

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.721/Ahd/2024  
निर्धारण वर्ष / Assessment Year : 2014-15

Joykuty Selistine Puthuvayal House Palliserrikal, Sastham Cottah Kollam Kollam 690 521, Kerala	<u>बनाम/</u> <u>v/s.</u>	The ITO Ward-1(2)(2) Ahmedabad
स्थायी लेखा सं./PAN: ALTPS 3335 G		

<b>अपीलार्थी/</b> (Appellant)	..	<b>प्रत्यर्थी/</b> (Respondent)
Assessee by :		Shri S. N. Divatia & Shri Samir Vora, ARs
Revenue by :		Shri V.K. Mangla, Sr.DR

सुनवाई की तारीख /Date of Hearing : 16/10/2024  
घोषणा की तारीख /Date of Pronouncement: 23/10/2024

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, AM:**

This appeal by the assessee is directed against the order dated 14.03.2024 passed by the office of the Commissioner of Income Tax (Appeals), Addl./JCIT(A)-8, Mumbai [hereinafter referred to as “Addl.CIT(A)”], in relation to the assessment order dated 23.12.2019 passed by the Assessing Office [hereinafter referred to as “AO”] under section 143(3) read with section 147 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”], for the Assessment Year (AY) 2014-15.

**Fact of the Case:**

2. The assessee is an individual engaged in the business of resale of plastic mats, operating between Kerala and Ahmedabad, who did not file his return of income for the AY 2014-15. The AO reopened the assessment for AY 2014-15 under section 147 of the Act, based on information received through the Non-filers Monitoring System (NMS) indicating cash deposits of Rs.22,71,200/- in the assessee's ICICI Bank account. Despite notices under section 148 of the Act and subsequent notices under section 142(1) of the Act, the assessee did not respond, resulting in the assessment being completed *ex-parte* under section 143(3) r.w.s 147 of the Act. The AO added Rs.12,19,200/- as unexplained money under section 69A of the Act, accepting part of the assessee's explanation for the cash deposits but rejecting others due to lack of documentary evidence.

3. Aggrieved by the addition made by the AO, the assessee filed an appeal before the CIT(A) office. However, as noted in the Addl.CIT(A)'s order, there was no compliance to four notices issued under section 250 of the Act during the appellate proceedings. Consequently, the Addl.CIT(A) dismissed the appeal for non-prosecution and upheld the order of the AO without addressing the issues on merits.

4. Aggrieved by the order of the Addl.CIT(A), the assessee is in appeal before us with the following grounds of appeal:

1.1 *The order passed Us.250 on 14.03.2024 by Addl./JCIT(A)-8, Mumbai (in short "Addl.CIT(A)") upholding the addition of Rs.12,19,200/- towards the cash deposit in bank account with ICICI Bank as unexplained money*

*u/s 69A of the Act is wholly illegal, unlawful and against the principles of natural justice.*

- 1.2 *The Id. Addl.CIT(A) has grievously erred in law and or on facts in not appreciating that the proceedings initiated u/s 148 by AO of Ahmedabad were wholly illegal and unlawful, since the appellant was permanently residing at Kerala and even notices were being issued of his address at Kerala, the AO at Ahmedabad had no jurisdiction to issue notice u/s 148 as well as make assessment for AY 2014-15.*
- 1.3 *That the in the facts and circumstances of the case as well as in law, the notice issued u/s 148 by AO of Ahmedabad was wholly illegal and without jurisdiction, so that it was liable to be quashed.*
- 2.1. *The Id. Addl.CIT(A) 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 because the mail id pertain to his tax consultant who had not informed him about any such proceedings or notices of hearing. Thus, there was a sufficient cause for failure to comply with the notices claimed to be issued by Addl.CIT(A).*
- 2.2. *The Id. Addl.CIT(A) has grievously erred in not considering fully and properly the submission made by the appellant and confirming the same without any speaking or reasoned order.*
- 3.1 *The Id. Addl.CIT(A) has grievously erred in law and or on facts in upholding that the cash deposits to the extent of Rs.12,19,200/- in account with ICICI Bank was unexplained income u/s.69A.*
- 3.2 *That the in the facts and circumstances of the Id. Addl.CIT(A) ought not to have upheld the addition of Rs.12,19,200/- in respect of the cash deposits to the extent of Rs.12,19,200/-in account with ICICI Bank was unexplained income u/s.69A.*
- 3.3 *Without prejudice to the above and in the alternative the impugned addition made by AO and confirmed by Addl.CIT(A) is highly excessive and calls for substantial reduction.*

*It is, therefore, prayed that the addition of Rs.12,19,200/- upheld by the Addl.CIT(A) may kindly be deleted.*

5. During the course of hearing before us, the Authorised Representative (AR) of the assessee submitted before us that the Addl.CIT(A) has not adjudicated the appeal on its merits and relied solely on the AO's order. The AR further contended that the assessee did not receive proper communication regarding the appellate proceedings because the registered email address on the ITBA portal belonged to the assessee's tax consultant, who did not inform the assessee about the notices. Additionally, the AR highlighted that the assessee, being a small businessman unfamiliar with email and computer technology, was unaware of the notices sent through electronic means. The AR undertook that the assessee is now prepared to fully co-operate with the Addl.CIT(A) and provide all necessary evidence to substantiate his claims regarding the cash deposits, and requested that the matter be remanded back for adjudication on merits. The Departmental Representative (DR) did not object to restoring the matter back to the file of the Addl.CIT(A).

5.1. Upon perusal of the facts and the order passed by the Addl.CIT(A), it is evident that the appeal was dismissed solely due to non-compliance with the notices under section 250 of the Act. A critical aspect raised by the AR is that the registered email address on the Income Tax Business Application (ITBA) portal was not the personal email address of the assessee, but that of his Tax Consultant and the assessee, being a small businessman unfamiliar with email or computer technology, was unaware of the communications sent to this email. The further contended that the tax consultant did not inform the assessee about the notices, leading to a lack of response during the appellate proceedings.

5.2. The AR submitted that this failure to inform the assessee of the notices under section 250 of the Act should not be construed as non-compliance on the part of the assessee. The principles of natural justice require that the assessee be given a reasonable opportunity to present his case. When notices are sent via email, and the recipient is either unaware of the communication or lacks access to the technology, this could result in procedural unfairness. In support of this, the AR referred to the recent judgement of the **Punjab & Haryana High Court in Munjal BU Centre of Innovation and Entrepreneurship vs. CIT (CWP-21028-2023, dated 04.03.2024)**. The Court held that tax authorities should adopt a pragmatic approach in recognizing the reality that individuals or companies are not always expected to monitor the e-portal of the department continuously. Failure to do so could lead to the denial of a fair hearing, thereby violating the principles of natural justice. The Addl.CIT(A), in the impugned order, noted that the registered email address was that of the Tax Consultant (casmsoni012@gmail.com) and proceeded with the assumption that the assessee was fully aware of the notices issued. However, the assessee's unawareness of the email and the absence of any direct communication significantly impacts the fairness of the proceedings. The Addl.CIT(A) did not explore the underlying reasons for non-compliance, particularly considering the assessee's lack of technological knowledge and the reliance on a third party (the tax consultant) to handle communications. In addition to the communication issue, it is evident that the Addl.CIT(A) did not decide the appeal on its merits. Instead, the appeal was dismissed for non-prosecution due to the lack of response to the notices. The substantive issues raised by the assessee, such as the validity of the notice under section 148 of the Act and the explanation for the cash deposits, were not addressed in the order. The Addl.CIT(A) solely relied on the assessment order passed by the

AO without independently examining the issues. It is a well-settled principle that appellate authorities must decide matters based on merits, particularly when substantive legal and factual grounds have been raised. Dismissing the appeal without adjudicating these issues deprives the assessee of a fair opportunity to be heard, further violating the principles of natural justice.

5.3. In light of the above, we find that the assessee was deprived of a fair chance to present his case due to procedural and communication deficiencies. The reliance on the email communication, which the assessee had no access to, and the subsequent non-prosecution of the appeal without considering the merits of the case, are contrary to the principles of natural justice. The assessee should be granted a fresh opportunity to present the necessary documentation and explanations in support of his case. The order of the Addl.CIT(A) is set aside, and the matter is remanded back to the file of Addl.CIT(A) for fresh adjudication in accordance with law, after providing adequate opportunity to the assessee to present his case.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

**Order pronounced in the Open Court on 23 October, 2024 at Ahmedabad.**

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

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 23/10/2024

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)/Addl/JCIT(A)-8, Mumbai
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