

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

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 668 & 669/Ahd/2024

(निर्धारण वर्ष / Assessment Years : 2016-17 & 2017-18)

Hanubhai Devabhai Rathod C/o. M S Chhaged & Co. CA, “Kamal Shanti” Nr. Sardar Patel Statue, Ahmedabad - 380014	बनाम/ Vs.	Income Tax Officer Ward 1, Anand
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABRPR2912C		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mahesh Chhaged, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Rignesh Das, Sr. DR

Date of Hearing	26/11/2024
Date of Pronouncement	05/12/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These two appeals are filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 09.03.2024 for the Assessment Years 2016-17 & 2017-18 respectively. As the facts of the cases are identical, they were heard together and are being disposed of vide this common order.

2. We will take ITA No.668/Ahd/2024 for A.Y. 2016-17 as the lead case.

3. The brief facts of the case are that the return of income for A.Y. 2016-17 was filed by the assessee on 13.07.2016 declaring

total income of Rs.6,70,700/-. The return was processed under Section 143(1) of the Income Tax Act, 1961 (in short 'the Act'). Subsequently, the AO received an information that the assessee had two bank accounts with Axis Bank & SBI, in which financial transactions were carried out and the total credits in these two accounts was to the extent of Rs.24,63,386/- including cash deposit of Rs.5,15,000/-. Further, the assessee had also purchased two shops during the year for a total consideration of Rs.24,35,800/-. On the basis of this information, the case was reopened u/s.147 of the Act. In the course of reopened assessment, no compliance was made by the assessee and the credits in the bank accounts as well as the source of investment in the property was not explained. Therefore, the AO made additions in respect of total credit of Rs.24,63,386/- in the bank account as well as in respect of unexplained investment of Rs.24,35,800/- in the shops. The assessment was completed u/s.147 r.w.s. 144 of the Act on 31.03.2022 at total income of Rs.56,21,180/-.

4. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided vide the impugned order and the appeal of the assessee was dismissed.

5. Now, the assessee is in second appeal before us. The following grounds have been taken in this appeal:

- “1. *The order passed by Ld. CIT (A) is against law, equity & justice.*
2. *The Ld. CIT(A) has erred in law and on facts in upholding addition made by the Ld. AO of Rs. 24,63,386/- U/S 69A of the Act in respect of cash deposit and credit entries in bank account*

3. *The Ld. CIT(A) has erred in Law and on facts in upholding addition made by Ld. AD of Rs. 24,35,800/-U/S 69 of the Act.”*

6. Shri Mahesh Chhajed, Ld. Counsel appearing for the assessee submitted that no compliance could be made by the assessee before the Ld. CIT(A). As a result, the Ld. CIT(A) had passed ex-parte but had not examined the additions made by the AO on merits. He, therefore, requested that another opportunity may be allowed to the assessee by setting aside the matter to the file of the AO.

7. Per contra, Shri Rignesh Das, Ld. Sr. DR supported the order of the Ld. CIT(A). He submitted that neither the assessee had made compliance before the Ld. CIT(A) in spite of 4 opportunities provided by him nor he has explained the reason for non-appearance before the Ld. CIT(A). He submitted that the assessee had also not properly complied before the AO.

8. We have carefully considered the rival submissions. It is found that no compliance was made by the assessee before the AO and the credits in bank accounts as well as the source of investment in the immovable property was not explained. As a result, the AO has passed the order ex-parte and made the additions. In first appeal, the Ld. CIT(A) had allowed 4 opportunities to the assessee on 21.04.2023, 14.09.2023, 24.11.2023 & 24.01.2024. The assessee did not make any compliance on any of the dates, neither any adjournment was ever sought on behalf of the assessee. Therefore, the assessee was required to explain the reason for non-compliance before the Ld. CIT(A). The assessee has filed an affidavit dated 20.11.2024 stating that default was committed by his Chartered Accountant

Shri Pankaj Mordani who neither appeared before the Ld. CIT(A) nor ever informed him about the non-compliance. We have considered the explanation of the assessee. The assessee has simply passed on the blame for non-compliance on the Chartered Accountant without bringing any supporting evidence on record. It is found that the email ID mentioned in Form No.35 was “hanubhairathod@gmail.com” which belonged to the assessee. Further, an option was also given in Form No.35 that notice/communication should be sent on this email ID. Thus, when the email ID mentioned in the Form No.35 belonged to the assessee on which the notices were sent by the Ld. CIT(A), the assessee cannot escape by placing the blame on any 3rd person. Since, the assessee has not satisfactorily explained the reason for non-compliance before the Ld. CIT(A), we deem it proper to **impose cost of Rs.10,000/- on the assessee**, which should be paid to the Income Tax Department within 15 days of receipt of this order.

9. At the same time, the additions made by the AO cannot be adjudicated unless the assessee is allowed another opportunity to explain the transactions and to place evidences on record. **In the interest of justice, we, therefore, set aside the matter to the file of the Ld. CIT(A) with a direction to allow another opportunity of being heard to the assessee.** The assessee is also directed to make necessary compliance before the Ld. CIT(A) and not to seek any adjournment. In case the assessee fails to make any compliance, the Ld. CIT(A) will be free to pass the order as deemed fit. Further, the Ld. CIT(A) will proceed in the set aside matter only after verifying that the cost is paid by the assessee.

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

ITA No.669/Ahd/2024 – A.Y. 2017-18

11. The facts of this case are identical to ITA No.668/Ahd/2024. The case for A.Y. 2017-18 was reopened to examine the total credit of Rs.21,11,608/- in the two bank accounts of the assessee, which was added to the income in the absence of any explanation on the part of the assessee. In this year also, there was no compliance before the Ld. CIT(A). Therefore, **the direction given in ITA No.668/Ahd/2024 for A.Y. 2016-17, including the payment of cost, will apply mutatis mutandis to this year as well.**

12. In the final result, both the appeals filed by the assessee are allowed for statistical purposes.

This Order pronounced on 05/12/2024

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

Ahmedabad; Dated 05/12/2024

S. K. SINHA

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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