

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.472/SRT/2024

Assessment Year: (2012-13)

(Hybrid Hearing)

Manojkumar Thakorbbhai Bhavsar, 87, Sitaram Naar, Eru Char Rasta, Navsari - 396 446	Vs.	The ITO, Ward - 3, Navsari
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: ALWPB4261B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Sujesh C. Suratwala, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख /Date of Hearing	18/07/2024
घोषणा की तारीख /Date of Pronouncement	27/08/2024

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short, "CIT(A)"] u/s 250 of the Income-tax Act, 1961 (in short, "the Act") dated 19.04.2024 for assessment year (AY) 2012-13.

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

"1. The learned AO as well as CIT(A)/NFAC has erred in making addition of Rs.2,74,338/- towards credit card payment which is done for personal needs out of income earned and offered for tax during the year under consideration.

2. The learned AO as well as CIT(A)/NFAC has erred in making addition of Rs.5,40,845/- wrongly on the basis of receipt as per Form No.26AS. However, the actual income reflecting in Form No.26AS is Rs.2,70,423/- only. The salary received by the assessee during the year under consideration is reflecting in Form No.26AS. The assessee has shown salary income in his return of income filed for the year under consideration. Thus, the learned AO has made addition of Rs.5,40,845/- which is resulting in double taxation which is not justified, bad in-law. Hence, requires to be deleted.

3. The learned AO as well as CIT(A)/NFAC has erred in making addition of Rs.6,34,710/- towards cash deposit made in bank account which is received towards insurance premium paid on behalf of third party. Hence, the same is not an income of the assessee and not liable to tax.

4. The learned AO as well as CIT(A)/NFAC has erred in making addition of Rs.1,79,407/- towards other credit entries appearing in bank account of the assessee which are all explainable and not liable to tax.

5. The learned AO while passing the order u/s 144 not justified his legal position as a quasi-judicial in a manner that he has not given justice to the assessee by way of not allowing any relief on the basis of material available on records and making addition of entire amount.

6. The learned CIT(A)/NFAC without calling "Remand Report" from jurisdictional AO passed the order u/s 250 of the Act which is not justified his legal position as a quasi-judicial in a manner that he has not given justice to the assessee by way of not allowing any relief on the basis of material available on records and making addition of entire amount.

7. The learned AO as well as CIT(A)/NFAC erred in justifying opening the case on the basis of information that the assessee has not filed his return of income. In fact the assessee has duly filed his return of income for the year under consideration.

8. Your appellant is craving for reserve his right to make addition, alteration, modification or deletion of grounds of appeal."

3. Facts of the case, in brief, are that assessee filed his return of income for the AY.2012-13 on 24.03.2014. The Assessing Officer (in short, 'the AO') has, however, mentioned that assessee did not file his return of income. He reopened the case u/s 147 of the Act after recording the reasons for reopening and after taking necessary approval from the concern authority. Notice u/s 148 was issued on 28.03.2019. The assessee did not file return of income in response to the said notice. Thereafter, notices u/s 142(1) and show cause notice were issued to the assessee. The assessee did not file any details or explanation till the date of passing the order. Since the assessee offered no explanation about the nature and source of credit card payment, receipts shown as per 26AS, cash deposits and credit entries in the savings bank account, AO added Rs.16,29,300/- and determined total income at Rs.16,29,300/- u/s 144 r.w.s. 147 of the Act. He also initiated penalty proceedings

u/s 271(1)(c) of the Act. Aggrieved by the order of AO, the assessee filed appeal before CIT(A).

3.1 The CIT(A) condoned the delay of 50 days in filing the appeal and decided the appeal based on the submission of assessee which were uploaded on 13.03.2023, 11.10.2023 and 04.04.2024 in the ITBA portal by the assessee. The assessee had given explanation on each of the issues i.e., (i) credit card payment – Rs.2,74,335/-, (ii) receipt as per 26AS – Rs.5,40,845/-, (iii) cash deposit in SB A/c with HDFC – Rs.6,34,710/-, and (iv) other credit in the A/c – Rs.1,79,407/- (total Rs.16,29,300/-). The details furnished by the assessee are extracted at para 5 (pages 5 to 15) of the appellate order. The decision of the CIT(A) is at para 6 to 9.2 of the order. The CIT(A) observed that the assessee did not submit any document before the AO. The appellant has submitted written submission along with certain evidence which are essentially additional evidence, which were not submitted before AO. He also observed that the additional evidence is incomplete and haphazard. He, therefore, stated that no petition has been filed for admission of additional evidence under Rule 46A of the Income-tax Rules, 1962. He did not admit the additional evidence and confirmed the addition of Rs.16,29,300/- made by the AO. Aggrieved by the order of CIT(A), the assessee filed appeal before this Tribunal.

4. The Learned Authorized Representative (Ld. AR) of the assessee has filed a paper book containing 28 pages and submitted that the addition made by the AO is totally unjustified. The CIT(A) has also dismissed the appeal despite elaborate written submission and evidence. He submitted that the reopening was made on

the ground that assessee had not filed return of income; however, assessee had in fact filed the return on 23.04.2014 declaring total income of Rs.2,53,300/-.The copy of the acknowledgement of ITR and Form No.16 have been placed at page nos. 1 to 3 of the paper book. He has also submitted copy of the saving bank statement of HDFC Bank, copy of Form No.26AS and copy of credit card statement in support of the return of income filed by the assessee. He submitted that without considering these documents, the CIT(A) has confirmed the order of AO, which is against the principles of natural justice. He further stated that since various additions made by the AO have already been considered by the AO in filing the return, the addition made by AO would be double addition of the same amount which is not permissible in law.

5. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) supported the order of lower authorities. He however would have no objection if the matter is set aside to the AO for *de novo* assessment because these details were not before the AO.

6. We have heard rival submissions and perused the material available on record. It is a fact that assessee had filed return of income for AY. 2012-13 on 24.03.2014 declaring total income of Rs.2,53,300/- after claiming deduction of Rs.1,00,000/- under Chapter VIA of the Act. But, the AO reopened the case u/s 147 by observing that assessee did not file the return of income. Since, assessee had not filed written submission and details, AO made additions of all issues namely, credit card payment, receipts shown as per 26AS, cash and credit entries in the bank

statement etc. All details along with explanation were given to the CIT(A) who decided the appeal without calling for the remand report from the AO. Considering the totality of the facts, we are of the considered view that the assessee was not given sufficient opportunity of hearing by the lower authorities. Therefore, one more opportunity should be given to the assessee to plead his case on merit. Both the parties have no objection if the matter is set aside to the file of AO. We, therefore, set aside the order of CIT(A) and remit the matter to the file of AO for fresh adjudication after hearing the assessee. The assessee is directed to submit all the details and explanations which were furnished before the CIT(A) and the Tribunal. The AO may call for further details if it is needed to make a proper assessment order in accordance with law. For statistical purposes, the grounds of appeal are allowed.

7. In the result, appeal of the assessee is allowed for statistical purpose.

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूत/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 //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat