

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

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकरअपीलसं./I.T.A. No. 1363/Ahd/2024
(निर्धारणवर्ष / Assessment Years: 2017-18)

Income Tax Officer, Ward-3(1)(4), Vadodara	बनाम/ Vs.	AnilbhaiChampaklal Shah 17, Nageshwar Society, Near Nageshwar Temple, Harni Road, Vadodara, Gujarat 390006
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AGTPS8933M		
(Appellant)	..	(Respondent)

अपीलार्थीओरसे/Appellant by :	Shri Rignesh Das, Sr. DR
प्रत्यर्थीकीओरसे/Respondentby:	Shri Mehul K. Patel, A.R.

Date of Hearing	15/10/2024
Date of Pronouncement	06/11/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the Revenue against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 24.05.2024 for the Assessment Year 2017-18.

2. The brief facts of the case are that return of income for A.Y. 2017-18 was filed by the assessee on 27.10.2017 declaring total income of Rs.4,19,590/-. Thereafter, the assessee had filed revised return on 07.11.2017 declaring income of Rs.4,32,370/-. The AO had received an information that the assessee had

deposited cash of Rs.1,74,62,000/- in the bank account maintained with the Kotak Mahindra Bank in the name of M/s. Shreenathji Agency, the proprietary concern of the assessee. The case was, therefore, reopened u/s.147 of the Income Tax Act, 1961 (in short 'the Act') to examine the source of this cash deposit. In the course of re-opened proceeding, no compliance was made by the assessee. The AO had, therefore, completed the assessment ex-parte under Section 147 r.w.s. 144 of the Act on 23.03.2022 at total income of Rs.1,78,94,370/-, wherein addition of Rs.1,74,62,000/- was made u/s.69 of the Act in respect of unexplained money being cash deposited in the bank account.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided vide the impugned order and the appeal of the assessee was allowed.

4. Now, the Revenue is in appeal before us. The Revenue has taken the following grounds in this appeal:

“i) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the addition of cash deposits of Rs. 1,74,62,000/- made u/s 69A rws 115BBE of the I.T.Act, 1961 on the basis of the details/documents submitted by the assessee during the course of appellate proceedings, without affording an opportunity to the Assessing Officer as per the provisions of Rule 46A(3) of the Income Tax Rules, 1962 to examine these details/documents and furnish a report on the same as these details/documents were never produced by the assessee before the Assessing Officer during the course of assessment proceedings?

(ii) *The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.”*

5. Shri Rignesh Das, Ld. Sr. DR for the Revenue submitted that the Ld. CIT(A) had allowed relief to the assessee by admitting additional evidences in contravention to provision of Rule 46A(3) of the Income Tax Rules. He explained that no compliance was made by the assessee in the course of assessment proceedings and the AO had passed the order ex-parte. On the other hand, the assessee had made submission before the Ld. CIT(A), which was admitted without allowing any opportunity to the AO. He, therefore, requested that the matter may be set aside with a direction to call for a remand report from the AO in respect of the additional evidences admitted by the Ld. CIT(A).

6. Per contra, Shri Mehul K. Patel, Ld. AR for the assessee fairly admitted that certain fresh evidences/explanations were filed before the Ld. CIT(A) and that the Ld. CIT(A) had not called for any remand report from the AO. He, therefore, requested that the matter may be set aside to the file of the Ld. AO to examine the evidences as brought on record in the course of appellate proceeding.

7. We have carefully considered the rival submissions. It is found that no compliance was made by the assessee before the AO who had passed the assessment order ex-parte. On the other hand, certain submissions / evidences were filed before the Ld. CIT(A), based on which he had allowed relief to the assessee.

The provision of Rule 46A(3) clearly stipulates that the CIT(A) shall not take into account any evidence without allowing an opportunity to the AO to examine the evidences/documents as brought on record in the course appellate proceedings. Since, the Ld. CIT(A) has controverted the provision of Rule 46A(3) of the IT Rules, we deem it proper to set aside the matter to the file of the Jurisdictional AO to examine the matter afresh. The AO is directed to allow a proper opportunity of being heard to the assessee. At the same time, the assessee is also directed to make compliance before the AO and file the necessary evidences as brought on record before the Ld. CIT(A) and also other evidences as available in support of the cash deposits. In case of non-compliance on the part of the assessee, the AO is free to decide the matter as deemed proper.

8. In the result, the appeal of the Revenue is allowed.

This Order pronounced on 06/11/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad: Dated 06/11/2024

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)-
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Ahmedabad
6. गार्डफाईल / Guard file.

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad