

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

श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.732/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2017-18

Sachin Kanubhai Thakkar 4, Jivraj Park Nr. Vejalpur Near State Bank of India Jivraj Park Ahmedabad - 380 051	<u>बनाम/</u> <u>v/s.</u>	The Income Tax Officer Ward-3(3)(7) Ahmedabad
स्थायी लेखा सं./PAN: ADUPT 1202 E		
(अपीलार्थी/ Appellant)	(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Aseem L. Thakkar, AR	
Revenue by :	Shri Ashok Kumar Suthar, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 22/07/2024
घोषणा की तारीख /Date of Pronouncement: 24/07/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal is filed by the Assessee against the order dated 31/12/2023 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "the Ld.CIT(A)" in short] arising out of the assessment order dated 29/11/2019 passed by the Assessing Officer (AO) under section 144 of the Income Tax

Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (AY) 2017-18.

Facts of the case:

2. The assessee filed his return of income for the. A.Y. 2017-18 on 30-10-2017 declaring the total income of Rs.3,92,090/-. The case was selected for scrutiny under CASS and notices u/s.143(2) and 142(2) of the Act were issued. Since no reply was received from the assessee, the AO issued notice u/s.133 to the banks and based on the bank statements received from the banks observed that there are entries of cash deposits in the said bank accounts. Since these deposits remained unexplained, the AO treated total cash deposits of Rs.63,29,000/- as unexplained money u/s 69A of the Act. The AO also added Rs.1,97,306/- declared as agriculture income under the head income from other sources for want of details and evidence.

2.1. The assessee filed an appeal before the Ld.CIT(A) which was delayed by 56 days. During the appellate proceedings, the CIT(A) issued notices on various dates, i.e. 30-01-2021, 11-10-2023, 02-11-2023, 10-11-2023 and 24-12-2023. Since no response was received, the Ld.CIT(A) dismissed the appeal confirming the addition.

2,2, Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us with following grounds of appeal:

"1. The Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in passing an Ex Parte Order dismissing the appeal without providing reasonable opportunity of being heard to the appellant. Hence the same being against the principles of natural justice and equity requires to be quashed.

2. *The Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in confirming the addition of Rs.63,29,000/- made by the Assessing Officer treating total cash deposits in bank during demonetisation period as alleged unexplained cash deposits u/s.69A of the I. T. Act, 1961 and taxing the same applying the provisions of Sec. 115BBE of the Act. In spite of the fact that the alleged cash deposits represent turnover of the appellant and the income of which has been covered in return of income filed by him.*
3. *The Appellant prays that the delay in filing of appeal may kindly be condoned.*
4. *The appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal."*

Condonation of delay

3. At the outset, we observed that there is a delay of 47 days in filing the appeal before us. The assessee has filed application for the condonation of delay along with an Affidavit stating the reasons for the delay. The Ld.Counsel for the assessee submitted that the assessee is engaged in the business of trading edible oil on a semi-wholesale and retail basis. The assessee had entrusted his tax filing formalities to a Chartered Accountant (CA). Since the assessee neither had an email nor was conversant with such technology, he provided the details of the CA as the communication details on the ITBA Portal. Consequently, the e-mail address on this portal was that of the CA.

4. The Ld.Counsel further submitted that the accounting work was assigned to one accountant who also undertook the responsibility of filing the return of income and other compliances through a Chartered

Accountant known to him. Since all the tax and accounting work was assigned to the accountant and the CA, the assessee was not fully aware of the pending Income Tax proceedings. The assessee became aware of the pending issues only when a penalty notice dated 15-03-2024 was received. Upon inquiry, the assessee became aware of the appeal having been dismissed primarily on account of noncompliance with the notices.

4.1. Thereafter, the assessee got involved in the pending issues, collected the papers from the former Chartered Accountant, and changed the communication details on the ITBA Portal. The assessee also engaged a new counsel who advised filing an appeal and, accordingly, the appeal was filed on 16-04-2024. The order of the Ld. CIT (A), NFAC was received on 31-12-2023. The appeal before the Hon. ITAT had to be filed on or before 01-03-2024. The appeal has come to be filed on 16-04-2024. Therefore, there is a marginal delay of 47 days in the filing of the appeal, which is on account of the reasons stated above.

4.2. The Ld.Counsel requested that the delay in filing the appeal was on account of the above bona-fide reasons and that the same was neither deliberate, intentional, nor casual. Therefore, the same may kindly be condoned.

4.3. Upon consideration of the facts and circumstances of the case and the submissions made by the Ld.Counsel, we are of the view that the reasons for the delay are bona-fide and genuine. The delay was neither deliberate nor intentional, but was due to the circumstances beyond the control of the assessee. Therefore, in the interest of justice, we condone the delay of 47

days in filing the appeal. The Ld.Departmental Representative did not object to our view. As a result, the application for condonation of delay is allowed.

On the grounds of appeal

5. The Ld.Counsel for the assessee submitted that the entire cash deposits in the bank accounts are treated as cash deposits during the period of demonetisation which is not correct. During the said period, only Rs.9,39,000/- were of old currency. He further stated that these cash deposits are relating to sale realization in cash and since the assessee could not receive the notices due to the reasons mentioned above, remained to be explained properly with the help of books of accounts and other evidence.

5.1. We find merit in the contention of the assessee that due to the lack of opportunity to explain the deposits and provide supporting evidence, the additions were confirmed by the Ld.CIT(A) without proper consideration.

5.2. In view of the above and in the interest of justice, we set aside the order of the Ld.CIT(A) and restore the matter to the file of the AO for fresh adjudication. The AO is directed to afford a reasonable opportunity to the assessee to present his case and to provide all necessary evidence to substantiate his claim regarding the cash deposits and the declared agricultural income. The assessee is also directed to fully co-operate with the AO during the proceedings by providing all necessary documents and explanations in a timely manner.

6. In the result, the appeal filed by the Assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 24 July, 2024 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 24/07/2024

टी.सी.नायर, व.नि.स।T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad