

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

सुश्री सुचित्राकम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

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

आयकर अपील सं/ITA No.733/Ahd/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Bhupendra Shantilal Shah 1, Sudev Duplex B/h. Shryash High School Manjalpur Baroda - 390 002 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The Dy.CIT Circle-1(1)(1) [previously ITO Ward-1(1)(3)] Vadodara
स्थायी लेखा सं./PAN: AEPPS 1425 Q		
<u>अपीलार्थी/</u> (Appellant)		<u>प्रत्यर्थी/</u> (Respondent)
Assessee by :		Shri Hemant Suthar, AR
Revenue by :		Shri Surendra Kumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 11/11/2024
घोषणा की तारीख /Date of Pronouncement: 12/11/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee arises from the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "CIT(A)"], dated 22/02/2024, for the Assessment Year (AY) 2017-18. The CIT(A) upheld the assessment order passed by the Assessing Officer [hereinafter referred to as "AO"] u/s.143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], dated 27/12/2019.

Facts of the Case:

2. The assessee, Shri Bhupendra Shantilal Shah, filed his return of income for AY 2017-18 on 27/03/2018 under Section 139(1) of the Act, declaring a total income of Rs.9,97,030/. The return was selected for scrutiny under the Computer Assisted Scrutiny Selection (CASS) guidelines based on the criteria of "Large Value Cash Deposits During Demonetization Period" and "Large Value Cash Deposits as Compared to Returned Income." The Assessing Officer (AO) commenced scrutiny proceedings by issuing a notice under Section 143(2) of the Act on 23/08/2018, which was duly served upon the assessee. This was followed by a notice under Section 142(1) of the Act dated 10/07/2019, requesting specific details and documents, including an explanation for cash deposits made during the demonetization period (from 08/11/2016 to 30/12/2016) and other deposits during the year. Despite this initial notice and subsequent reminders on 17.09.2019, 01.10.2019, 13.11.2019, and 17.12.2019, the assessee's responses were incomplete, and several critical documents, including confirmations of unsecured loans, bank statements, and proofs of alleged commission income, were not submitted.

3. During the assessment proceedings, the AO noted substantial cash deposits totalling to Rs.96,25,414/- made in the assessee's bank accounts during the demonetization period and other times during the financial year. Although the assessee attributed these deposits to income from commission and brokerage, unsecured loans, and personal cash reserves, he failed to provide corroborative documentary evidence to substantiate these claims. The assessee claimed to have earned commission income of Rs.9,30,500/- in cash. However, no supporting documents, such as vouchers, invoices, or

recipient details, were provided to establish the genuineness of this income, leading the AO to question its legitimacy. Additionally, the AO observed that the assessee had unsecured loans amounting to Rs.1,42,45,240/- during the year, allegedly received from various parties. The AO issued multiple notices specifically requesting confirmations, PAN details, and bank statements of the lenders to verify their creditworthiness. However, the assessee's responses were inadequate, and no credible evidence was furnished, prompting the AO to treat these loans as unexplained under Section 68 of the Act. Furthermore, the AO expressed concern over the assessee's declared household expenses of only Rs.2,10,000/-. Given the assessee's ownership of multiple luxury vehicles (including Mercedes, Jaguar, and Honda Mobilio) and evidence of a high lifestyle, the AO deemed this amount insufficient. In the absence of satisfactory explanations or justification, an additional amount was estimated and added to account for household expenses.

3.1. Based on the lack of compliance and failure to produce sufficient evidence, the AO made the following additions:

- Rs.96,25,414/- as unexplained cash deposits under Section 69A, of the Act invoking Section 115BBE to apply the highest tax rate to this amount.
- Rs.1,42,45,240/- as unexplained unsecured loans under Section 68, due to non-submission of confirmations and supporting evidence.
- Rs.2,10,000/- for inadequate household withdrawals, considering the high expenses observed in the assessee's lifestyle.

4. The assessee filed an appeal against the AO's order. However, the CIT(A), NFAC, issued several notices to the assessee that were either un-

responded or met with repeated adjournment requests without sufficient cause. These notices were as follows:

- **Notice dated 23.02.2021** - issued through ITBA for a hearing on 10.03.2021, which remained non-complied.
- **Notice dated 04.11.2022** - issued to enable communication, but the assessee did not respond.
- **Notice dated 05.01.2024** - issued for a hearing on 11.01.2024, with no compliance received.
- **Notice dated 24.01.2024** - a final opportunity notice issued for compliance by 31.01.2024. The assessee responded by seeking an adjournment without specifying any valid reason.
- **Notice dated 12.02.2024** - a last and final opportunity was granted for compliance by 19.02.2024, to which the assessee again responded with an adjournment request without any substantive grounds.

4.1. The repeated non-compliance and adjournment requests exhibited a pattern of delay and non-cooperation, leaving the CIT(A) with no choice but to decide the appeal ex-parte.

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

1. *The Ld. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi has grossly erred in law and in facts in dismissing the appeal ex-parte without affording reasonable opportunity of being heard to the appellant. The appeal of the appellant may kindly be restored to the file of the Ld. CIT (Appeals) and may please be directed to afford reasonable opportunity of being heard.*
2. *The Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, has erred in law and in facts in confirming the action of the Ld. A.O. in making an addition of Rs.96,25,414/- holding that the amount deposited in the bank account during the year under consideration represents unexplained money u/s. 69A of the I.T. Act r.w.s.115BBE. The Ld. CIT(A) has failed to appreciate that the addition so made is purely based on hypothesis and surmises without any cogent material*

and hence the addition of Rs.96,25,414/-, being in complete disregard of the fact and the law, is prayed to be deleted.

3. *Without prejudice to Ground No. 2 above, the Ld. CIT(A), NFAC has erred in law and in facts in not appreciating the fact that the Ld. A.O. has made the addition of Rs.52,64,000/- twice, one when such amount is disclosed by the appellant as commission income and secondly, as unexplained deposit. The addition of Rs.52,64,000/- having resulted into double addition of the same income is prayed to be restricted to either of the one.*
4. *The Ld. CIT(A), NFAC has erred in law and in facts in confirming the action of the Ld. AO in the addition of Rs.1,42,45,240/-, being the amount received as unsecured loan, treating the same to be unexplained as per Section 68 without considering the explanations of the appellant. The impugned addition of Rs.1,42,45,240/- being bad in law and in facts is prayed to be deleted.*
5. *The Ld. CIT(A), NFAC has erred in law and in facts in confirming the action of the Ld. AO in the addition amounting to Rs.2,10,000/- on account of household expenses ignoring the explanation and submission made by the appellant. The impugned addition being bad in law and in facts is prayed to be deleted.*
6. *Your appellant craves liberty to add, alter, amend substitute or withdraw any of the ground(s) of appeal hereinabove contained.*

5.1. During the course of hearing before us, the Authorised Representative (AR) submitted an application under Rule 29 of the Income Tax Appellate Tribunal (ITAT) Rules, 1963, requesting permission to introduce additional evidence. A Paper Book containing 71 pages was submitted, including loan confirmations, copies of PAN cards, bank statements, and other documents that were not previously available at the time of assessment. The AR contended that these documents substantiate the sources of cash deposits and unsecured loans and should be admitted to allow a fair determination of the issues on merit.

6. The DR submitted that while the assessee has now presented additional evidence, these documents were not provided to the AO or the CIT(A) during the initial assessment and appellate stages, despite several opportunities and repeated notices. The DR highlighted that the assessee repeatedly requested adjournments and failed to furnish the necessary evidence on time, demonstrating a lack of cooperation throughout the proceedings. The DR further contended that the additional documents— including loan confirmations, copies of PAN cards, and bank statements— require thorough verification to ensure their authenticity and relevance to the issues under consideration. In light of these facts, the DR submitted that if the bench is inclined to admit the additional evidence, the matter should be remanded back to the CIT(A) for proper verification of these documents to ensure a fair and comprehensive adjudication based on all relevant information.

7. We have carefully examined the submissions of both parties, the facts of the case, and the additional evidence. While we note the assessee's lack of co-operation and delay in furnishing evidence, we find that the additional evidence submitted is critical to verifying the sources of the cash deposits and unsecured loans. To ensure a just outcome, we admit the additional evidence, subject to verification by the CIT(A).

7.1. Given the assessee's pattern of non-compliance and procedural delays, we deem it appropriate to impose a cost of Rs.5,000 (Rs.Five thousand only) on the assessee, payable to the Income Tax Department within 30 days of this order. This cost underscores the importance of adhering to procedural

requirements and timely compliance during assessment and appellate proceedings.

7.2. Accordingly, without going into the merit of the case, we set aside the order of the CIT(A) and remand the matter back to the file of the CIT(A) with a direction to adjudicate the appeal afresh on the basis of the additional evidence submitted before us. The CIT(A) is directed to verify the authenticity, completeness, and relevance of the documents submitted, provide a reasonable opportunity to the AO to examine the additional evidence and ensure that the principles of natural justice are followed by allowing the assessee a fair hearing.

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

Order pronounced in the Open Court on 12th November, 2024 at Ahmedabad.

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

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 12/11/2024

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