

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.689/SRT/2023

(Assessment Year: 2011-12)

(Physical Hearing)

Zahir Abdulhamid Belim, 5-6, Aman Park Society, Kholwad, Kathor, Dist – Surat - 394150	Vs.	The ITO, Ward -2(2)(5), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AKFPB9920M		
(Appellant)		(Respondent)

Appellant by	Shri Ketan Jagirdar, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	29/07/2024
Date of Pronouncement	27/08/2024

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee, emanates from the order passed under section 250 of the Income-tax Act [in short, 'the Act'] of the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [in short, 'the Ld. CIT(A)/NFAC'], dated 03.10.2023 for the assessment year (AY) 2011-12.

2. The grounds of appeal raised by the assessee are as follow:

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs.17,67,229/- of the Income Tax Act, 1961 on account of alleged unexplained deposits in Bank.

2. It is therefore prayed that addition made by the Assessing Officer and confirmed by CIT(A) may please be deleted.

3. Assessee craves leave to add, alter delete any ground(s) either before or in the course of hearing of the appeal."

3. The facts of the case in brief are that the assessee did not file his return of income for AY.2011-12. He was identified as a non-filer in ITD system. As per AIR information, assessee had deposited a cash of Rs.28,73,700/- in his bank account with Bank of India. The assessee was requested to submit explanation regarding the source of cash deposits. There was no reply to the above letter. Thereafter, information u/s 133(6) was called for which was also not responded to. Hence, after recording reasons and obtaining necessary approval, case was reopened and notice u/s 148 was issued to the assessee on 19.03.2018. There was no compliance to the notice u/s 148 of the Act. AO also mentioned in the order that there was also no compliance to the notice u/s 142(1) or to the show cause notice u/s 142(1). Hence, assessment order u/s 144 was passed by making addition of Rs.17,67,229/- based on credits in the bank statement maintained by assessee with Bank of India. The AO also initiated penalty proceedings u/s 271(1)(c) and 271(1)(b) of the Act.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). He had raised grounds on validity of reopening as well as merit of addition. The assessee filed written submission and various details before the CIT(A). It was stated that the information on basis of which reopening was initiated is erroneous. The notice u/s 148 was not served on the correct address. Therefore, none of the notices issued by AO have been replied to by the assessee. The assessee could know the fate of the proceedings because the bank account of assessee was attached due to demand raised by the department pursuant to the order u/s 144 r.w.s. 147 of the Act. The assessee challenged validity of reopening

u/s 147 and issue of notice u/s 148 of the Act. The assessee also furnished explanation regarding the deposits in the bank account. It was stated that assessee is engaged in the business of agriculture and is also an agent for automobiles during the year. It was also submitted that total income from all sources was below taxable limit and hence return of income was not filed. Since, the documents submitted before CIT(A) had not been submitted before the AO, the same were forwarded by the CIT(A) to AO for comment. The AO submitted remand report which is at para 5.1 of the appellate order. The AO submitted that reopening was based on information available with department and the assessment order was passed after considering the bank statement obtain u/s 133(6) of the Act. The assessee had not submitted any response in respect of the credit in the bank account. The comment of the assessee to the remand report is at page 14 to 16 of the appellate order. The assessee submitted that the AO has simply reiterated the statements in the assessment order. It was again submitted that the notices were issued in wrong address and assessee never received the same. After considering the assessment order, submission of the assessee, remand report of AO and reply of assessee to the remand report, the CIT(A) has given the decision at para 5 to 5.2 of the appellate order. The CIT(A) has stated that the reply of the assessee to the remand report is a general in nature and assessee has not made any effort to prove the source of cash deposit. The assessee had not produced any books of accounts, vouchers, sales of agricultural produce etc. in support of his contention of agricultural income. The CIT(A) further observed that the income may be below taxable limit but the assessee

had to explain the source of cash deposits before him. Due to failure of assessee to explain the source of cash deposits, the addition of AO was confirmed and the appeal was dismissed.

5. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before this Tribunal. The Learned Authorized Representative (Ld. AR) has filed two paper books, written submission and additional evidence. He prayed that the additional evidence may be admitted because assessee did not have opportunity to submit the same before AO and CIT(A). The Ld. AR of the assessee submitted that satisfaction to reopen u/s 147 of the Act by AO is without independently verifying the information and the evidence and without application of mind by the AO. The requisite documents and evidences relied upon for reopening assessment and making addition were not provided to the assessee. The notice u/s 148 was issued for reason of cash deposit of Rs.28,73,200/- but the addition was only Rs.17,67,229/- which was the total of entries in the credit side. Thus, addition was made without proper verification of bank statement. Every credit entry cannot be the income of assessee. The Ld. AR also submitted that the section under which addition was made has not been referred to in the order u/s 147 r.w.s. 144. The CIT(A) also dismissed the appeal without referring to the provisions of law under which addition was sustained. If it is presumed that addition is made u/s 68, 69 or 69A and 69B of the Act, such addition cannot be made as it is not based on books maintained by the assessee. The Ld. AR has also submitted a paper book on case laws both on validity of reopening and merit of the addition.

6. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) supported the order of Ld. CIT(A). He submitted that adequate opportunity of hearing has been granted to the assessee by AO but he failed to comply with various statutory notices and show cause notice. Hence, the assessee failed to explain the source of the deposit in the bank account. He also submitted that assessee failed to explain the source of such deposits before CIT(A). Hence, the appeal has been rightly dismissed by the CIT(A).

7. We have heard rival submission of both the parties and perused the material available on record. We have also deliberated on the decision relied upon by the Ld. AR. We find that the assessee had taken a specific ground regarding validity of reopening and issue of notice u/s 148 of the Act. It was stated in the ground that reopening was based on wrong information and without ascertaining the facts. It was also stated that the notice for reopening was issued on a wrong address and was not served upon the assessee. We have verified the record and find that this issue has not been decided by the Ld. CIT(A) in his appellate order. He has given the decision at para 5 to 5.2 (page 16 and 17) of the appellate order after considering submission of the assessee, remand report of AO and reply of assessee to the remand report. However, no discussion or decision on reopening has been made in the appellate order. Since, the issue, being jurisdictional in nature, goes to the root of the matter, we set aside the order of Ld. CIT(A) and direct him first to decide the issue of validity of reopening u/s 147 and issue of notice u/s 148 of the Act before proceeding to decide the issue on merit. The appellant has challenged the merit of addition by furnishing

information and relying on various decisions. He has also filed additional evidence and requested to admit the same by stating that the assessee did not have opportunity to submit the same before AO and Ld. CIT(A). We are not expressing any opinion on the merits of the issue which the Ld. CIT(A) shall consider after deciding the issue on reopening u/s 147 of the Act. He may decide admission of additional evidence as per law. The assessee should be given adequate opportunity of hearing. The assessee is also directed to be vigilant and submit all explanations and details as called for by the Ld. CIT(A) by not taking adjournment without valid reasons. For the statistical purpose, the appeal of the assessee is allowed.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 27/08/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 27/08/2024

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat