

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 836/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

Krintesh Rameshbhai Patel Patel Wadi, opp Swaminarayan Temple, Lasundra Bazar, Lasundra Ahmedabad, Gujarat - 387640	बनाम/ Vs.	DCIT Circle – Kheda Nadiad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BYVPP1598Q		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri B. T. Thakkar, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Prateek Sharma, Sr. DR

Date of Hearing	07/11/2024
Date of Pronouncement	12/11/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 08.01.2024 for the Assessment Year 2017-18.

2. There was delay of 48 days in filing of this appeal. The assessee has filed an affidavit explaining that in Form No.-35 e-mail address of Sri Malay Shah, the tax consultant was given. All the notices for the hearing of the

appeal and the appeal order was sent on the e-mail of the tax consultant. Due to non-compliance on the part of the tax consultant, the Ld. CIT(A) had decided the appeal ex-parte. The assessee has explained that neither the notices nor the order of CIT(A) was brought to his notice by the tax consultant. It is further submitted that assessee is an illiterate person carrying on a small business of mobile recharging and was unaware about the income tax provision. It is explained that due to non-communication of the appeal order by the tax consultant in time, there was delay in filing of this appeal. It is found that in the Form no.-35 the email address mentioned is mns21192@gmail.com and an option was given that notices/communication may not be sent on this email. In view of this fact and the explanation of the assessee, the delay in filing of the appeal is condoned.

3. The brief facts of the case are that the assessee had filed his return of income for AY 2017-18 on 08.08.2017 declaring income of Rs.2,96,350/-. The return was selected for scrutiny under CASS. In the course of assessment, the assessee had made compliance only once vide letter dated 07.09.2018 and thereafter no compliance was made by the assessee. The AO had found that the assessee had made total cash deposit of Rs.54,94,100/- in his two bank accounts with Central Bank of India. In the absence of any explanation the entire cash deposit of Rs.54,94,100/- was treated as unexplained by the AO and added to income u/s 69A of the Act. The assessment was completed u/s 144 of the Act on 27.11.2019 at total income of Rs.57,90,450/-.

4. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which was decided vide the impugned order and the appeal of the assessee was dismissed.

5. Now, the assessee is in second appeal before us. The only ground taken by the assessee in this appeal is as under:

“1. Sum of Rs.54,94,100 treated as unexplained income being unlawful and unjust in nature may please be deleted.”

6. Shri B. T. Thakkar, Ld. AR appearing for the assessee explained that the Ld. CIT(A) had passed the order ex-parte as no compliance could be made by the assessee before him. He explained that the issue involved in this case requires examination of facts. The Ld. AR submitted that the assessee carries on a small business of recharging of mobile of Vodafone and other cell companies and he earns commission in respect of recharge done through him. The Ld. AR explained that the cash deposits were the amount of recharge which were deposited on day-to-day basis in his bank account and immediately transferred to Vodafone and other cell companies after retaining his commission. Under the circumstances the AO was not correct in treating the entire cash deposit as income of the assessee. The Ld. AR explained that the nature of business was explained by the assessee in the submission made before the AO on 07.09.2018 which was not appreciated in the right perspective. He, therefore, requested that the matter may be set aside to the file of the AO with a direction to allow another opportunity to the assessee to

explain the cash deposits. The Ld. AR assured that the assessee will certainly make compliance before the AO if another opportunity is allowed to him.

7. Per contra, Shri Prateek Sharma, the Ld. Sr. DR submitted that no compliance was made by the assessee either before the AO or before the Ld. CIT(A). Therefore, the addition in respect of cash deposit can't be faulted as no explanation in this respect was given by the assessee. The Ld. Sr. DR had, however, no objection if the matter was set aside to the file of the AO considering the explanation of the assessee as given in the course of this proceeding. At the same time, he requested that a direction may be given to the assessee to make necessary compliance before the AO.

8. We have carefully considered the rival submissions. It is true that no proper compliance was made by the assessee before the AO. In the course of assessment proceeding the AO has mentioned about reply of the assessee dated 07.09.2018 digitally filed but the contents of this letter has not been discussed in the order. Apart from this letter, no compliance was made by the assessee in response to the subsequent notices issued by the AO. Therefore, the AO had treated the entire cash deposit of Rs.54,94,100/- as unexplained and made the addition. The action of the AO in adding the entire credit entries in the form of cash deposits without considering the debit entries, also cannot be held as correct. The AO should have considered the transactions in the bank statement in its entirety. A copy of the bank statement

has been brought on record in the paper book filed by the assessee. It is found from the bank statement that the cash deposits were made in the bank account on almost daily basis and there are transfers made to Vodafone and other companies, also on the daily basis. The assessee has explained that he was earning only commission income from the recharge amount, which requires verification in order to correctly assess the income of the assessee. It is found that the AO had not considered the bank transactions in its entirety. In view of this fact and also considering the nature of entries in the bank statement the action of the AO to treat the entire cash deposit as income of the assessee cannot be held as correct. Since, the matter was not examined on merits, as the assessee didn't make proper compliance in the assessment and no compliance at all in the appellate proceeding, we deem it proper to set aside the matter to the file of the AO with a direction to allow another opportunity to the assessee to furnish the required documents & to explain the cash deposits in the bank account and thereafter to decide the matter on merits. Further, the AO should consider the transactions in the bank accounts in its entirety. The assessee is also directed to produce the necessary evidences in support of the ground as taken in this appeal to explain the cash deposits and not to seek any undue adjournments. In case, the assessee doesn't comply before the AO, he will be free to decide the matter in the manner as deemed fit.

9. It is noted that the assessee has not explained the reason for non-compliance before the Ld. CIT(A) in spite of repeated

opportunities provided by him. The Ld. CIT(A) had allowed four opportunities to the assessee on 13.01.2021, 08.12.2023, 18.12.2023 and on 27.12.2023. However, no compliance was made by the assessee on any of the dates nor any request for adjournment was ever sought. The assessee can't simply escape by placing the blame on the Tax Consultant. Once the appeal was filed by the assessee, it was his obligation and duty to ensure that proper compliance was made before the Ld. CIT(A). The assessee has also not brought on record evidence for any action taken against the errant Tax Consultant. Therefore, we deem it proper to **impose a cost of Rs.5,000/- (Rupees five thousand only)** on the assessee, which should be deposited to the Income Tax Department within two weeks of the receipt of this order. The copy of challan for payment of cost should be filed with the Registry. The AO will proceed in the matter after verifying that the assessee has paid the cost as imposed.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

This Order pronounced on 12/11/2024

Sd/-

Sd/-

(SUCHITRA KAMBLE)

(NARENDRA PRASAD SINHA)

JUDICIAL MEMBER

ACCOUNTANT MEMBER

Ahmedabad; Dated 12/11/2024

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)-

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad