

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1239/AHD/2024
निर्धारण वर्ष/Asstt. Year: 2009-2010

Kamleshbhai Vinodbhai Patel, At Ravpura, Taluka Sankheda, Chhotaudepur, Dhandhuka, Gujarat-391135. PAN: AVKPP8248E	बनामVs	Income Tax Officer, Ward-4(2)(2), Baroda. Now Ward 4(1)(7), Baroda.
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(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)
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Assessee by :	Shri Written Submission
Revenue by :	Shri Nitin Vishnu Kulkarni, Sr. DR

सुनवाई की तारीख/Date of Hearing : 24/10/2024
घोषणा की तारीख/Date of Pronouncement: 05/12/2024

आदेश/ORDER

PER SUCHITRA KAMBLE, JM:

The captioned appeal has been filed at the instance of the Assessee against the order dated 22/05/2024 passed by the National Faceless Appeal Centre(NFAC)/CIT(A), arising in the matter of assessment order passed under s. 144 r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal:

1. The CIT Appeals has erred both in facts and law?

(a) By confirming the addition of Rs.17,94,872/- made by the A.O rejecting evidence submitted by the appellant? For agriculture income.

(b) A.O who is in the salary ward having jurisdiction over salaried persons had no jurisdiction over the appellant as he was NRI and had no salary or pension income.

(c) Sec.68 applied to credits in books of account maintained by the assessee. So sec. 68 is not applicable in appellant case as the addition is made for the credits in bank accounts which are not books of accounts of the appellant.

(d) Addition of Credit entries is account of Nikita Patel first account holder in appellant case merely because my name was there as joint account holder in not correct particularly because she has her own PAN as well as on affidavit she has confirmed the ownership of the bank account which is not denied by CIT Appeals. Assessment order is bad in law because it is against the principle of natural justice.

3. The assessee has not filed his return of income and after receiving information, the Assessing Officer observed that the assessee has made cash deposits totalling to Rs.10,80,000/- in his saving bank account. Since the assessee has not furnished the return of income, the AO issued notice u/s.148 of the Act on 28.03.2016, after recording the reasons for issuance of notice. The notice u/s.142(1) r.w.s 129 of the Act was issued on 23.05.2016 and subsequent notice was issued on 20.06.2016 along with the questionnaire. In response to notice u/s.148 of the Act, the assessee did not attend the assessment proceedings and also not filed his return of income. The assessment therefore was finalized u/s.144 r.w.s 147 of the Act. The AO observed that the information u/s.133(6) of the Act was called from Kotak Mahindra Bank, Bodeli Branch. The bank submitted the information in two parts, firstly, copy of bank account which is a joint bank account with spouse of the assessee and another bank account. The AO observed that both the bank account are maintaining in the name of the assessee. The bank

account is jointly held with the spouse of the assessee, who has not filed return of income. The letter received from one of the Advocate dated 02.09.2016 stating that the assessee is in USA, but the AO allowed the said advocate to appear before the AO. After going through the details the AO held that the total deposits ranging from Rs.15,000/- to Rs.7,70,000/- were deposited in the regular interval of one or two months and the same is treated as cash credits within the meaning of section 68 of the Act, and added Rs.17,94,872/- to the total income of the assessee.

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

5. At the time of hearing, when the matter was called out none appeared but the written submission with a prayer that the same may be taken into consideration on record filed by the assessee and addition may be deleted.

6. The Ld.DR submitted that the assessee did not demonstrate the cash deposits and credit entries and therefore the AO has rightly made the addition of Rs.17,94,872/-. The Ld.DR relied upon the order of the Ld.CIT(A).

7. We have heard the parties and perused the relevant materials available on record. It is pertinent to note that the assessee through his advocate has given certificate/affidavit relating to the agriculture income as well as Talati certificate regarding estimated agricultural income from the family lands of the assessee. From the perusal of the records it can be seen that the assessee has given ample evidences relating to agricultural income

to the AO which is reproduced from page 4 to 28 of the assessment order and clearly demonstrates that cash deposits and credit entries are through the agriculture income. The AO as well as the Ld.CIT(A) has taken into account bank deposits but has not co-related the same with the actual income derived from the agriculture produce by the assessee through various documents. The AO as well as Ld.CIT(A) has totally ignored this fact and made the addition which is not justifiable. Hence, the appeal of the assessee is allowed.

11. In the result, the appeal of the assessee is allowed

Order pronounced in the Open Court on 05th December, 2024 at Ahmedabad.

**Sd/-
(MAKRAND VASNAT MAHADEOKAR)
ACCOUNTANT MEMBER**

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

(True Copy)

अहमदाबाद/Ahmedabad, दिनांक/Dated 05/12/2024

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

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad