

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

सुश्री सुचित्रा कम्बले, 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 No.50/Ahd/2024
निर्धारण वर्ष / Assessment Year : 2014-15

M/s.Maha Gujarat Silk Section 402, Akshat Apartment Opp. Suvidha Shopping Centre Paldi Ahmedabad - 380 007 (Gujarat)	<u>बनाम/ v/s.</u>	The ITO Ward-5(2)(5) Ahmedabad
स्थायी लेखा सं./PAN: AAGFM 5457 M		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Ritesh Shah, AR	
Revenue by :	Shri V.K. Mangla, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 15/10/2024
घोषणा की तारीख /Date of Pronouncement: 22/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal is filed by the assessee against the order dated 16.11.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"] upholding the *ex-parte* assessment order dated 17.11.2019 passed under Section 144 read with Section 147 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] by the Assessing Officer [hereinafter referred to as "AO"] for Assessment Year (AY) 2014-15.

Facts of the case:

2. The assessee is a partnership firm engaged in the business of trading and retail of sarees, had not filed its return of income for the AY 2014-15. The case was reopened by the AO under Section 147 of the Act, based on information received through ITS-NMS-AIMS about the sale of immovable property for a consideration of Rs.33,50,000/- on 20.03.2014. Despite issuance of multiple notices under Section 148 and Section 142(1) of the Act, the assessee did not respond. The AO proceeded with an *ex-parte* best judgment assessment under Section 144 of the Act, treating the entire sale consideration as unexplained income and adding Rs.33,50,000/- to the assessee's total income. The assessment order was passed on 17.11.2019, and a demand notice was issued.

3. Aggrieved by the said order, the assessee preferred an appeal before the CIT(A), wherein it was contended that the AO had erred in treating the entire sale consideration as income without considering the indexed cost of acquisition. The assessee claimed a capital loss on the sale of the immovable property and provided the computation of income along with the property purchase and sale agreements as additional documentary evidence at the appellate stage. The CIT(A) issued multiple notices for hearing between 2020 and 2023, but the assessee failed to comply, citing various reasons, including the death of one of the partners due to the COVID-19 pandemic and health issues of another partner. As a result, the CIT(A) disposed of the appeal *ex-parte*, upholding the addition made by the AO, without considering the additional evidence submitted by the assessee under Rule 46A of the Income Tax Rules, 1962.

4. Being aggrieved by the dismissal of the appeal by the CIT(A), the assessee has now preferred an appeal before us with following grounds of appeal:

1. *The order passed by U/s.250 passed on 16.11.2023 by NFAC(CIT (A), Delhi (for short NFAC) upholding the addition of Rs.35,50,000/- made by A.O. is wholly illegal, unlawful and against the principles of natural justice.*
2. *The Id. NFAC has grievously erred in law and or on facts in not appreciating that there could not be compliance to the notices claimed to be issued mainly on account of failure of the previous tax consultant Shri Alay Mistry of Ahmedabad who did not inform the appellant and also during the meantime one of the Partner of the Firm Bharat M Shah the partner responsible to handle the matter succumbed to the Pandemic [Coronal during the second wave in 2021 while the other partner Mr Harshad M Shah had undergone heart surgery during the same period in the year 2021. Thus, there was a sufficient cause for failure to comply with the notices claimed to be issued by NFAC.*
3. *The Id. NFAC has grievously erred in law and or on facts in upholding the additions to the extent of Rs.35,50,000/- was unexplained income against sale consideration received from sale of immovable property.*
4. *The Id. NFAC has grievously erred in law and or on facts in upholding the additions to the extent of Rs.35,50,000/- when being upon the additional documentary evidences under Rule 46A, that is Computation of Income and the property purchase and sale agreement for calculation of Indexation purpose was already uploaded along with the Form 35 at the time of filing of appeal with of CIT (A).*
5. *That the in the facts and circumstances of the Id. NFAC ought not to have upheld the addition of Rs.35,50,000/-.*

It is, therefore, prayed that the addition of Rs.35,50,000/- upheld by the CIT(A) may kindly be set aside or deleted and/or remand the matter for adjudication and provide natural justice to the appellant.

5. During the course of hearing before us the Authorised Representative (AR) of the assessee contended that they could not comply with the notices issued by the CIT(A) as the notices issued by the CIT(A) were sent to the email-id of the previous Tax Consultant, Shri Alay Mistry, based in

Ahmedabad and the Consultant failed to inform the assessee about the notices or take necessary action on their behalf. This miscommunication resulted in the assessee being unaware of the ongoing proceedings and hence unable to respond to the notices. The AR further stated that one of the partners, Shri Bharat M Shah, who was primarily responsible for handling tax matters, passed away during the second wave of the COVID-19 pandemic in 2021. Additionally, the AR stated that the other partner, Shri Harshad M Shah, underwent heart surgery during the same period. These personal tragedies further disrupted the firm's ability to manage its legal and financial affairs, leading to the failure to comply with the notices. To support this contention, the assessee submitted the death certificate of the partner. The assessee also submitted the copy of sale agreement and purchase agreement along with computation of income.

6. The Departmental Representative (DR) stated that the assessee has not filed the return of income and has filed only computation of income.

7. We have carefully perused the submissions made by both the parties, the documents on record, and the orders passed by the AO and the CIT(A). The key issue before us is whether the CIT(A) was correct in upholding the addition of Rs.33,50,000/- made by the AO without considering the additional evidence provided by the assessee, despite the claim of exceptional circumstances and non-compliance. The AO reopened the assessment under Section 147 of the Act based on information from ITS-NMS-AIMS, showing that the assessee had sold an immovable property for Rs.33,50,000/- during the year. However, the assessee had not filed a return of income for the AY 2014-15. Despite issuing multiple notices under Sections 148 and 142(1) of

the Act, the assessee did not respond. As a result, the AO completed the assessment *ex-parte* under Section 144 of the Act and treated the entire sale consideration as unexplained income, adding Rs.33,50,000/- to the assessee's total income. In the appeal before the CIT(A), the assessee submitted that there was a capital loss on the sale of the immovable property and provided additional documentary evidence, including death certificate of Shri Bharat M Shah, the partner primarily responsible for handling tax matters, who passed away during the second wave of COVID-19 in 2021, computation of income showing the capital loss and sale and purchase agreements related to the immovable property for the purpose of computing the indexed cost of acquisition. The assessee also argued that the email notices were sent to the previous tax consultant's email-id, who failed to inform them about the notices, leading to non-compliance. These circumstances, along with the personal tragedies, were cited as sufficient cause for non-compliance with the CIT(A)'s notices.

7.1. The Departmental Representative (DR), on the other hand, emphasized that the assessee had not filed a return of income for the relevant year, and the only document filed was the computation of income. The DR argued that the AO's action of adding Rs.33,50,000/- to the income was justified due to the lack of cooperation from the assessee.

7.2. Upon reviewing the facts, we find merit in the assessee's contention that the CIT(A) did not consider the additional evidence submitted along with the appeal, particularly the sale and purchase agreements and the computation of income, which are crucial to determining the indexed cost of acquisition and whether the transaction resulted in a capital gain or loss. The

failure to admit and evaluate the additional evidence constitutes a violation of natural justice. Further, the assessee has demonstrated sufficient cause for the non-compliance with the notices issued by the CIT(A). The death of one partner during the pandemic and the serious health issues faced by the other partner are exceptional circumstances that should have been considered by the appellate authority. The fact that the notices were sent to the email of the previous tax consultant, who failed to inform the assessee, further supports the assessee's claim of genuine hardship.

7.3. While the DR is correct in stating that the assessee did not file a return of income, the computation of income and supporting documents related to the sale of the property were filed at the appellate stage. These documents are critical for the proper computation of the capital gain or loss.

7.4. In light of the above findings, we are of the opinion that the CIT(A) erred in upholding the addition made by the AO without considering the additional evidence provided by the assessee. The order of the CIT(A) is set aside, and the matter is remanded back to the file of the AO for fresh adjudication. The AO is directed to examine the additional evidences provided by the assessee, including the sale and purchase agreements and the computation of income and re-assess the capital gain or loss by considering the indexed cost of acquisition in accordance with the relevant provisions of the Income Tax Act. The AO is also directed to provide the assessee with a reasonable opportunity to be heard during the re-assessment proceedings. The assessee is also directed to fully co-operate with the AO during the re-assessment process and furnish all necessary details and documents to facilitate a fair and just assessment.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 22 October, 2024 at Ahmedabad.

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

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 22/10/2024

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