

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

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
&
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.1079/Ahd/2024
(Assessment Year: 2012-13)

Dipakbhai Jadishbhai Patel, Mankani Bodeli, Vadodara-391135	Vs.	Income Tax Officer Ward-3(1)(3), (Now Income Tax Officer, Ward 3(1)(4),) Vadodara.
[PAN No.AREPP6123A]		
(Appellant)	..	(Respondent)

Appellant by :	Ms. Amrin Pathan, A.R.
Respondent by:	Shri Sudhakar Verma, Sr. DR

Date of Hearing	03.09.2024
Date of Pronouncement	10.09.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), vide order dated 30.03.2024 for Assessment Year 2012-13.

2. The Assessee has taken the following grounds of appeal:-

All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other

Ex-parte Order:

The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [“CIT(A)”] erred in fact and in law in passing an ex-parte order.

The learned CIT(A) erred in fact and in law in passing the order without granting proper opportunity of being heard.

Reopening of Assessment u/s 147:

The learned CTT(A) erred in fact and in law in confirming the action of the learned Income Tax Officer, Ward 3(1)(3), Vadodara ("the AO") in reopening the assessment ws 147 of the Income-tax Act, 1961 ("the Act

The learned CTT(A) erred in fact and in law in confirming the action of the learned AO in reopening the assessment without fulfilling the conditions mentioned in section 147 of the Act.

The learned CTT(A) erred in fact and in law in confirming the action of the learned AO in reopening the assessment despite the fact that there was no income which had escaped assessment during the year under consideration

Without prejudice to the above:

Unexplained Money u/s 69A-Rs. 97,66,506

6 The learned CTT(A) erred in fact and in law in confirming the action of the learned AO in making addition of Rs. 97,66,506 u/s 69A of the Act.

The learned CTT(A) erred in fact and in law in confirming the action of the learned AO in Treating cash/credit deposits in the bank account as income without appreciating the fact that deposits in bank does not always tantamount to income of the Appellant

3. The brief facts of the case are that the assessee did not file his return of income for AY 2012-13 within the prescribed time limit. Subsequently, the assessment was reopened u/s.148 of the Act after recording the reasons to the effect that as per the information available on record, the assessee has deposited cash of Rs.63.93,000/- in his bank account, however, no return has been filed by the assessee for the impugned assessment year. The AO observed that in response to notice u/s.148 of the Act, neither the assessee filed return of income nor the assessee responded to the notices issued by the Assessing Officer(AO). Accordingly, the AO finalized the assessment by adding total credits in the bank account held by the assessee with SBI,Mankani Branch, u/s.147 of the Act amounting to Rs.97,66,506/- as income of the assessee u/s.69A of the Act, with the following observations:

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3. As per natural justice and providing an another opportunity to the assessee, a show cause notice dated 09.10.2019 was issued and served upon the assessee. Vide the show cause notice, the assessed was asked to explain the following, relevant portion of the show cause notice is re-produced as under

2. On the basis of information received and after verification of the same, it is found that the following amount has been credited in your bank account during the financial year (FY) 2011-12 le from 01.04.2011 to 31.03 2012, which are summarized as below-

Sr.No	Name of the Bank and Branch	Account No.	Unexplained cash deposit (in Rs.)	Other credit (in Rs.)	Total credits (in Rs.)
1.	State Bank of India, Mankani Branch	10805996115	54,51,000/-	43,15,506/-	97,66,506/-
		Total	54,51,000/-	43,15,506/-	97,66,506/-

As evident from above, during the relevant financial year, cash deposits of Rs. 54,51,000/- and credits of Rs. 43,15,506 has been made in your bank account(s) and the total credits comes to Rs. 97,66,506/- Therefore you are requested to furnish the source of the above cash deposit and credits of Rs. 97,66.506/- in your above mentioned bank account. Please note that your failure to furnish the source of the above cash deposits and credit entries with supporting evidence will lead to addition of Rs. 97,66,506/-in your total income for the A.Y 2012-13 u/s 69A of the Income-tax Act, 1961.

3. It is also noticed that you have received interest income of Rs. 3099/- during the relevant FY 2011-12. Therefore, you are show caused as to why said income should not be added to your total Income for the year under consideration."

In this case the cash deposits/credits fall under the purview of sec 69A of the Income tax Act The provisions of sec 69A states that-

Unexplained money, etc. 69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or other valuable article is not recorded in the books of account, if any maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion jewellery or other valuable article or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the money and the the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year

Accordingly, the total credit entries of Rs. 97,66,500/- including cash deposits of Rs 54,51,000/- are treated as unexplained money u/s 69A of the Act and added to the total income of the assessee. In view of the above facts and circumstances of the case, I am also satisfied that the assessee has concealed the particulars of his income to the extent of Rs. 97,66,506/- and hence, penalty proceedings u/s 271(1)(c) of the Act are also initiated for concealment of income.

5. As the assessee has not offered interest income of Rs. 3099/- by filing return of income, therefore

4. In appeal, the Ld.CIT(A) dismissed the appeal of the assessee and confirmed the additions made by the AO.

5. The assessee is in appeal before us against the aforesaid order passed by the Ld.CIT(A), confirming the additions made by the AO u/s.69A of the Act.

6. Before us, the Ld.Counsel for the assessee submitted that the assessee is an uneducated farmer who is engaged in farming of bananas. The assessee has not been keeping well and had also suffered from paralysis attack, which has rendered him bed-ridden. Accordingly, it was submitted that it was for the foregoing reasons that could not cause appearance before the Tax Authorities and there was no malafide intention on the part of the assessee in not participating in appellate proceeding on merits. The Ld.Counsel for the assessee submitted that the orders have been passed by the AO (and also by the Ld.CIT(A)) on ex-parte basis, wherein the assessee did not get any opportunity to present his case on merits. The Ld.Counsel for the assessee submitted that the entire deposits/credits have been added in the hands of the assessee, without giving any credit/benefit for withdrawals made by the assessee from same bank account. Secondly, it was contended that in the instant case there are certain amounts which have been deposited on account of maturity of fixed deposits, which have also been added by the AO and confirmed by the Ld.CIT(A). Accordingly, it was submitted the assessee has a good case on merits and if given an opportunity to represent his case, the assessee would be able to justify the source of cash deposits made in its bank account.

7. In response, the Ld.DR placed reliance on the observations of the AO and the Ld.CIT(A) in their respective orders and submitted that the assessee had been totally non-compliant at all stages of proceedings and therefore, the

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assessee could not be given a further round of opportunity at this stage of proceedings.

8. We have heard the rival contentions and perused the material available on record. On going through the facts of the case, we observe that the entire cash deposits in the bank account held by the assessee with SBI, Mankani Branch amounting to Rs.97,66,506/- have been added to the income of the assessee u/s.69A of the Act. Further, no benefit for cash withdrawals made by the assessee from the above bank account have been given to the assessee. Further, the Ld.Counsel for the assessee submitted that certain deposits, which have been added as income of the assessee u/s.69A of the Act are on account of the maturity of fixed deposits made by the assessee and therefore, the same cannot be added as unexplained income of the assessee u/s.69A of the Act. Accordingly, in the interest of justice, the matter is restored back to the file of the Assessing officer for denovo consideration, after giving due opportunity of hearing to the assessee. Further, in case the assessee still continues to remain non compliant, then the AO would be at liberty to pass the appropriate orders in accordance with law, on the basis of material available on record.

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

This Order pronounced in Open Court on 10/09/2024

Sd/-
(MAKRAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(True Copy)

Ahmedabad; Dated 10/09/2024
Manish, Sr. PS