

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायापीठ, "ए" अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" A " 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.567/Ahd/2024  
निर्धारण वर्ष / Assessment Year : 2012-13

Arunbhai Nimbalkar Gajare 2, Krishna Appt Bhudarpura Road Ambawadi Ahmedabasd - 380 006 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The Income Tax Officer Ward-5(3)(4) Ahmedabad
स्थायी लेखा सं./PAN: AKTPG 8637 L		

<b>अपीलार्थी/</b> (Appellant)		<b>प्रत्यर्थी/</b> (Respondent)
Assessee by :		Shri Aseem L. Thakkar, AR
Revenue by :		Shri B.P. Srivastava, Sr.DR

सुनवाई की तारीख /Date of Hearing : 22/10/2024  
घोषणा की तारीख /Date of Pronouncement: 29/10/2024

**आदेश/ORDER**

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

This appeal by the assessee arises against the *ex-parte* order dated 20.09.2023 passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "CIT(A)"], for the Assessment Year (AY) 2012-13. The impugned order of the CIT(A) confirmed the assessment order passed by the Income Tax Officer, Ward 5(3)(4), Ahmedabad [hereinafter referred to as "AO"], under section

147 read with section 144 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] dated 7.12.2019.

**Facts of the Case:**

2. In the original assessment, the AO observed that the assessee had deposited cash amounting to Rs.1,13,57,000/- in his bank account with Central Bank of India, Bhudarpura Branch, Paldi, Ahmedabad during the Financial Year (FY) 2011-12, relevant to the AY 2012-13. Additionally, credit entries totalling to Rs.3,73,550/- were also observed in the same account. The assessee failed to furnish the return of income in response to the notice under section 148 of the Act, and upon being requested to explain the source of these deposits and credit entries, the assessee did not provide any satisfactory explanation or documentary evidence. Consequently, the AO made additions of Rs.1,13,57,000/- under section 69A of the Act, treating the cash deposits as unexplained, and Rs.3,73,550/- as unexplained credit entries, assessing the total income at Rs.1,17,30,550/- under section 144 of the Income Tax Act.

3. The assessee filed an appeal against the order of the AO before the CIT(A), NFAC, Delhi. However, during the appellate proceedings, the assessee did not respond to multiple notices issued by the CIT(A). Despite four opportunities being granted between 2021 and 2023, the assessee failed to appear or furnish submissions in time. In response to the final notice dated 07.09.2023, the assessee sought an adjournment due to his medical condition, but the request was rejected. Consequently, the CIT(A) passed an *ex-parte* order, confirming the additions made by the AO without considering the merits of the case or the assessee's explanation.

3.1. The assessee has raised the following grounds of appeal before us:

1. *The Learned CIT(A), NFAC, Delhi has erred in passing an ex Parte order dismissing the appeal of the assessee without giving reasonable opportunity of being heard to the appellant hence the same being against the principles of natural justice and law requires to be quashed.*
2. *The Learned CIT(A), NFAC, Delhi has erred in passing an Ex Parte order and confirming the additions made by the Assessing Officer.*
3. *The learned CIT(A), NFAC, Delhi has erred in confirming the action of the assessing Officer in completing the assessment by passing an order u/s.147 rws.144 of the Act without providing copy of the reasons recorded for reopening the assessment and for issue of notice u/s.148 of the Act. Hence the order so passed being illegal and bad in law requires to be quashed.*
4. *The learned CIT(A), NFAC, Delhi has erred in confirming the action of the Assessing Officer has erred in computing the total income at Rs.1,17,30,550/- treating the cash deposits and credit entries in bank account No.306656602 held with Central Bank of - India, Bhuderpura Branch, Paldi, Ahmedabad during the year under appeal as income of the appellant.*
5. *The learned CIT(A), NFAC, Delhi has erred in confirming the addition of Rs.1,13,57,000/- made by Assessing Officer treating the cash deposited in bank account No.306656602 held by the appellant with Central Bank of India, Bhuderpura Branch, Paldi, Ahmedabad during the year under appeal as alleged unexplained cash deposits u/s.69A of the I.T.Act, 1961 without any basis.*
6. *The learned CIT(A), NFAC, Delhi has erred in confirming the addition addition of Rs.3,73,550/- made by Assessing Officer treating the credit entries in bank account No.306656602 held by the appellant with Central Bank of India, Bhuderpura Branch, Paldi, Ahmedabad during the year under appeal as alleged unexplained credit entries without any basis.*
7. *The learned CIT(A), NFAC, Delhi has erred in confirming the order passed by the the Assessing Officer without providing copies of the material and data relied upon by him while completing the assessment and therefore the assessment is made in violation of principles of natural justice and equity.*
8. *The appellant prays that the delay in filing of appeal before the Hon'ble Income tax Appellant Tribunal may kindly be condoned.*
9. *The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.*

### Condonation of Delay

4. The appeal was filed with a delay of 130 days, for which the assessee has submitted an application for condonation, supported by an affidavit and medical certificate. The assessee has submitted that the delay in filing the appeal occurred due to his medical condition, which included hospitalization and prolonged treatment, as evidenced by the medical certificate and affidavit on record. The assessee was unable to handle his legal and financial affairs during this period, which led to the delay of 130 days in filing the appeal.

5. We have carefully examined the reasons for the delay. **The Hon'ble Supreme Court in Collector, Land Acquisition vs. Mst. Katiji [1987] 167 ITR 471 (SC)** held that courts should adopt a liberal approach in condoning delays when the cause for delay is bona fide and beyond the control of the party. In the present case, the delay was caused due to genuine medical reasons, and there is no evidence of any malafide intent. The medical certificate corroborates the assessee's claim. Therefore, in the interest of justice, we condone the delay of 130 days in filing the appeal and proceed to decide the appeal.

5.1. The assessee has primarily challenged the *ex-parte* nature of the CIT(A)'s order, contending that he was not given a reasonable opportunity to present his case. The CIT(A), in rejecting the assessee's request for adjournment due to medical reasons, proceeded to pass an *ex-parte* order without considering the merits of the case. Given the substantial additions

made by the AO under section 69A of the Act for unexplained cash deposits and credit entries, it is essential to provide the assessee with a fair opportunity to explain the source of these transactions.

5.2. Upon careful consideration of the facts and circumstances, we find that the assessee was prevented from appearing before the CIT(A) due to genuine reasons. The principles of natural justice require that the assessee be given a reasonable opportunity to present his case before an adverse decision is rendered. In the present case, the *ex-parte* order of the CIT(A) deprives the assessee of such an opportunity. In the interest of justice, we deem it appropriate to set aside the *ex-parte* order of the CIT(A) and restore the matter to his file for fresh adjudication on merits.

5.3. Considering the facts and circumstances the Departmental Representative did not object to the same.

5.4. The order of the CIT(A) is set aside, and the matter is restored to his file for fresh adjudication on merits, after giving the assessee a reasonable opportunity to present his case. The CIT(A) is directed to provide the assessee with a reasonable opportunity of being heard and to consider any documentary evidence or explanations the assessee may furnish in support of his case. The assessee is directed to co-operate with the appellate proceedings before the CIT(A) and adhere to the timelines provided. Failure to comply with the notices or directions of the CIT(A) may result in the appeal being decided based on the material available on record.

5.5. In light of the foregoing discussion, the appeal is allowed for statistical purposes.

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

**Order pronounced in the Open Court on 29 October, 2024 at Ahmedabad.**

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

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 29/10/2024

*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