total income and requested for additional time for further details to defend its case. Despite providing reasonable opportunity to the assessee, no valid and cogent reasons were furnished by the assessee to justify the accommodation entries and also failed to discharge the onus of proving genuineness of the transactions and creditworthiness of the credits from the "Orange Tradex P.Ltd." Therefore, the AO completed the assessment under section 147 read with section 144 read with section 144B of the Act making addition of Rs.56,06,383/- being unexplained entries.

4. This addition was challenged before the first appellate authority. The Id.CIT(A) noted that the assessee was given three opportunities to appear and prosecute his appeal. However, the assessee failed to appear during the appellate proceedings, and therefore, relying on the

observations of the AO, dismissed the appeal of the assessee for non-prosecution and thereby confirmed the action of the AO in making the impugned addition under section 68 of the Act. Aggrieved by the action of the Id.CIT(A), the assessee is now further appeal before the Tribunal.

5. The solitary prayer of the Ld.Counsel before us was that the appeals be restored back for reconsideration since both the authorities below had passed orders without giving due opportunity of hearing to the assessee.

6. With respect to the assessment orders passed, it was pointed out that in all cases orders were passed after issuing only two notices of hearing, which were responded to by the assessee by filing certain details and documents as noted in the orders. And thereafter without issuing any show cause notice the assessment orders were passed.

With respect to the orders passed by the Ld.CIT(A), it was pointed out that in appeals relating to A.Y 14-15 to 16-17 three notices were issued and the assessee sought adjournment on all occasions. That thereafter the Ld.CIT(A) passed his order without even dealing with the merits of the issue. It was also pointed out that in A.Y 2017-18 the assessee had responded to notice of hearing before the Ld.CIT(A) and filed his submissions in writing which, the order of the Ld.CIT(A) notes, were forwarded to the AO for his comments but none were received despite several reminders to the AO. That despite no comments received by the AO on the assessee's submissions, the Ld.CIT(A) still went on to uphold the order of the AO.

7. The learned counsel for the assessee submitted that the Revenue authorities' action in making additions under section 68 of the Act clearly violates the principles of natural justice, as the

assessee was not given a proper opportunity to be heard. Further, the Revenue's observations contradict the facts and material on record. The contention of the assessee are that transactions were genuine as the same have been carried out through banking channel and supported by documentary evidences; that no adverse inference was made by the Assessing Officer.

8. On the other hand, the ld.DR relied on the order of the Revenue authorities, though he was unable to controvert the factual averments of the ld.Counsel for the assessee as noted above.

9. In view of the above, it is patently clear that the orders passed by the authorities below is violative of the principles of natural justice. The order of the ld.CIT(A) for this reason alone needs to be set aside.

The issue needs reconsideration at the end of the AO and therefore all the appeals are restored back to the AO with the direction to frame assessment afresh after giving due opportunity of hearing to the assessee. The AO is directed to provide a fair and reasonable opportunity to the assessee to present all relevant evidence and submissions and thereafter pass a reasoned order after considering all materials on record.

10. In view of the above, all the four appeals of the assessee are treated as allowed for statistical purpose.

Order pronounced in the Court on 23rd July, 2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 23/07/2024

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Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**