

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

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA Nos.609, 610 & 611/Ahd/2023
निर्धारण वर्ष /Assessment Years : 2010-11, 2011-12 & 2012-13 respectively

Hema Viral Joshi 9C Sector-19, Gandhinagar - 382 019 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The Income Tax Officer Ward-2, Gandhinagar
स्थायी लेखा सं./PAN: ADMPJ 6455 B		

AND

आयकर अपील सं/ITA No.612/Ahd/2023
निर्धारण वर्ष /Assessment Year : 2011-12

Viral Vinodchandra Joshi 9C Sector-19, Gandhinagar - 382 019 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The Income Tax Officer Ward-2, Gandhinagar
स्थायी लेखा सं./PAN: ABJPJ 6812 H		

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Kushal Fofaria, AR
Revenue by :	Shri Surendra Kumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 30/09/2024
घोषणा की तारीख /Date of Pronouncement: 08/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

These four appeals by the different two assessees; namely, Hema Viral Joshi and Viral Vinodchandra Joshi, are directed against the orders of the

Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] for the Assessment Years (AYs) 2010-11, 2011-12, 2012-13. In both cases, the appeals relate to issues arising from the ex-parte assessment orders framed under sections 144 and 147 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"].

2. Details of the assessments are tabulated as follows:

Sr	Particulars	Hema Viral Joshi			Viral Vinodchandra Joshi
		A.Y. 2010-11	A.Y. 2011-12	A.Y. 2012-13	A.Y. 2011-12
1	Date of Order of AO	28/12/2017			22/12/2018
2	Section under which the AO passed the order	144 read with section 147 of the Act			
3	Addition in Rs.	39,62,800/-	47,82,000/-	32,71,000/-	98,60,537/-
4	Section under which addition was made	69A	69A	69A	68 including Rs. 3866 added as income from other sources
4	Assessed Income in Rs.	39,62,800/-	47,82,000/-	32,71,000/-	98,60,537/-
5	Date of Order of CIT(A)	08/06/2023	08/06/2023	08/06/2023	07/07/2023

Facts of the case:

(i) In case of Hema Viral Joshi

3. The assessee was subjected to *ex-parte* assessments under section 144 of the Act by the Assessing Officer (AO) for the respective assessment years, details of which are tabulated above. These assessments were framed due to the failure of the assessee to file the returns of income within the time prescribed under section 139 of the Act. All the assessment orders were passed on December 28, 2017, where the AO made an addition under section 69A of the Act on account of unexplained deposits in her bank account. The

AO issued various notices to the assessee, including show-cause notice, but the assessee failed to comply with the notices except filing the letter of authority in the name of CA Manoj Lakinwala and requesting AO to provide 4-weeks' time to submit necessary information as the data in accounting software Tally was lost.

3.1. In all three AY(s), both the assessee filed appeals before the CIT(A). In the grounds of appeal(s), the assessee took grounds that the financial records and transactions related to the relevant assessment years were maintained in Tally accounting software, but the data was lost due to a virus attack on her system. As a result, she was unable to produce the details of the transactions in her bank account during the assessment proceedings. She submitted that she had been unwell during the relevant period, and due to her illness, her doctor had advised her to take bed rest. This was cited as a reason for her inability to provide the necessary details and attend to the proceedings on time. The assessee mentioned that many of the transactions were handled by her father-in-law, Major Vinodchandra Joshi, who passed away on June 18, 2012. As a result, she claimed that the details regarding the transactions were not readily available, and this contributed to the difficulty in responding to the Assessing Officer's queries during the assessment. She asserted that she had made efforts to obtain the necessary details from the bank and other authorities but was unable to receive the required documentation on time. This further compounded her inability to furnish the details required for the assessment. The assessee also argued that the cash deposits made into her bank account were not income but represented redeposits of cash withdrawn earlier. She stated that the cash transactions in her bank account were incorrectly treated as unexplained income under section 69A of the Income

Tax Act by the Assessing Officer. She contended that many of the financial transactions in question were conducted under the supervision of her father-in-law prior to his death, and she had little to no knowledge of the specifics. This was submitted as a key reason for her inability to provide a full explanation of the bank transactions. Given the aforementioned reasons, the assessee also requested that the delay in filing the appeal before the CIT(A) be condoned. She argued that her illness, the loss of data due to the virus, and the death of her father-in-law were valid reasons for the delay in pursuing her case. However, the CIT(A) did not find these reasons sufficient to condone the delay, and as a result, her appeals were dismissed without being considered on merits.

(ii) In case of Viral Vinodchandra Joshi

3.2. The assessee did not file his return of income for the assessment year 2011-12 within the prescribed time under section 139(1) of the Act. The assessment was reopened by the Assessing Officer (AO) under section 147 based on information received from the Income Tax Investigation Wing. The information indicated that the assessee had conducted significant financial transactions, specifically related to shares of Gandhinagar Hotels Ltd.. The AO noted that these transactions were not disclosed in any income tax return. The AO focused the large deposits in assessee's bank account, particularly related to the sale of shares of Gandhinagar Hotels Ltd. The assessee's bank account showed cash deposits totalling to Rs.47,82,000/- and deposits by cheques totalling to Rs.50,74,671/, which the AO treated as unexplained cash credits under section 68 of the Income Tax Act. The AO also linked these transactions to certain off-market deals in the shares of Gandhinagar Hotels Ltd., which were transferred to various parties, including the assessee. The

shares were sold at significant profits, but the corresponding income was not reported by the assessee. The AO also added Rs.3866/-, under the head income from other sources being interest received on the bank account.

4. The assessee filed an appeal before CIT(A), who confirmed the assessment order, stating that the appellant had not co-operated during the assessment or appellate proceedings and that the addition was justified based on the information available on record.

5. Aggrieved by the orders of CIT(A), both the assesseees are in appeals before us with following grounds of appeal:

Common grounds of appeal, except quantum of appeals, in ITA No.609 to 611/Ahd/2023 in the case of Hema Viral Joshi:

- 1. The Ld. CIT(A) has erred in law and on the facts in confirming Ex-parte assessment order framed by the Assessing Officer us. 144 of the Act. Both the lower authorities erred in not appreciating that the impugned order, an unreasoned and non-speaking order was framed without providing proper opportunity of hearing to the appellant that is in breach of principals of natural justice.*
- 2. The Ld. CIT(A) has erred in law and on facts of the case in not holding that assessment was completed without providing copy of material, documents, statements, etc. relied upon by him for making additions. Moreover, opportunity to cross examine was also not provided. Hence, it is in violation of principles of natural justice and law.*
- 3. The Ld. CIT(A) has erred in law and on facts in invoking provisions of section 69A of the Act which is not at all applicable in the facts of the present case. He further erred in not appreciating that there is no income chargeable to tax in the case of the appellant.*
- 4. The Ld. CIT(A) has erred in law and on facts in confirming an addition of Rs.39,62,800/- u/s.69A of the Act on account of deposit in bank*

account on protective basis. (For A.Y. 2011-12 Rs. 47,82,000/- and for A.Y. 2012-13 Rs. 32,71,000/-)

5. *Alternatively, and without prejudice both the lower authorities have failed to appreciate the fact that the cash that is withdrawn is itself deposited in the bank account.*
6. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
7. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in charging interest u/s. 234A/B/C/D of the Act.*
8. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO in levying penalty u/s. 271(1)(c) of the Act.*
9. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO in levying penalty u/s. 271F of the Act.*
10. *The Ld. CIT(A) has erred in not considering various facts and in not appreciating the facts and law in their proper perspective.*
11. *The Appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

Grounds of appeal in the case of Viral Vinodchandra Joshi in ITA No. 612/Ahd/2023:

1. *The Ld. CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in reopening the assessment u/s. 147 of the Act. On the facts and circumstances of the case, Ld. CIT(A) ought to have held that the action of reopening is without jurisdiction and not permissible either in law or on facts.*

2. *The Ld. CIT(A) has erred in law and on the facts in confirming Ex-parte assessment order framed by the Assessing Officer u/s. 144 of the Act. Both the lower authorities erred in not appreciating that the impugned order, an unreasoned and non-speaking order was framed without providing proper opportunity of hearing to the appellant that is in breach of principals of natural justice.*
3. *The Ld. CIT(A) has erred in law and on facts of the case in not holding that assessment was completed without providing copy of material, documents, statements, etc. relied upon by him for making additions. Moreover, opportunity to cross examine was also not provided. Hence, it is in violation of principles of natural justice and law.*
4. *The Ld. CIT(A) has erred in law and on facts in invoking provisions of section 68 of the Act which is not at all applicable in the facts of the present case. He further erred in not appreciating that there is no income chargeable to tax in the case of the appellant.*
5. *The Ld. CIT(A) has erred in law and on facts in confirming an addition of Rs.98,56,671/- u/s. 68 of the Act on account of deposit in bank account.*
6. *Alternatively, and without prejudice both the lower authorities have failed to grant benefit of telescoping.*
7. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
8. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the ld. AO in charging interest u/s. 234A/B/C/D of the Act.*
9. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty u/s. 274r.w.s. 271(1)(b) of the Act.*
10. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty u/s. 274r.w.s. 271(1)(c) of the Act.*

11. *The Ld. CIT(A) has erred in not considering various facts and in not appreciating the facts and law in their proper perspective.*

12. *The Appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

6. During the course of hearing before us, the Authorised Representative (AR) of the assessee stated that the CIT(A) has not decided the issues on merit and not taken into account facts of both the cases. The AR submitted the common paper book containing various correspondence with AO and CIT(A).

6.1. From the details available in the paper book, we observe that there is a Letter from Viral Vinodchandra Joshi to the Income Tax Officer (dated 14-12-2018) responded to a notice under section 142 of the Act for A.Y. 2011-12. In this letter, he raised concerns about the delayed reopening of his assessment, requested copies of materials and documents used in the investigation, and stated that he was not involved in the transactions related to Gandhinagar Hotels Ltd. He explained that his brother, Shri Pritesh Joshi, had misused his bank account, and he denied knowing individuals mentioned in the notice. We also note that the assessee submitted copy of Bank book (in the case of Hema Viral Joshi) and the copy of assessment order of M/s Pragna Auto Services for A.Y. 2011-12 (in which the brother of Viral Joshi – Shri Pritesh Joshi was a partner). In the assessment order of the said firm M/s Pragna Auto Services, there is reference to money received against sale of shares of Gandhinagar Hotels Ltd. which apparently not considered by the lower authorities.

6.2. We also noted that in her letter dated 15-02-2019, Ms.Hema Viral Joshi submitted that she did not participate in the banking transactions in the joint savings account in question. The transactions were primarily executed by her husband, Viral Joshi. In the same letter, Ms.Hema Joshi claimed that she had no connection or relationship with Shri Hitesh B. Raval, an advocate involved in the share transactions that led to the tax demands. She asserted that she had never interacted with him, which was crucial since the demand was based on share transactions attributed to him. She also stated that the ITO, Ward 3, Gandhinagar, had passed an order adding Rs.28 lakhs as business income and Rs.1.86 crore as short-term capital gains in the case of Shri Hitesh Raval. She also stated that the addition in her case was based on transactions in the joint account at Gandhinagar Nagarik Co-operative Bank Ltd. (A/c No. 118321116009578), which was jointly held with her husband and her husband, Viral Joshi, was also assessed for transactions related to this account, and the Assessing Officer had made an addition of Rs.98,60,537/- for A.Y. 2011-12 in his case. The letter also highlighted that the joint account transactions were managed by her husband, Viral Joshi. She insisted that both the additions in her case and her husband's case were related to the same bank account and transactions, and any liabilities should be adjusted accordingly.

6.3. Upon careful consideration of the submissions made by the Authorized Representative (AR) of the assesseees and the materials placed on record, it is evident that both Hema Viral Joshi and Viral Vinodchandra Joshi were subjected to ex-parte assessment orders framed under sections 144 and 147 of the Act. In the case of Hema Viral Joshi, her appeals were further

dismissed by the CIT(A) without condoning the delay, and the substantive issues were not adjudicated on merit. Similarly, in the case of Viral Vinodchandra Joshi, the CIT(A) also failed to appreciate the factual details and passed an ex-parte order upholding the additions made by the Assessing Officer.

6.4. It is further observed that both assessees had provided reasonable explanations for their inability to comply with the assessment proceedings and had placed relevant facts before the lower authorities, which were not properly considered. In particular, Hema Viral Joshi claimed that the cash deposits were redeposits of previously withdrawn amounts, and Viral Vinodchandra Joshi asserted that the transactions related to his bank account were not properly attributed to him but were linked to off-market share dealings, allegedly executed by other family members. These factual submissions, along with supporting documents such as bank books and correspondence with the authorities along with affidavits of both the assessees, have material bearing on the assessments but were overlooked by the CIT(A).

6.5. In light of the above, we find that the orders of the CIT(A) in all four cases are unsustainable as they do not address the merits of the case and have failed to consider the explanations and evidence provided by the assessees. Therefore, in the interest of justice, we hereby set aside the impugned orders passed by the CIT(A) in the cases of both assessees for their respective assessment years and restore the matters to the file of the CIT(A) for fresh adjudication. The CIT(A) is directed to provide a reasonable opportunity to the assessees to present their cases and to decide the issues on merit, after

considering the relevant facts and evidence. At the same time, we direct the assessee to fully co-operate with the proceedings before the CIT(A) and ensure compliance with all notices and time limits stipulated during the hearing process. Failure to do so, may result in the dismissal of their appeals. Accordingly, these four appeals of the assessee(s) are allowed for statistical purposes.

6.6. In the combined result, the appeals of the assessee (in the case of Hema Viral Joshi) in ITA Nos.609, 610 & 611/Ahd/2023 for AYs 2010-11, 2011-12 & 2012-13 respectively and the appeal of the assessee (in the case of Viral Vinodchandra Joshi) in ITA No.612/Ahd/2023 for AY 2011-12 all are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 8th October, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 08/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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)/(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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