

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
&  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 965/Ahd/2023  
(निर्धारण वर्ष / Assessment Year : 2017-18)

<b>Income Tax Officer</b> Ward – 1(3)(1), Ahmedabad	<b>बनाम/ Vs.</b>	<b>Rajeshkumar Theophilbhai Christie</b> F-1, Delhiwala Block, Gayakwad Haveli, Raikhad, Ahmedabad, Gujarat, 380001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AKAPC0179L		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

अपीलार्थी ओर से /Appellant by :	Dr. Darsi Suman Ratnam, CIT.DR
प्रत्यर्थी की ओर से/Respondent by :	None

<b>Date of Hearing</b>	16/07/2024
<b>Date of Pronouncement</b>	25/07/2024

**ORDER**

**PER SHRI NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the Revenue against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 13.10.2023 for the Assessment Year 2017-18.

2. The brief facts of the case are that an information was received that the assessee had deposited cash of Rs.12,82,000/- in Development Credit Bank Ltd., Vejalpur, Ahmedabad during

the demonetization period. As no return of income was filed by the assessee for A.Y. 2017-18, a notice under Section 142(1) of the Act was issued by the AO on 09.03.2018 asking the assessee to file the return. There was no compliance to the notice. Thereafter, the AO had issued various notices to the assessee on different dates but no compliance was made by the assessee during the assessment proceeding. The AO made enquiry from the Bank under Section 133(6) of the Act and it was found that in the bank account maintained by the assessee total credit of Rs.7,30,32,566/- including total cash deposit of Rs.23,78,505/- was appearing. The AO had also made enquiries in respect of some of the persons whose details were appearing in the bank statement. In the absence of any compliance on the part of the assessee total credit of Rs.7,80,32,566/- appearing in the said bank account was considered as unexplained and added to the income u/s 69A of the Act. Accordingly, the assessment was completed under Section 144 of the Act on 30.11.2019 at total income of Rs.7,30,32,570/-.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided by the CIT(A) vide the impugned order. The Ld. CIT(A) has restricted the addition as made by the AO to Rs.37,91,586/- only.

4. Now, the Revenue is in appeal is before us.

5. The Revenue has taken the following grounds in this appeal:

*“1. CIT(A) has erred in sustaining only amount of Rs.37,91,586/ out of total addition made of Rs.7,30,32,570/ on account of cash deposits during demonetization period, so made u/s 69A r.w.s. 115BBE of the Act.*

*2. "On the facts and circumstances of the case and in law, the id CIT(A) erred in admitting additional evidences under Rule 46A of the IT. Rules, without calling for the A O's remand report on the additional evidences submitted during the appellate proceedings.”*

6. Dr. Darsi Suman Ratnam, CIT.DR explained that the addition as made by the AO was restricted by the Ld. CIT(A) on the basis of additional evidences as filed by the assessee in the course of appeal proceeding. He submitted that the Ld. CIT(A) was not correct in admitting additional evidences under Rule 46 of the Income Tax Rules without calling for a remand report from the AO. He explained that the Ld. CIT(A) had considered the submissions made before him for the first time without allowing any opportunity to the AO. Since, no compliance was made by the assessee before the AO, a remand report should have been called for on the submissions and additional evidences as brought on record in the course of appeal proceeding. On merits, the Ld. CIT-DR submitted that the Ld. CIT(A) was not correct in estimating commission income @ 2% only on the turnover as appearing in the bank account of the assessee. He has drawn our attention to the enquiries made by the AO in the course of assessment proceedings, from which it was found that the assessee was dealing in Board CNG Steel Cylinders. On the other hand, the Ld. CIT(A) had held that assessee was providing accommodation entry and on this basis he has estimated income

@ 2% only. The Ld. CIT.DR assailed the order of the Ld. CIT(A) for changing the business model of the assessee on the basis of submissions as made in the appeal proceeding, without allowing any opportunity to the AO.

7. On the part of the respondent, no compliance was made and nobody was present in the course of hearing.

8. We have carefully considered the submission of the Ld. CIT.DR and the materials available on record. It is true that no compliance was made by the assessee in the course of assessment proceeding in spite of numerous opportunities provided by the AO. At the same time, the addition of Rs.7,30,32,566/- as made by the AO in respect of the entire credit transactions appearing in the bank account of the assessee cannot be held as correct. The AO had conducted independent enquiry from one Shri Kishan Samatbhai Siju, Prop. of M/s AFE Trading Company in the course of assessment and it transpired therefrom that the assessee had made payment of Rs.83,76,698/- to Shri Kishan Samatbhai Siju, in respect of purchase of Board CNG Steel Cylinders. It was, thus, apparent from this evidence gathered in the course of assessment that the assessee was engaged in certain purchase and sale transactions. In view of this evidence on record, the addition of the entire credits in the bank account can't be held as correct.

9. The total cash deposit in the bank account of the assessee was to the extent of Rs.23,78,505/- only and addition to this

extent was sustained by the Ld. CIT(A). So, there is no dispute so far as this addition is concerned. On the balance turnover/ credit in the bank account of Rs.7,06,54,061/-, the Ld. CIT(A) estimated commission income @ 2% and sustained the addition to the extent of Rs.14,13,081/- only. This action of the Ld. CIT(A) also cannot be held as correct. When the AO had brought on record the evidence that the assessee was engaged in purchase and sale transactions, the Ld. CIT(A) was not correct in giving a finding that the assessee was providing accommodation entries and thereby estimating the income @ 2% only. The Ld. CIT(A) has relied upon fresh submissions and additional evidence filed by the assessee in the course of appeal proceeding for estimating the income in this manner. However, no opportunity was allowed to the AO to examine the fresh evidences brought on record by the assessee in the course of appeal proceeding. The Ld. CIT(A) has not acted in accordance with Rule 46A of the I.T. Rules and the applicability of the conditions as stipulated in the said Rule was not examined. The submission of the assessee that he was an entry provider and associate of one Mr. Jignesh Shah, was accepted by the Ld. CIT(A) without any verification. The Ld. CIT(A) was not correct in taking into account the evidences produced by the assessee without allowing any opportunity to the AO to examine and rebut the evidences and documents as brought on record before him. The matter is, therefore, set aside to the file of the Ld. CIT(A) with a direction to call for a remand report on the fresh submissions/evidences filed by the assessee in the

course of the appellate proceeding. The CIT(A) should also consider the finding of the AO in the course of assessment that the assessee was engaged in purchase and sale transactions of goods and, thereafter, decide the matter afresh.

10. In the result, appeal preferred by the Revenue is allowed for statistical purposes.

**This Order pronounced on 25/07/2024**

Sd/-  
(SIDDHARTHA NAUTIYAL)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 25/07/2024

Sd/-  
(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

S. K. SINHA

True Copy

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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad