

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

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.672/Ahd/2023
Assessment Year: 2011-12**

Kamlesh Mahendrabhai Dave, 42, Matrukrupa, Navjivan Society, Station Road, Mahemdavad – 387 130. (Gujarat) [PAN – ALVPD 4157 H] (Appellant)	Vs.	The Income Tax Officer, Ward – 2, Nadiad. (Gujarat). (Respondent)
Assessee by	Shri Vivek Chavda, AR	
Revenue by	Shri Ramesh Kumar, Sr. DR	
Date of Hearing	13.08.2024	
Date of Pronouncement	19.09.2024	

ORDER

This appeal is filed by the assessee against order dated 08.02.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal :-

- “1.1 *The order passed u/s. 250 on 08.02.2023 for A.Y. 2011-12 by NFAC, Delhi upholding the addition/disallowances of Rs.48,94,942/- made by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the eccentric facts and evidence available with regard to the impugned additions.*
- 1.3 *The Ld. CIT(A) has grievously erred in law and on facts in not carrying out any inquiry with regard to the applicability of the provisions of Income tax Act and thereby violated the principle of natural justice. The appellant had specifically denied at the time of filing Form No.35 to receive the notices on Email, however, the CIT(A) has kept on sending the same on Emails rather than sending physically which could not be served to the appellant. Therefore, the appellant shall be granted opportunity to produce additional evidences.*

- 2.1 *The Ld. CIT(A) has grievously erred in law and or on facts in upholding the addition of unsecured loan of Rs.43,75,000 as unexplained cash Credit.*
- 2.2 *That the Ld. CIT(A) ought not to have upheld addition of unsecured loan of Rs.43,75,000 as unexplained cash Credit.*
- 3.1 *The Ld. CIT(A) has grievously erred in law and or on facts in upholding the disallowing interest of Rs.5,19,942 pertaining to Unsecured Loans.*
- 3.2 *That the Ld. CIT(A) ought not to have upheld disallowance of interest of Rs.5,19,942 pertaining to Unsecured Loans.*
- 3.3 *The Ld. CIT(A) has grievously erred in law and or on facts in not granting opportunity of being heard via video conferencing.*
- 3.4 *The Ld. CIT(A) has failed to appreciate that granting opportunity of being heard via video conferencing facility is mandatory in the new regime of Faceless appeal process.*

It is therefore prayed that the addition/disallowance made by Ld. AO and upheld by the CIT(A) may please be deleted in the interest of natural justice and considering the eccentric facts of the case.”

3. The assessee is a property dealer. The Assessing Officer observed that the assessee filed his return of income for the year under consideration on 08.05.2018 showing total income at Rs. Nil wherein the assessee has shown business loss of Rs.62,203/-, interest income of Rs.14,903/- and agricultural income of Rs.1,85,748/- in response to the notice under Section 148 of the Income Tax Act, 1961 issued on 27.03.2018. After taking cognisance of the assessee's reply, the Assessing Officer completed the assessment under Section 143(3) read with Section 147 of the Act by making addition of Rs.43,75,000/- under Section 68 of the Act as unexplained cash credit and Rs.5,19,942/- was disallowed in respect of interest expenses.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that there is a delay of 149 days in filing the present appeal due to the fact that the assessee approached the Chartered Accountant but the same was not followed up in respect of finalising of appeal and filing of the appeal immediately and, therefore, the delay on the part of the Consultant could not be attributed to the assessee. The explanation given by the assessee for filing the belated

appeal appears to be genuine and hence the delay is condoned. The Ld. AR submitted that the assessee could not represent his case before the CIT(A) as the assessee's Consultant has not followed up the matter before the CIT(A) and, therefore, the Id. AR requested that the matter may be remanded back to the file of the CIT(A) for proper adjudication of the issues on merit.

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee could not represent his case and file the relevant documents/details before the CIT(A) and, therefore, the CIT(A) passed ex-parte Order. At this juncture, the assessee has filed the details and confirmation of various parties before the Tribunal which appears to be crucial in deciding the case on merit. Thus, the additional evidences filed before the Tribunal is admitted. The matter is remanded back to the file of the CIT(A) for proper adjudication of the issues in consonance with the additional evidences filed before the Tribunal and decide/adjudicate the appeal as per the Income Tax Statute. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. It is further directed to the assessee that concise grounds before the CIT(A) should be filed as the CIT(A) has observed that in paragraph no.5 of the order dated 08.02.2023 that no proper effective grounds were raised. Further, the assessee is also directed that the assessee will take utmost care of hearing before the CIT(A) and co-operate with the hearings of the matter. If the assessee did not co-operate, the CIT(A) is at liberty to decide the case on merit.

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

Order pronounced in the open Court on this 19th September, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 19th day of September, 2024

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*