

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

ITA No. 844/Ahd/2024
Assessment Year 2010-11

Danabhai Bharvad, Block No.15 Rajeshwar Bungalow, Besides Balaji Heights Harni Vadodara-390022 Gujarat PAN:BFBPB2754P (Appellant)	v.	The Income-tax Officer, Ward-1(3)(1), Vadodara- 390007, Gujarat (Respondent)
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Assessee by: Shri Mayur Thakkar, Advocate
Revenue by: Shri Sanjay Jain, Sr. D.R.

Date of hearing : 10-07-2024
Date of pronouncement : 26-07-2024

आदेश/ORDER

This appeal in ITA No.844/Ahd/2024 for assessment year 2010-11, filed by the assessee with Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad , has arisen from the appellate order dated 28-02-2024 passed by Id.

Commissioner of Income-tax(Appeals),NFAC, Delhi u/s. 250 of the Income-tax Act, 1961 in DIN & Order No. ITBA/NFAC/S/250/2023-24/1061662541(1), which appeal before Id. CIT(A) in turn has arisen from the assessment order dated 28-11-2017 passed by the Assessing Officer u/s. 144 r.w.s. 147 of the Income-tax Act 1961.

2. The grounds of appeal raised by the assessee in memo of appeal filed with Tribunal, reads as under:-

“1. The Assessing Officer and Commissioner Appeal have erred in law and in facts, in considering the cash deposit as un-explained cash deposit.

2. Commissioner Appeal has dismissed the appeal for a reason that the tax determined by AO was not paid without going into the merits of the case.

3. I pray to you to allow us to add, edit or delete any of the ground of appeal during hearing.”

3. The brief facts of the case are that as per the information available with Revenue, the assessee has made cash deposit of Rs.11,65,300/- in his saving bank account during the year under consideration. The assessee did not file return of income for the impugned assessment u/s 139. The reasons for reopening of the assessment were recorded by the AO, and the case of the assessee was reopened by the AO u/s 147. Notice u/s.148 of the Act was issued by the AO to the

assessee, on 25/03/2017 requiring assessee to file return of income in pursuance to notice u/s 148. The assessee did not file return of income in pursuance to notice issued by the AO u/s 148. Statutory notices u/s 142(1) was issued by the AO from time to time during the course of reassessment proceedings. In response thereof, none appeared on behalf of the assessee before the AO , and no submissions were filed by the assessee. The AO also invoked provisions of Section 133(6) and called for the bank statement directly from Bank of India, Savli Branch. There were three saving bank accounts maintained by the assessee with Bank of India , as follows:

Sr.No.	Bank Name	Branch	Account No.
1.	Bank of India	Samlaya, Tal. Slavi	250910100004603
2.	Bank of India	Samlaya, Tal. Salvi	250976310000013
3.	Bank of India	Samlaya, Tal. Savli	250976210000013

3.2 The AO observed that the assessee has total credits of Rs.23,70,635/- in the above three bank accounts, during the year under consideration. The AO proceeded to frame best judgment assessment u/s.144 of the Act, and issued Show cause notice (SCN) to the assessee. The assessee did not appear before the AO nor made any submissions in this regard. The AO finalised the best judgment assessment u/s 144 on the basis of material available on record , and brought to tax income of Rs. 21,20,635/- in the hands of the assessee being undisclosed income with respect to credits in the aforesaid three bank accounts maintained by the assessee

under the provisions of section 69 of the Act, vide reassessment order passed by the AO u/s 28.11.2017 u/s 144 read with Section 147 of the 1961 Act. There was an entry of returned cheque of Rs. 2,50,000/- on 09.02.2020 in the bank account, which was not added by the AO.

4. Aggrieved , the assessee filed first appeal with Ld.CIT(A), who dismissed the appeal of the assessee , vide appellate order dated 28.02.2024 , on the ground that the assessee has not paid advance tax on the assessed income, by invoking the provision of section 249(4) of the Act. The ld. CIT(A) observed that the assessee did not file return of income. The AO has passed assessment order u/s 144 read with Section 147. The notice of demand u/s 156 was issued by the AO , calling upon assessee to deposit Rs. 15,57,920/- . The assessee did not deposit the said demand in pursuance of notice of demand issued by the AO u/s 156. The ld. CIT(A) observed that even at the time of filing of the appeal before ld. CIT(A), the said demand remained unpaid. The assessee submitted before Ld. CIT(A) that the assessee is not liable to pay advance tax , as the assessee has earnings from agriculture income, and the assessee prayed for the admission of its appeal. This contention was rejected by Ld.CIT(A) on the ground that the AO has assessed the income under the head 'income from other sources' other than 'income from agriculture' . The ld.

CIT(A) dismissed the appeal of the assessee as not liable to be admitted and was dismissed as 'infructuous', as in view of ld. CIT(A), the assessee has not filed return of income as well not paid an amount equal to the amount of advance tax which was payable by the assessee.

5. The assessee filed second appeal with the Tribunal. The Ld.Counsel for the assessee at the outset submitted that the Ld.CIT(A) has dismissed the appeal of the assessee on the ground that the assessee has not deposited advance tax, and hence the appeal of the assessee before Ld. CIT(A) is not maintainable. It was submitted by Ld. Counsel for the assessee, that the assessee is farmer, and during the assessment proceedings ex-parte reassessment order was passed by the AO. It was submitted that no return of income was filed by the assessee on the bonafide belief that the assessee is not having taxable income and there is no liability to deposit advance tax. It was further submitted by ld. Counsel for the assessee that since the assessee was having agriculture income, no return of income was filed u/s.139 and 148 of the Act. It was also submitted that no return of income was filed for the earlier year also. The ld. Counsel for the assessee submitted that there was some delay in filing of the appeal before ld. CIT(A).

5.2.The Ld. Sr. DR submitted that the assessee did not filed any evidence of the earning of agriculture income before ld. CIT(A). It was submitted that the assessee did not file any written application before ld. CIT(A) requesting for exemption from depositing of advance tax as is contemplated u/s 249(4)(b).

5.3 At this point , the Ld.Counsel for the assessee submitted in rejoinder that in the statement of facts filed by the assessee before ld.CIT(A), the assessee has clearly stated that the assessee is having agriculture income.It was submitted that the assessee also enclosed/uploaded land records 7/12 and 8A , evidence of agricultural income and bank statement along with Form No. 35 filed with ld. CIT(A), which were additional evidences u/r 46A of Income-tax Rules, 1962(para 12 and 12.1 of Form no. 35). It was submitted that the assessee is an illiterate farmer , and he together with other family members of the family owns 60 Vighas of fertile and cultivable agricultural land at Villages Pratpanagar and Samlaya, Tal. Salvi. The assessee along with his family members is engaged in cultivation of the above agricultural land and various crops like cotton, jira , castor, rice and other food grains like wheat, jowar etc. are produced. In addition to these crops , vegetables are also produced. The assessee was not aware of the assessment proceedings which were decided ex-parte by the

AO, and it is only when the bank account was attached by the Income-tax department, the assessee became aware of the proceedings. The Ld.Counsel for the assessee relied on the decision of ITAT, Surat Bench in the case of Dishant Chimanbhai Mangroliya v. ITO, dated 30.04.2024, in ITA No.217/Srt/2024 dated 30/04/2024.

6. I have considered the contention of the both the parties and perused the materials available on record. I have observed that that the assessee has not filed its return of income u/s.139(1) of the Act. The case of the assessee was reopened by the AO based on the information available that there is a cash deposit of Rs.11,65,300/- in the saving bank account maintained by the assessee with Bank of India. The AO recorded reasons for reopening of the assessment, and notice was issued by the AO u/s.148 of the Act on 25.03.2017, requiring assessee to file return of income. The assessee did not file any return of income in pursuance to notice issued by the AO u/s 148 of the 1961 Act. The Statutory notices u/s.142(1) were issued by the AO from time to time during the course of reassessment proceedings, but there was no compliance on the part of the assessee . The AO invoked powers u/s 133(6) and called for bank statements directly from the Bank of India. The bank supplied the requisite bank

statements and the assessee was maintaining three bank accounts with Bank of India, Samlaya, Tal. Savli, as under:

Sr.No.	Bank Name	Branch	Account No.
1.	Bank of India	Samlaya, Tal. Slavi	250910100004603
2.	Bank of India	Samlaya, Tal. Salvi	250976310000013
3.	Bank of India	Samlaya, Tal. Savli	250976210000013

There were total deposit/credits of Rs. 23,70,635/- in the aforesaid three bank accounts maintained by the assessee. The AO invoked provisions of Section 144 of the Act and proceeded to frame best judgment assessment , and the show-cause notice(SCN) was issued by the AO to the assessee, but still there was no reply/response by the assessee. The AO framed best judgment assessment u/s.144 r.w.s 147 of the Act , wherein total credits in the aforesaid three saving bank accounts maintained by the assessee with Bank of India, Samlaya, Tal. Savli , to the tune of Rs.21,20,635/- were brought to tax as undisclosed income of the assessee. There was one cheque deposited by the assessee in the bank account but returned unpaid by the bank of Rs. 2,50,000/- in the bank account number 250910100004603 maintained by the assessee with Bank of India, Samlaya, Tal. Savli, which was not added by the AO to the income of the assessee. The assessee filed first appeal before Id. CIT(A) who dismissed the appeal of the assessee on the grounds that the assessee did not deposited the advance tax amount on the assessed

income, keeping in view provisions of Section 249(4)(b) of the Act. The assessee has claimed before Ld. CIT(A) in the statement of fact(SOF) filed that the assessee is not having any taxable income as the assessee is agriculturist/farmer having earnings of income from agriculture. The assessee claimed that he is not required to file return of income or to pay income-tax, and hence no return of income was filed u/s.139 and 148 of the Act, keeping in view that the assessee was having income from agriculture. The assessee has claimed to have uploaded/enclosed documents such as Land Records 7/12 and 8A as well evidence of agricultural income along with Form No. 35, as an additional evidences under Rule 46A of the 1962 Rules. The assessee has elaborately submitted in SOF filed with Form No. 35 that the assessee along with his family members holds 60 Vighas of fertile and cultivable agricultural land at Village Pratapnaga and Samlaya, Tal. Savli. The assessee has stated that the crops grown by the assessee along with family members were cotton, castor, jira, rice and other food grains such as wheat, jowar etc . These crops are sold in local markets and sales proceeds are received in cash , which stood deposited in the bank account maintained by the assessee with Bank of India. The assessee has also submitted before ld. CIT(A) that the assessee is having only income from agriculture and there is no tax liability of the assessee during the year under the consideration. The assessee has claimed

that he is illiterate and was not aware of the income tax reassessment proceedings going on with the AO u/s 147/148 in his case, and that is the reasons for his non compliances to the notices issued by the AO. It is also claimed that no notices as well issued by the AO, were received by the assessee. It is also claimed that only when the assessee's bank account was attached, the assessee came to know of the reassessment framed against him and tax demand raised by the AO. It is also claimed that even in the earlier years, the assessee was having agricultural income and no return of income was filed by the assessee. enjoying agriculture income . It is true that the assessee did not filed its return of income u/s 139 as well u/s 148. The reasons given by the assessee that being agriculturist he was not having any taxable income and/ or liability to pay income-tax, and there was no requirement to file return of income u/s 139. Be that it may be as it is subject to verification by authorities , but, in any case the assessee was required to file return of income in pursuance to notice u/s 148 issued by the AO. The assessee has submitted that he is an illiterate farmer/agriculturist and he was not knowing about the reassessment proceedings, and even notices were not received. It is only when the bank account is attached, the assessee came to know about the reassessment proceedings. The explanation furnished by the assessee are plausible

explanation. All the contentions and claims made by the assessee requires verification by the assessee. If the contentions of the assessee that since he was only having income from agriculture and some minor interest income from bank and no liability to pay income-tax and/or to file return of income u/s 139, are found to be true and correct, then in my considered view, there was no liability on the assessee to deposit advance tax keeping in view provisions of Section 10(1) of the 1961 Act. However, the assessee was liable to file return of income in pursuance to notice u/s 148. The language of Section 249(4)(b) is clear that when no return of income is filed by the tax-payer , then the appeal can only be admitted by ld. CIT(A) only when the tax-payer has paid an advance tax which was payable by him. Section 249(4)(b) is subject to proviso which empowers ld CIT(A) to exempt any tax-payer from the operation of Section 249(4)(b) , provided on an application made by the tax-payer , good and sufficient reasons are shown. In the instant case, no return of income is filed by the assessee but claim is made that there is no liability to pay tax and file return of income by the assessee, in view of the assessee having only income from agriculture and some minor income from interest from bank account. The assessee by filing its appeal before ld. CIT(A) in grounds of appeal as well Statement of Fact has claimed that there is no liability to pay tax and /or to file return of income u/s 139, in view of

assessee having mainly income from agriculture and some minor income from interest from bank. The assessee has challenged and disputed the additions made by the AO vide reassessment order passed u/s 147 r.w.s. 147, by treating the cash deposited in bank accounts as undisclosed income . If that contention of the assessee is true then, in my considered view, even if the AO has made the additions by treating the same as income from other sources other than income from agricultural activities which are now a disputed additions as the very basis of chargeability to tax of an exempt income is raised by the assessee will not debar the assessee by filing an appeal before Id. CIT(A) on the grounds that it is hit by Seciton 249(4)(b) keeping in view the proviso to Section 249(4)(b), as no adjudicating authorities are seized of the matter to adjudicate on the issue of the taxability of an income which is claimed to be an exempt income u/s 10(1), which got taxed owing to an exparte best judgment reassessment order u/s 144 read with Section 147 . Sufficient reasons for non appearance/non compliance before the AO by the assessee during reassessment proceedings , are also demonstrated by the assessee. Now, I set aside the appellate order passed by Id. CIT(A) and direct the Id. CIT(A) to make necessary preliminary enquiry as to the assessee's claim to have filed additional evidences before Id. CIT(A) by way of Land Records 7/12 and 8A, evidence of agricultural income etc., and if that

be found to be prima-facie true, then ld. CIT(A) shall admit the appeal as good and reasonable cause as are stipulated under proviso to Section 249(4)(b) is shown by the assessee to seek exemption from deposit of advance tax, before filing appeal with ld. CIT(A). The ld. CIT(A) shall give finding in writing on the claim of the assessee w.r.t. admission of appeal keeping in view provisions of Section 249(4)(b) read with proviso to Section 249(4)(b), by passing a reasoned and speaking order on this issue. If the ld. CIT(A) decides to admit the appeal of the assessee keeping in view provisions of Section 249(4)(b) read with proviso, then the ld. CIT(A) shall proceed to adjudicate the appeal of the assessee, on merits in accordance with law, by passing a speaking and reasoned order , keeping in view provisions of Section 250(6) of the 1961 Act. The ld. CIT(A) shall admit the additional evidences filed by the assessee, while adjudicating the appeal of the assessee. As per section 250(6), the CIT(A) has to state the points for determination, decision thereof and reasoning thereof. I clarify that I have not commented on the merits of the issue arising in the appeal. In the result, the appeal filed by the assessee is allowed for statistical purposes.

7. In the result, the appeal of the assessee in ITA No.844/Ahd/2024 for assessment year 2010-11 is allowed for statistical purposes.

8. Order pronounced in accordance with Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963 at Ahmedabad on 26.07.2024.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad : Dated: 26/07/2024

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