

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "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.1110/Ahd/2023
निर्धारण वर्ष /Assessment Year : 2017-18

Navroz Munshi A-301, Green Emerald B/h. Utopian Corner New Alkapuri Vadodara - 390 023 (Gujarat)	<u>बनाम</u> <u>/</u> <u>v/s.</u>	National Faceless Assessment Centre Present Jurisdiction The ITO Ward-1(2)(3) Vadodara - 390 007
स्थायी लेखा सं./PAN: AOJPM 8149 K		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Rushin Patel, AR
Revenue by :		Shri Veerbadram Vislavath, Sr.DR

सुनवाई की तारीख/Date of Hearing : 17/10/2024
घोषणा की तारीख /Date of Pronouncement: 25/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "CIT(A)"], dated 27/10/2023, for the Assessment Year (AY) 2017-18, wherein the CIT(A) upheld the addition of Rs.1,00,57,985/- under Section 69A of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], made by the Assessing Officer [hereinafter referred to as "AO"] as unexplained income.

Facts of the Case:

2. The brief facts of the case are that during the course of the assessment proceedings under Section 144 of the Act, 1961, it was noted by the AO that the assessee had made substantial cash deposits in multiple bank accounts during the Financial Year (FY) 2016-17. These deposits, amounting to Rs.24,88,400/-, were made during the demonetization period (from 09/11/2016 to 30/12/2016). Further, the AO observed other credit entries in the assessee's bank accounts totaling to Rs.75,69,585/-, bringing the total to Rs.1,00,57,985/-. The assessee failed to file a return of income for the assessment year under consideration and did not respond to notices issued under Section 142(1) of the Act. Consequently, the AO passed a best judgment assessment under Section 144 of the Act, treating the cash deposits and credit entries as unexplained income under Section 69A of the Act. The AO also initiated penalty proceedings under Section 271AAC of the Act and taxed the unexplained income at 60% under Section 115BBE of the Act.

3. Aggrieved by the order, the assessee filed an appeal before the **CIT(A)**. The assessee, while filing the appeal, faced a delay of **548 days**, for which a request for **condonation of delay** was made, citing reasons such as non-receipt of the assessment order, COVID-19 disruptions, and difficulty in gathering documents. However, the **CIT(A)**, in their order, held that the assessee had not prosecuted the appeal in a meaningful manner, stating that no submission had been made, and dismissed the appeal.

4. The assessee has now filed an appeal before us, raising following grounds against the order of the **CIT(A)**:

1. That the Id. CIT (A) has failed to communicate the notices to the designated e mail id which was even mentioned in the Form 35 filed by Your Appellant. The designated e mail id was munshi27@gmail.com and notices issued up to 01/08/2023 & 18/08/2023 were communicated to the correct e mail id i.e. munshi27@gmail.com and Your Appellant submitted his response against the notice issued on 01/08/2023.

But subsequent notices i.e. issued on 20/09/2023 was issued to client taxmaster@ymail.com. The said email id does not belong to Your Appellant and therefore Your Appellant did not receive the notice itself and Your Appellant has not even received the order passed u/s 250 of the Income Tax Act, 1961 dated 27/10/2023.

2. Without prejudice to the above, the Ld. CIT (A) has failed to appreciate factual circumstances in the subject appeal and passed order us/ 250 of the Income Tax Act, 1961 with undue haste. Ld. CIT (A) has indicated in his order u/s 250 of the Act that no submission whatsoever has been made in the case which is factually incorrect statement on the part of Hon'ble CIT (A). Your Appellant made a submission on 08/08/2023 making available preliminary information/evidence in the matter and requesting for more time as Your Appellant had to not only gather such old information but also to explain each and every entry in the bank statements which was extremely difficult in a short span of time.
3. So, vide above referred submission, Your Appellant had indicated his intention to pursue the appeal in most possible manner as he could have as against the allegation made by Id. CIT (A) in his order that Your Appellant failed purposefully to pursue the appeal in a worthwhile manner. In the submission made before Id. CIT (A), Your Appellant had categorically mentioned that he is gathering the necessary information/documents required and will be able to explain all the deposits and credit entries in his bank account and for the said purpose Your Appellant sought time from Id. CIT (A).
4. Without prejudice to the above, following factual grounds also being submitted for consideration of your honor;
 - a. The assessment order contains details about deposits made in three bank accounts viz. HDFC Bank, Canara Bank, and Bank of Baroda. In respect of information produced about deposits in Bank of Baroda (A/c No. 0727010000990), it is to be noted that the information is erroneous as no such amounts can be verified in the bank statement available for the above said account. The said bank account has deposits of only Rs.70,569/- as against indicated in the assessment order for Rs.16,69,170/-.

- b. *In respect of other two bank accounts, there are contra credit entries in the said accounts to the tune of Rs.14,00,000/- which have also been considered as unexplained income in the assessment order due to the facts being not verified.*
 - c. *In addition to the above, it is also observed that Your Appellant has received genuine credit entries from friends and relatives and also explainable loan entries which if verified, the unexplained income as alleged in the assessment order will reduce to NIL.*
 - d. *In view of the above factual grounds, Your Appellant prays that a fair chance be given to represent his case and produce evidences as required which will help your honor understand the fact that the addition made in the case is unsustainable.*
5. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

5. During the course of the hearing before us, the Authorised Representative (AR) submitted that the CIT(A) issued notices up to 01/08/2023 and 18/08/2023 to the correct designated email address, 'munshi27@gmail.com', as provided in Form 35. However, the final notice dated 20/09/2023 was sent to the incorrect email address, 'client taxmaster@ymail.com', which does not belong to the assessee. The AR contended that due to this error, the assessee did not receive the notice and was deprived of an opportunity to represent his case. Moreover, the AR stated that the assessee had not even received the order under Section 250 of the Act passed by the CIT(A) on 27/10/2023 due to the same error. The AR further submitted a copy of the acknowledgment dated 08/08/2023, showing that the assessee had made a submission before the CIT(A), where preliminary information and part documentation were submitted. The assessee had also requested additional time of two weeks to gather further documents and evidence to explain the bank transactions. The AR argued

that contrary to the findings in the CIT(A)'s order, the assessee had indeed made a submission and indicated the intention to pursue the appeal diligently. The appeal before the CIT(A) was filed with a delay of 548 days. However, it was brought to our notice that the delay was largely due to the COVID-19 pandemic, which affected the assessee's ability to procure the assessment order and file the appeal. The effective delay, excluding the pandemic-related period, was 80 days, which the AR contended should be considered a sufficient cause for the delay. The reasons for the delay, as cited by the assessee, including non-receipt of the assessment order and difficulties in gathering documents, were found to be reasonable and genuine.

6. The AR also raised certain factual errors in the assessment order, particularly in relation to the Bank of Baroda account (A/c No. 0727010000990), where the AO erroneously recorded deposits of Rs.16,69,170/-. The actual deposits in this account, as per the bank statement, were only Rs.70,569/-. Additionally, the AR pointed out that contra entries amounting to Rs.14,00,000/- were recorded in the other two bank accounts, which were erroneously treated as unexplained income by the AO. Further, there were genuine credit entries from friends, relatives, and loans, which could be verified and, if properly explained, would reduce the unexplained income to NIL.

7. We observed that the submission of the AR regarding the incorrect email address used by the CIT(A) for the notice dated 20/09/2023 appears valid. The notices prior to this were sent to the correct email address, and this sudden change to an incorrect email address is a procedural lapse that deprived the assessee of the opportunity to fully participate in the appellate

proceedings. This constitutes a violation of the principles of natural justice. The evidence submitted by the AR showing that a submission was made on **08/08/2023**, seeking additional time and submitting part documents, contradicts the CIT(A)'s finding that no submission was made. It is evident that the assessee demonstrated intent to pursue the appeal and requested reasonable time to gather further evidence. The failure to consider this request by the CIT(A) reflects undue haste in passing the appellate order.

8. We have carefully considered the reasons for the delay in filing the appeal before the CIT(A). The effective delay of 80 days, excluding the COVID-19 period, is justified based on the reasons provided by the assessee, including the non-receipt of the assessment order and the difficulties in procuring necessary documents. These reasons constitute sufficient cause under Section 249(3) of the Act, and the CIT(A) should have condoned the delay. Considering the circumstances, the Departmental Representative (DR) has not raised any objection in condoning the delay.

9. The discrepancies in the AO's assessment, specifically regarding the Bank of Baroda account and the contra entries, require further verification. The AR has raised valid points that, if substantiated, could materially alter the outcome of the assessment. Therefore, the matter warrants a fresh examination of the facts and evidence by the CIT(A).

9.1. In view of the procedural lapses, non-communication of notice to the correct email address, and the failure to consider the appellant's submission dated 08/08/2023, we find that the principles of natural justice have been violated. Furthermore, the factual discrepancies raised by the appellant

require proper verification. Accordingly, we are of the opinion that the matter should be restored to the file of the CIT(A) for fresh adjudication, with a direction to consider the appellant's submissions and evidence on record, and to issue notices to the correct designated e-mail address. Therefore, the CIT(A)'s order dated 27/10/2023 is hereby set aside, and the case is remanded back to the file of CIT(A) for fresh consideration, after providing the assessee a reasonable opportunity to present additional evidence and submissions.

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

Order pronounced in the Open Court on 25 October, 2024 at Ahmedabad.

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

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 25 /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