

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

BEFORE DR. BRR KUMAR, VICE PRESIDENT
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1256/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2012-13

Rakeshkumar Shamalbhai Sharma Sampa, Dehgam Gandhinagar - 382 315 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The ITO Ward-3 Gandhinagar
स्थायी लेखा सं./PAN: BJAPS 9160 B		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Tej Shah, AR	
Revenue by :	Shri C. Dharani Nath, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 20/11/2024
घोषणा की तारीख /Date of Pronouncement: 22/11/2024

आदेश/ORDER

PER MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed by the Assessee against the order dated 24/12/2019 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" in short] for Assessment Year (AY) 2012-13.

2. Grounds of appeal are as under:

1. The learned A.O. has erred in computing the total income that of Rs. 21,98,124/-, as against return income of Rs. 1,60,050/-.
2. That the reopening of the case under section 147 is bad in law and void ab initio as it is beyond four years and not properly recorded regarding escapement of income.

3. *The learned A.O. has erred in law as well as facts in making addition of Rs. 21,98,124/- as unexplained deposit u/s 69A of the Act.*
4. *In law and in the fact and circumstances of the appellant's case, the learned A.O has grossly erred in charging interest under section 234A/B/C/D of the Income Tax Act, 1961.*
5. *The learned A.O is not justified in initiating penalty proceeding under section 271(1)(c) of the Income Tax Act, 1961 with respect to above addition.*
6. *That the appellant pray to stay the demand of Rs. 9,69,290/- made by the learned A.O. for the year under consideration since the same is a high pitch assessment done without appreciating the facts and circumstances of the case.*
7. *That the appellant craves leave to add, alter, amend, modify, substitute, delete, and/or rescind all or any of the GROUNDS OF APPEAL on or before the final hearing, if necessity so arise.*

3. The assessee filed the return of income for AY 2012-13 on 29/03/2013 declaring total income of Rs.1,60,050/-. The same was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and e-notice u/s.148 of the Act was issued through e-mail on 28/03/2019. The AO observed that the assessee made cash deposit of Rs.21,98,124/- in saving bank account. The AO also observed that the assessee did not file the return of income in response to the notice issued u/s.148 of the Act. Thereafter, notice u/s.142(1) of the Act was issued on 24/06/2019. In response thereto, the assessee furnished copy of bank statement vide letter dated 01/07/2019. The AO further issued notice u/s.142(1) of the Act on 29/07/2019, 21/08/2019, 07/10/2019 and 03/12/2019. However, the assessee did not file any evidences to prove the source of the said deposits, the AO made addition of Rs.21,98,124/- u/s.69 of the Act treating the same as unexplained deposits.

4. Being aggrieved by the assessment order, the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld.AR for the assessee submitted that there is a delay of 389 days in filing the present appeal before the ITAT for which the assessee has filed the detailed Affidavit dated 13/06/2024.

5.1. After going through the said Affidavit, it appears that the assessee has given the work of filing of Income Tax Return to one of his relatives, who was not aware about the income tax litigation matter. While filing the return of income, the said relative changed the password of assessee's account registered with Income Tax Department and the same change was not notified to the Chartered Accountant, who was handling the assessee's case. Therefore, the notices were not received by the assessee/not the assessee was not aware of the notices. Therefore, the assessee could not appear before the CIT(A) as well as assessee could not file the appeal in stipulated time before the ITAT. The reason for delay appears to be genuine, hence delay is condoned. The Ld.AR further submitted that since the assessee could not appear before the CIT(A) as well as could not submit the relevant details of source of deposits due to the reason extracted in the Affidavit, and therefore, he requested the matter may be remanded back to the file of the AO.

6. The Ld.DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The assessee has not given the explanation as to why the assessee

did not appear before the AO and file the details of source of the deposits within the stipulated time. The assessee has also not filed the return in response to the notice issued u/s.148 of the Act. Therefore, it will be appropriate to direct the assessee to deposit a cost of Rs.5,000/- which is to be deposited in the Prime Minister's National Relief Fund within a period of two weeks from the receipt of this order. Thus, the matter is remanded back to the file of the AO for proper verification and adjudication of the issues as per the Income Tax Statute. Needless to say, the assessee be given proper opportunity of hearing in the interest of natural justice. It is further directed that the assessee will take utmost care, who appear before the AO and fully co-operate with the assessment proceedings. Otherwise, the AO is at liberty to take appropriate action and adjudicate the matter as per law.

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

Order pronounced in the Court on 22nd November, 2024 at Ahmedabad.

**Sd/-
(DR BRR KUMAR)
VICE PRESIDENT**

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

Ahmedabad; dated 22/11/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि ँग्रेषित/Copy of the Order forwarded to :

1. ँपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंघित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (ंपील)/ The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधिआयकर ँपीलीय ँधिकरण /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर ँपीलीय ँधिकरण, ITAT, Ahmedabad