

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

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.412/Ahd/2024
(Assessment Year: 2011-12)

Ajay Jethanand Notwani, 83, Patel Society, Nr. Indira Bridger, Sadarnagar, Ahmedabad-382475	Vs.	Income Tax Officer, Ward-7(2)(1), Ahmedabad
[PAN No.AGXPN3292N]		
(Appellant)	..	(Respondent)

Appellant by :	None (Written Submission)
Respondent by:	Shri Atul Pandey, Sr. DR

Date of Hearing	26.11.2024
Date of Pronouncement	27.11.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), (in short “Ld. CIT(A)”), ADDL/JCIT(A)-2, Ludhiana vide order dated 02.01.2024 passed for A.Y. 2011-12.

2. The Assessee has taken the following grounds of appeal:-

“1. The Ld. CIT(A), NFAC, Delhi has erred in passing an ex Pane 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 hence, Assessment Order requires to be quashed.2-The Ld. CIT(A), NFAC, Delhi has erred in passing an Ex Parte order and confirming the addition made by the Assessing Officer without I considering the written submissions made before Learned CIT(A)-7, Ahmedabad. Assessee had submitted replies on 08.03.2019, 13.04.2019 in physical mode to the Learned CIT(A)-7, Ahmedabad. The Assessee alongwith filing of Form No. 35 had submitted exhaustive Statement of Facts, Grounds of Appeal. The appellant has also sought the adjournment of hearing on or after 11.01.2024 for the hearing fixed on 27.12.2023 for which an adjournment application was submitted vide application dated 27.12.2023. contd below.

2. 2-(continued from above) But without considering the adjournment application, order u/s 250 was received on 10.01.2024 passed by learned ADDL/JCIT (A)-2, Ludhiana dated 02.01.2024, it is most respectfully submitted

that CIT Appeals is not supposed to dismiss the Appeal for Non Submission of details but has a duty and obligation to take into consideration the merits of matter, examine the Grounds raised by Appellant and decide the issue on merits based on details available with him. Learned CIT(A) cannot passed an order u/s 250 of I.T. Act, 1961 without rejecting and adjournment application.

3. *3-The Ld. CIT(A), NFAC, Delhi has erred in confirming the action of the Assessing Officer in making addition of Rs. 1,65,47,220/- u/s.68 of the I.T. Act, 1961 being cash deposited out of sale proceeds of the business for which return of income was filed after opting provisions of section 44Ad of I.T. Act 1961. The Learned Assessing Officer has made addition by treating the cash deposits of Rs. 1,65,47,220/- in the Bank account with Bank of BARods, Sardarnagar Branch, Ahmedabad as against actual amount of cash deposit of Rs. 18,77,970/- in Bank as an unexplained cash credit within the meaning of section 68. Cash deposited is of Rs. 18,77,970/- and not Rs. 1,65,47,220/- as alleged in order passed u/s 250 of I.T. Act, 1961.*

4. *4-The appellant craves leave to add, alter, amend or modify all or any of the grounds of appeal before or at the time of hearing.”*

3. The brief facts of the case are that the assessee had opted for presumptive basis of taxation under Section 44AD of the Act. The AO initiated proceedings on the assessee on the ground that assessee has deposited cash of Rs. 1,65,47,220/- in his bank account with Bank of Baroda during the year under consideration, but the assessee had not filed his return of income and nor offered the said amount for taxation. The AO issued several notices of hearing, which remained uncomplied with and therefore, the aforesaid cash deposits of Rs. 1.65 crores were added to the income of the assessee under Section 68 of the Act.

4. The assessee filed appeal before Ld. CIT(A), who dismissed the appeal of the assessee on the ground of non-appearance with the following observations:

“5. Therefore, in view of the above discussed facts, it is clear that the case of the appellant has been fixed for various dates but no reply has been given by the appellant and the appellant is a habitual non-compliant without any concern/respect for the law of the land. Even the assessment was completed under Section 144 due to non-compliance. Therefore, it is presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Ld. Assessing Officer. Thus, the action of the AO

*is confirmed and the grounds of appeal raised by the appellant are dismissed. In result, the appeal is **dismissed**.*

6. *In result, the appeal of the appellant is **dismissed**.*”

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A).

6. Before us, the Counsel for the assessee submitted that Ld. CIT(A) has simply upheld the addition of Rs. 1.65 crores without discussing the facts of the assessee’s case and without going into the merits of the case. The Counsel for the assessee submitted that the Ld. CIT(A) issued two notices dated 06.12.2023 and 13.12.2023 to the assessee, against which the assessee sought adjournment on 27.12.2023. However, without giving any further opportunity, only within a span of few days the Ld. CIT(A) dismissed the appeal of the assessee vide order dated 02.01.2024. The Counsel for the assessee submitted that while passing the order, there is no independent application of mind by Ld. CIT(A) and the order passed by Ld. CIT(A) is not a reasoned and speaking and has been passed against the principle of natural justice. The Counsel for the assessee argued before us, if given an opportunity, the assessee is in a position to demonstrate that the present additions are not liable to be sustained and therefore, requested that the matter may be restored to the file of Ld. CIT(A), for de-novo consideration.

7. In response, even Ld. D.R. did not object to the matter being restored to the file of Ld. CIT(A), in the interest of justice, for de-novo consideration.

8. We have heard the rival contentions and perused the material on record.

9. In view of the above discussion, in the interest of justice, the matter is being restored to the file of Ld. CIT(A) for de-novo consideration and to pass appropriate orders, after giving due opportunity of hearing to the assessee. It

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is, however, directed that in case it is found that the assessee continues to remain non-compliant, then in that case the Ld. CIT(A) would be at liberty to pass appropriate orders in accordance with law, on the basis of materials available on record.

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

This Order pronounced in Open Court on	27/11/2024
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Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 27/11/2024

TANMAY, Sr. PS

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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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad