

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 886/Ahd/2024
Assessment Year 2016-17**

Mukund Pranvkumar Patel C-9 Shaum Appt. B/H Rajasthan Hospital Shahibaug, Ahmedabad Gujarat 380004 PAN: BFCPP7933R (Appellant)	Vs	The ITO, Ward-1(3)(1), Ahmedabad (Respondent)
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**Assessee Represented: Shri Sulabh Padshah, A.R.
Revenue Represented: Shri Sanjay Kumar, Sr.D.R.**

Date of hearing : 27-11-2024
Date of pronouncement : 29-11-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the ex-parte appellate order dated 28.02.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the reassessment order passed under section 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2016-17.

2. Brief facts of the case is that the assessee is an individual engaged in the construction business. For the Asst. Year 2016-17, assessee filed his Return of Income on 18-11-2017 declaring total income of Rs. 3,35,940/-. The assessment was reopened by issuing a notice u/s. 148 dated 30-03-2021 for the reason that the A.O. was in receipt of information from DIT(Inv.) that cash of Rs. 60 lakhs seized from the assessee by the State Police Authority which has escaped assessment. In response to the 148 notice, assessee filed his return belatedly on 14-03-2022, therefore the same was treated as invalid return. However the A.O issued notices u/s. 142(1) calling for details. The assessee furnished the entire transactions, however the same was not accepted and the Ld. A.O. treated Rs. 60 lakhs cash seized from the assessee as the undisclosed income and made addition u/s. 69A of the Act and demanded tax thereon.

3. Aggrieved against the reassessment order, assessee filed an appeal before Ld. CIT(A) with detailed submissions as follows:

i. The Ld. Assessing Officer has erred both on facts and in law in making addition of Rs. 60,00,000/- treating the same as Unexplained money u/s 69A of the Act. On facts and circumstances of the case, the provisions of Section 69A and Section 115BBE of the Act are just not applicable in case of Appellant. Hence, the addition made by Ld. AO of Rs. 60,00,000/- on account of cash seized treating the same as unexplained money u/s 69A of the Act is incorrect and illegal and the same be deleted.

ii. The Ld. Assessing Officer has erred in making the addition of Rs.60,00,000/- u/s 69A of the Act without appreciating the facts and details available on record. During the course of assessment proceeding, it is submitted that the source of cash seized of Rs. 60,00,000/- have been received from Mr Vikas Sharma towards deal of property owned by Appellant's Grandfather Mr. Ambalal Patel. The complete details justifying above facts such as copy of Panchnama statement, FIR Copy and Charge sheet were filed before Ld. AO and accordingly, the source

of cash seized of Rs. 60,00,000/- was duly explained. On the facts and circumstances of the case, the impugned addition made by Ld. AO of Rs.60,00,000/- is completely illegal and unjustifiable and the same be deleted in the interest of justice.

iii. The Ld. AO has erred in stating that the assessee has not filed any objection against the show cause notice issued as per Para 6 of the Asst Order. It is submitted that the Appellant has filed detailed reply and explanation along with documentary evidences justifying the source of cash seized by police of Rs. 60,00,000/-, however the same has not been considered by Ld. AO at the time of passing the order. Therefore the huge addition made of Rs. 60,00,000/- u/s 69A of the Act without considering the documentary evidences available on record are clearly against the principle of natural justice, which is not at all tolerable in eyes of law. In view of this also, the addition made of Rs. 60,00,000/- be deleted. The same be held accordingly.

iv. The Ld. Assessing Officer has erred in levying the tax u/s 115BBE of the Act on the addition made u/s 69A of the Act of Rs. 60,00,000/-. It is submitted that on facts and circumstances of the case, the provisions of Section 69A and Section 115BBE of the Act are just not applicable in case of Appellant. Therefore the tax if any be levied in future on any addition confirm by high authorities, the same be levied at normal rate of tax and not at special tax rate as provided u/s 115BBE of the Act. The same be held now.

v. The Ld. Assessing Officer has erred in charging interest u/s.234A/ 234B/ 234C of the I.T. Act. It is submitted that looking to the facts and circumstances of the case no interest is chargeable and therefore the incorrect interest charged u/s.234A/ 234B/ 234C of the I.T. Act be deleted.

vi The Order passed by the Ld. Assessing Officer is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.

vii. Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing of appeal."

4. Ld. CIT(A) issued five hearing notices between 04-07-2023 to 17-11-2023, however the same were not responded by the assessee because of the non-communication by assessee's former Tax Consultant, which has resulted in passing exparte order. In

support of the facts, the assessee filed a Notarized Affidavit explaining the above details which is on record before us.

5. Ld. Counsel appearing for the assessee further drawn our attention to the submissions made before Ld. CIT(A) which clearly explain the facts of the case and the addition made by the Assessing Officer is against the provisions of law. Ld. CIT(A) without appreciation of the facts on record dismissed the appeal *exparte* and therefore requested one more opportunity be given to the assessee to explain its case before Ld. CIT(A). Further the assessee placed on record, the FIR filed against the fraudulent NIA Officers before Metropolitan Magistrate Court No. 11, Ahmedabad and various other proceedings before Police Authorities which were very much filed before Ld. Assessing Officer. However the same were not considered by the lower authorities. Further the Ld. Counsel pleaded the very reopening of assessment itself is bad in law and therefore the addition made by the Ld. A.O. are liable to be deleted.

6. Per contra, Ld. Sr. D.R. appearing for the Revenue submitted that the assessee having failed to appear before Ld. CIT(A), therefore one more opportunity be given to the assessee to explain its case.

7. We have given our thoughtful consideration and perused the materials available on record. The impugned order is an *exparte* appellate order without addressing merits of the case. Therefore in the interest of Principle of Natural Justice, we deem it fit to set aside the same to the file of Ld. CIT(A) to pass order on merits by

giving an adequate opportunity of hearing to the assessee. Needless to say it open to the assessee to raise all legal grounds before Ld. CIT(A) for adjudication on merits.

8. In the result, **the appeal filed by the Assessee is allowed for statistical purpose.**

Order pronounced in the open court on 29-11-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 29/11/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद