

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

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.208/Ahd/2024
Assessment Year: 2017-18**

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| Rameshkumar Kanaiyalal Patel, 6-69, Gurukrupa Society, Balol, Mehsana – 384 410. (Gujarat). [PAN – DSKPP 0299 H] | Vs. | The Income Tax Officer, Ward-2, Mehsana. (Gujarat). |
| (Appellant) | | (Respondent) |
| Assessee by | Shri Rohan Thakkar, CA | |
| Revenue by | Shri Ramesh Kumar, Sr. DR | |
| Date of Hearing | 12.08.2024 | |
| Date of Pronouncement | 19.09.2024 | |

ORDER

This appeal is filed by the assessee against order dated 26.12.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2017-18.

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

- “1. *The Ld. Assessing Officer & Ld. Commissioner Officer has erred in law as well as on facts in charging interest under Section 234B of the Act.*
2. *The Ld. Assessing Officer & Ld. Commissioner Officer has erred in law as well as on facts in charging interest under Section 234C of the Act.*
3. *The notice under Section 143(2) has been issued on 08.11.2019 when the return has been filed for the F.Y. 2016-17 on 22.03.2019. the Ld. Assessing Officer has erred in facts as well as law in framing assessment without issuing notice under Section 143(2) of the Act.”*

3. On the basis of information receive from SHO, Police Station, Jaipur that cash was seized of Rs.23,00,000/- from two persons namely Shri Rameshbhai and Shri Kausik Patel on 15.12.2016. Notice under Section 148 of the Income Tax Act, 1961 was issued to the assessee on 23.01.2019 after obtaining the approval. In response

to notice under Section 148 of the Act, the assessee filed return of income on 22.03.2019 declaring total income of Rs.22,51,140/-. The reasons recorded were provided to the assessee on 07.11.2019. Notice under Section 143(2) of the Act was issued on 07.11.2019 which was served upon the assessee. Thereafter, notice under Section 142(1) read with Section 129 of the Act alongwith questionnaire was issued on 07.11.2019. Final show cause notice dated 02.12.2019 was issued to the assessee, proposing to make assessment under Section 144 of the Act which was duly served upon the assessee. In response to the show cause notice, the assessee furnished the details. After taking cognisance of the same, the Assessing Officer made addition of Rs.20,00,000/- under Section 69A of the Act.

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. As regards ground no.3, the Ld. AR submitted that the notice under Section 143(2) of the Act was issued on 08.11.2019 (07.11.2019 as per Assessment Order) when the return was filed for the Assessment Year 2017-18 on 22.03.2019. Thus, the Ld. AR submitted that the notice under Section 143(2) of the Act should have been issued at the end of the six months i.e. by September 2019 and, therefore, the notice issued under Section 143(2) of the Act is not a valid notice and the proceedings under Section 143(3) read with Section 147 of the Act itself is bad in law. The Ld. AR relied upon the following decisions:-

- 1) *ACIT vs. Hotel Blue Moon (2010) 2 TMI 1(SC)*
- 2) *Khaitan Winding Wire P. Ltd (2022) 3 TMI 249 (Tribunal - Kolkata)*
- 3) *CIT vs. Nirali Specific Family Trust (2016) 3 TMI 502 (Guj. High Court)*
- 4) *PCIT vs. Silver Line (2015) 11 TMI 809 (Delhi High Court)*
- 5) *PCIT vs. Jai Shiv Shankar Traders P. Ltd (2015) 10 TMI 1765 (Delhi HC)*
- 6) *PCIT vs, Jignesh Bhagwandas Patel (2019) 7 TMI 751 (Gujarat HC)*

5.1 As regards ground nos.1 & 2, the Ld. AR submitted that the assessee has offered the amount of Rs.20,00,000/- for tax in the return of income which was filed under the response to notice under Section 148 of the Act. Therefore, the cash seized was always available with the Department and, therefore, the assessee was not required to make payment of any interest and the cash was already gone out of the

possession of the assessee and lying in the possession of the Department. The Ld. AR relied upon the following decisions :-

- 1) *Dwarkadas Punjabhai Patel (2014) 1 TMI 1434 (Tribunal - Ahmedabad)*
- 2) *Balaji Salt Works vs. ACIT (2024) 3 TMI 202 (Tribunal - Rajkot)*
- 3) *Sushil Bansal vs. ACIT (2023) 1 TMI 522 (Tribunal – Delhi)*

5.2 The Ld. AR further submitted that when the cash was seized during the course of search is required to be adjusted against taxes which were due including the advance tax for the purpose of computation of the interest under Section 234A, 234B & 234C of the Act. The Department has to adjust the seized amount towards the advance tax from the date when it was seized. Therefore, the CIT(A) was not right in confirming the interest.

6. The Ld. DR, as regards ground no.3, submitted that the CIT(A) has categorically given the finding that the notice under Section 143(2) of the Act was issued within the prescribed time and hence the Assessment Order is a valid order. As regards ground nos.1 & 2, the Ld. DR relied upon the order of the Assessing Officer and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. As regards the notice under Section 143(2) of the Act, it has been categorically mentioned in the statute that the Assessing Officer shall serve on the assessee a notice requiring him on the date to be specified therein either to attend the Office of the Assessing Officer or to produce or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return, provided that notice under Sub-section shall be served on the assessee after the expiry of six months from the end of the Financial Year in which the return is furnished. In the present case, return was furnished by the assessee in response to the notice under Section 148 of the Act on 22.03.2019 as mentioned in paragraph no.2 of the Assessment Order. Thus, the statutory notice to be issued under Section 143(2) has to be by 30th September, 2019. But, in the same paragraph of the Assessment Order, the notice under Section 143(2) of the Act was issued on 07.11.2019 which was delayed by more than one month and thus the statutory limit was not adhered by the

Assessing Officer as per the provisions of Section 143(2) of the Act. The decision of Hon'ble Supreme Court in case of Hotel Blue Moon as well as the decisions of Hon'ble Gujarat High Court in case of Nirali Specific Family Trust and Jignesh Bhagwandas Patel which are applicable in the present case to the extent that the statutory limit prescribed was not followed by the Assessing Officer. Thus, ground no.3 filed by the assessee is allowed. The assessment itself is null and void ab initio.

8. Since the assessment Order is void ab initio, there is no need to comment on the merits of the assessee's ground nos.1 & 2.

9. In the result, appeal of the assessee is allowed.

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