

**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.1394/Ahd/2024  
(Assessment Year: 2017-18)

Abdulrahim Yakubbbhai Gudala, 1, Jhalod Kasba Dahod, Gujarat-389170	Vs.	Assistant Commissioner of Income Tax, Panchmahal (Now DCIT, Circle Anand), Anand, Gujarat
[PAN No.ADDPG7145A]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Ms. Amrin Pathan, A.R.
<b>Respondent by:</b>	Shri Atul Pandey, Sr. DR

<b>Date of Hearing</b>	27.11.2024
<b>Date of Pronouncement</b>	28.11.2024

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 (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Center, (in short “NFAC”), Delhi vide order dated 29.05.2024 passed for A.Y. 2017-18.

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

**“Ex-parte Order:**

1. *The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [“CIT(A)”] erred in fact and in law in passing an ex-parte order.*

2. *The learned CIT(A) erred in fact and in law in passing the order without granting proper opportunity of being heard.*

**Addition u/s 69A r.w.s 115BBE - Rs. 2,05,00,477:**

3. *The learned CIT(A) erred in fact and in law in confirming the action of the learned Assistant Commissioner of Income tax, Panchmahal Circle,*

Godhra ("the AO") in taxing business income disclosed during the course of survey as unexplained income u/s 69 A r.w.s 115BBE of the income Tax Act, 1961 ("the Act").

4. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in treating business income as unexplained income u/s 69A of the Act without disputing the explanation of source of income.

5. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in treating income of Rs. 2,05,00,477 as unexplained income of the Appellant without appreciating the Fact that unaccounted project expenditure and booking amount received by the Appellant were in relation to the business of the Appellant.

6. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in invoking section 69A of the Act without bringing on record any other source of income other than the source of income explained by the Appellant.

7. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in taxing the business income of the Appellant u/s 115BBE of the Act.

**Other Grounds:**

8. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in charging interest u/s. 234A of the Act.

9. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in charging interest u/s. 234B of the Act.

10. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in charging interest u/s, 234C of the Act.

11. The learned CTT(A) erred in fact and in law in confirming the action of the learned AO in initiating penalty proceedings u/s, 271AAC of the Act.

12. Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.”

3. The brief facts of the case are that the assessment order was framed in which the AO made certain additions in the hands of the assessee under Section 69A of the Act r.w.s. 115BBE of the Act amounting to Rs. 2,05,00,477/- as unexplained income of the assessee.

4. The case of the assessee is that a search was conducted at the premises of the assessee, and on the basis of such search, the assessee declared certain additional income to the tune of Rs. 2,05,00,477/- as it's business income. However, the AO treated the aforesaid income of Rs. 2,05,00,477/- as unexplained income of the assessee and did not treat the same as the business income of the assessee.

5. In appeal before Ld. CIT(A) he dismissed the appeal of the assessee on account of non-appearance with the following observations:

*“The appeal is filed against the order of ACIT, Panchmahal, Circle Godhra passed u/s 143(3) of the IT Act 1961, dated 23.12.2019.*

*1. In the grounds of appeal, the assessee objects to adding Rs.20500477 u/s 69A. The nature and sources of the disclosure was not satisfactory to the AO as the disclosure was from unaccounted business. Further, tax on additional income of Rs.20500477 is calculated under the provisions of section 115BBE of the IT Act.*

*2. It is pertinent to note here that section 158B(b) defining undisclosed income refers to not only assets found but also income based on entry in the books of account or other documents or transactions representing income. It is also very well accepted principle dealing with the deemed income that even any sum is credited in credited in the books of account, the onus of proving its genuineness is cast on the assessee and in discharging such onus, the identity, genuineness etc. shall have to be established. Thus in the absence of discharging such onus, the income is considered as deemed income. Further the assessee has disclosed that Rs..20500477 as unaccounted income and also admitted in the statement recorded on oath that the same has not been entered in the books of account. The addition of Rs.20500477 is confirmed.*

*3. The appeal filed by the assessee is dismissed.”*

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

7. Before us, the Counsel for the assessee submitted that the order passed by Ld. CIT(A) is against the principles of natural justice. The Counsel for the assessee submitted that the assessee had filed appeal against the order dated 23.12.2019 in the month of January 2020 before Ld. CIT(A). The Ld. CIT(A) issued the first notice of hearing on 20.01.2021 and after issuing only one notice of hearing Ld. CIT(A) dismissed the appeal of the assessee vide order dated 29.05.2024. The Counsel for the assessee submitted before us that in the entire appellate proceedings, the Ld. CIT(A) had only issued **one notice of hearing**, and thereafter, proceeded to pass the appellate order without giving any further opportunity of hearing to the assessee to present it's case on merits. The Counsel for the assessee also pointed out that even in the appellate order passed by Ld. CIT(A) there is no mention whatsoever of the notices of hearing issued to the assessee, during the course of appellate proceedings. Therefore, clearly the entire appellate proceedings have been carrying out in an arbitrarily and high handed manner without giving opportunity of hearing to the assessee to present it's case on merits.

8. In response, the Ld. DR placed reliance on the observations made by Ld. CIT(A) in the appellate order.

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

10. On going through the facts of the instant case, we observe that on the order of Ld. CIT(A) does not specifically mention the notices of hearing issued to the assessee. Even Ld. DR has not been able to

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controvert the assertion of the Counsel for the assessee that **only one notice of hearing** was issued to the assessee and thereafter, the appeal of the assessee was dismissed without giving any further opportunity of hearing to the assessee. Accordingly, in light of the arguments placed before us, we are of the considered view that in the interest of justice, the matter may be restored to the file of Ld. CIT(A) for de-novo consideration after giving due opportunity of hearing to the assessee.

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

<b>This Order pronounced in Open Court on</b>	<b>28/11/2024</b>
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Sd/-  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 28/11/2024

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