

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.756/Ahd/2024
Assessment Year : 2017-18

Shree Gayatri Finance 7, Janta Bazar Borsad 388 540 Dist. Anand. PAN : ABCFS 7635 L	Vs	ITO, Ward-13(1) Petlad.
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(Applicant)	(Responent)
Assessee by :	Shri B.T. Thakkar, AR
Revenue by:	Shri Hrishikesh 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

This is assessee's appeal against the order of the Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, New Delhi dated 7.3.2024 passed under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) for the assessment year 2017-18

2. The grounds raised in the appeal are as under:

"1. The CIT(A) has erred in law in confirming the assessment order passed against a dissolved firm inspite of the fact that the fact of dissolved firm was within the knowledge of CIT(A). The assessment order being unlawful, the order may please be declared as void.

2. All the transactions based on which additions are made having been duly recorded in the books of account of ex partner

Pratikshaben N Patel, the entire addition amounts to taxing the same transaction twice.

3. Appeal decide without considering the submissions made, the order passed is bad in law and the same may be declared so.

4. The appeal order passed without giving the opportunity of personal hearing through VC is against the SOP of Department. It may please be decided so.”

3. Short facts sufficient for adjudication of the appeal is that, on the basis of the information received it was revealed to the AO that the assessee had deposited cash of Rs.1,31,60,850/- in two bank accounts maintained with the State Bank of India during FY 2016-17 relevant to the Asst.Year 2017-18 and earned interest thereon of Rs.1,02,567/-,but no return of income was filed by the assessee. Accordingly, the AO initiated proceedings under section 147 of the Act by issuing requisite notices. However, the assessee neither responded nor filed return in response to the notice. In view of the non-compliance of the assessee to the statutory notices, the AO assumed that the assessee had nothing to explain about the cash deposits found in the bank accounts and about the interest earned thereon and accordingly he treated the cash deposits of Rs.1,31,60,850/- as unexplained money under section 69A of the Act, and added the same to the total income of the assessee.

4. In appellate proceedings before the Id.CIT(A), the assessee filed an affidavit stating that initially the assessee firm was a partnership concern till 31.3.2010, and the firm got dissolved on 31.3.2010; that thereafter the assessee was running the business in the capacity as a proprietor from 1.4.2010 and filing returns regularly. The assessee further submitted that the bank had not updated PAN in their records, and the transactions of the proprietorship-firm was reported under

the PAN of dissolved firm; that the AO failed to notice change in the nature of the firm i.e. the AO treated the proprietorship firm of the assessee as a partnership firm, and therefore, the AO failed to notice correct nature of the transactions while framing the assessment. However, the Id.CIT(A) did not accept these contentions of the assessee, and noted that though the assessee was given a number of opportunities, but did not come forward and submit details/explanation in support of its case, and it therefore could be presumed that the assessee was not interested in pursuing his case prosecuting. The Id.CIT(A) accordingly dismissed the appeal of the assessee for non-compliance.

Aggrieved, the assessee is now in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee submitted that both the authorities below have passed the impugned ex parte orders without providing adequate opportunity of hearing; he pleaded that the assessee did not have access to the notices issued by the authorities, since they were sent on email. He also pointed out that assessment was framed on the assessee in the name of partnership firm; that it was informed to the AO that partnership firm had been dissolved way back in 2010, and the business thereafter was continued and run by the assessee as a proprietorship concern. Despite all these details with the Revenue authorities, and in the absence of non-consideration of the same, the AO was not justified in passing the impugned order. Accordingly, he prayed that the impugned orders be set aside and the assessee be given one more opportunity to defend its case, and for this purpose, the issue may be restored back to the AO for reconsideration.

On the other hand, the ld.DR supported the orders of the Revenue authorities.

6. After hearing both the sides, and on perusal of the impugned orders, we find that both the authorities below have passed the impugned orders *ex parte*, without providing an adequate opportunity for a hearing to the assessee. The ld.counsel submitted before us that the assessee did not have access to the notices issued by the authorities as they were sent via email and that the assessment was framed in the name of a partnership firm, despite it being informed to the AO that the partnership firm had been dissolved back in 2010, and the business was thereafter continued and run by the assessee as a proprietorship concern. Despite these details being with the Revenue authorities, the AO proceeded without considering these facts. We find substance and merit in this contention of the assessee, more so, when we notice from the e-proceedings response acknowledgement, the assessee did file various documentary evidences (there are about ten in numbers) as annexures during the first appellate proceedings, including replies, copy of dissolution deed, affidavits, bank statements etc., which in our opinion, were not duly considered by the ld.CIT(A) in the appropriate context.

Therefore, to address this genuine grievance of the assessee, and to ensure that the principles of natural justice are upheld, we are of the view that the assessee should be given one more opportunity, by setting aside the impugned orders.

The matter is remanded back to the AO for reconsideration. The AO shall provide the assessee with a fair opportunity to present all relevant documents and submissions. The AO shall thereafter pass a

fresh order in accordance with the law after considering all the submissions and evidence provided by the assessee.

7. In the result, appeal of the assessee is 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

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**