

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 236/Ahd/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Habibbhai Adambhai Maniya, Sindhi Bazar, Station Road, Nadiad-387001, Gujarat PAN : ACRPM 8025 G	Vs.	Income Tax Officer, Ward-1, Nadiad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Girish Mehta, Advocate & Shri Hitesh Chavda, AR	
Revenue by :	Shri Sanjay Kumar, Sr DR	

सुनवाई की तारीख/Date of Hearing : 11.07.2024
घोषणा की तारीख /Date of Pronouncement: 09.10.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

Present appeal has been filed by the assessee against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi [hereinafter referred to as "CIT(A)" for short] dated 13.12.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2017-18.

2. The grounds raised by the assessee are as follows:-

"1. The Ld Commissioner of Income Tax (Appeals) has erred on facts and in law in summarily dismissing the appeal of the appellant without following the principle of natural justice and passed the ex parte order.

2. The Ld Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the addition made u/s 69A of the Act to the tune of

Rs.48,66,000/- being cash deposit made in the business current account No. 903002201003984 during the demonetisation period and deposit of Rs. 80,000/- in Department of Post. (Rs.48,66,000 plus Rs.80,000 equal to 49,46,000/-) Both recorded in the audited books of account without properly appreciating the facts and considering the provisions of law.

3. The Ld lower authorities have erred on facts and law in presuming the cash deposit of Rs.48,66,000/-in current account No. 903002201003984 and Rs. 80000/- in Department of Post as per provisions of section 69A of the Income tax Act and added to the total income.

4. The lower authorities have failed to appreciate that the genuineness of the source of the cash deposit have been explained and made out of the cash sales (Total Turn Over Rs.4.72 Cr) made by the assessee and income already offered for taxation.

5. The Appellant craves leave to add/amend /alter any of the grounds of appeal before or at the time of hearing.

6. In view of all these and other reasons, which may be produced during the process of appeal, the appeal may please be allowed and justice rendered."

3. The solitary issue in the present appeal relates to the addition made to the income of the assessee on account of cash found deposited in his bank account during demonetization period remaining unexplained amounting to Rs.49,46,000/-.

4. The ld. CIT(A), we have noted, has reiterated the order of the Assessing Officer in the absence of any participation on behalf of the ld. Counsel for the assessee before him in appellate proceedings. The solitary contention of the ld. Counsel for the assessee before us was that the order passed by the ld. CIT(A) was grossly against the provisions of law and in contravention to the principles of natural justice. He pointed out that, during the course of appellate proceedings, the assessee had participated seeking adjournments on several occasions which was also granted by the ld. CIT(A), and it was only

on the last occasion when none appeared on behalf of the assessee that the Id. CIT(A) went forward and decided the appeal against the assessee. He contended that the Id. CIT(A) reiterated the order of the Assessing Officer without going into the facts of the case and the material before him which was placed before the Assessing Officer during assessment proceedings by the assessee itself. He pointed out that the Assessing Officer had made addition of the cash found deposited in the bank account of the assessee in the absence of any satisfactory explanation regarding the source of the same. Ld. Counsel for the assessee pointed out that, during the assessment proceedings, the assessee had stated that he was carrying out business of tobacco products and confectionery of namkeen and other items since very long in his proprietorship concern 'Vikas Trading'. That, the cash deposited was on account of this business carried out by him. The Tax Audit Report of the assessee, duly certified by the Chartered Accountant, was also before the Assessing Officer along with the audited financial results of the assessee. He pointed out that all these facts are noted by the Assessing Officer in his assessment order in page No. 2 itself. He further pointed out that, during the assessment proceedings, the Assessing Officer had exercised his powers of issuing notices and acquired copy of bank account statements of the assessee from the respective bank, which revealed the fact of cash deposited in the bank account. He contended that these very bank accounts also revealed that all the cash deposited was used to make payments to the suppliers of material in which he traded. Ld. Counsel for the assessee contended that all these facts, though present before the Id. CIT(A), he completely ignored all of them and went on to reiterate the order of the Assessing Officer. Ld. Counsel for the assessee also contended that the audited accounts of the assessee coupled with the bank statements procured by the Assessing Officer which form part of the audited accounts clearly revealed that all cash deposits in the bank account

were attributable to the business of the assessee and utilized for the same purpose alone by the assessee. That, there was no question of treating the cash so deposited as unexplained and adding the same to the income of the assessee. He contended that the assessee is in possession of all confirmations and evidences of the source of cash deposits and is willing to now place them before the Revenue Authorities for verification. He pleaded that, therefore, the matter may be restored back to the Assessing Officer for verifying the contention of the assessee.

5. Ld. DR, however, supported the order of the Id. CIT(A).

6. We have heard the contentions of both the parties and we are in agreement with the Id. Counsel for the assessee that it is a fit case for reconsideration of the issue raised in appeal by the Assessing Officer afresh. The Id. Counsel for the assessee has made out a fairly good case before us that the Id. CIT(A) has reiterated the order of the Assessing Officer without considering all the facts and material before him. As rightly pointed out by the Id. Counsel for the assessee, the Id. CIT(A) ought to have considered the audited financial results of the assessee, the Tax Audit Report of the assessee and the copy of bank statements collected by the Assessing Officer during assessment proceedings for adjudicating the issue of cash found deposited in the bank account of the assessee, even if none appeared on behalf of the assessee. Having failed to do so and the assessee having now filed before us all evidences in support of his claim of the cash deposited in the bank account being from explained sources, it is in the interest of justice that the issue be reconsidered by the Revenue Authorities after due verification of all the claims made by the assessee. We, therefore, restore the issue back to the Assessing Officer to decide the issue of cash deposited in the bank account of

the assessee afresh after giving due opportunity of hearing to the assessee and after considering all explanation and evidences filed by the assessee in this regard. The grounds raised by the assessee are accordingly allowed for statistical purposes.

7. In effect, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 09/10/2024 at Ahmedabad.

Sd/-

**(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER**

Ahmedabad; Dated 09/10/2024

**btk

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रोषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad