

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं/ITA No.1087/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2017-18

Arham Gems and Jewellery C/o. M.S. Chhajed & Co., CA "Kamal Shanti" Nr.Sardar Patel Statue, Ahmedabad - 380 014	बनाम/ v/s.	The Income Tax Officer Ward-1(2)(1) [Old Ward-1(3)(1)] Ahmedabad - 380 015
स्थायी लेखा सं./PAN: AASFA 7013 P		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri M.S. Chhajed, AR	
Revenue by :	Shri Rignesh Das, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 03/12/2024
घोषणा की तारीख /Date of Pronouncement: 17/12/2024

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal filed by the Assessee is directed against the order dated 18-12-2023 passed by the Ld. Commissioner of Income Tax (Appeals)-11, Ahmedabad [hereinafter referred to as "Ld.CIT(A)"] for the Assessment Year (AY) 2017-18 arising from the order dated 26/12/2019 passed by the Assessing Officer (hereinafter referred to as "AO") u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

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

1. *The order passed by the Ld.CIT(A) is against law, equity & justice.*
2. *The Ld.CIT(A) has erred in law and on facts in upholding levy of tax by the Ld.A.O. Sec.115BBE of the Act even when transaction are occurred prior to insertion of provision on statute.*

3. *The Ld.CIT(A) has erred in law and on facts in upholding addition made by the Ld.A.O. for addition made U/s.69A of the Act of Rs.2,10,530/- for cash found at the time of Rs.2,10,530/- for cash found at the time of survey.*
4. *The Ld.CIT(A) has erred in law and on facts in upholding addition made by the Ld.A.O. for addition made U/s.69B of the Act for Rs.20,06,356/-.*
5. *The Ld.CIT(A) has erred in law and on facts in upholding addition made by the Ld.A.O. for addition made U/s.69A of the Act of Rs.1,45,00,000/- for cash deposited in bank out of cash sales.*
6. *The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal."*

3. At the outset, we observe that the present appeal is time barred by a period of 96 days. The Counsel for the assessee filed an Affidavit before us stating that the reason for the delay was that the assessee had not received the order of Ld. CIT(A) for a long-time after the order was passed. It was submitted before us that Ld. CIT(A) has passed order on 18.12.2023, but the said order was not attached on the ITBA Portal. Thereafter, the assessee filed grievance on the CP GRAM Portal on 29.02.2024, in response to which, the assessee received reply on CP GRAM Portal on 26.30.2024, in which it was stated that certain technical issues were identified and the same have also been resolved and therefore, the assessee may again try to obtain the order. However, in spite of the aforesaid grievance raised by the assessee, the technical issue was not resolved and the assessee filed further appeal against CP GRAM response to the E-filing Web Manager on 06.04.2024. However, subsequently, the assessee observed that order of Ld. CIT(A) was available on the portal and therefore, the assessee immediately filed appeal on 22.05.2024. Accordingly, the Counsel for the assessee submitted that the delay in filing of the present appeal was due to aforesaid reason and there was no mala fide intention on the part of the assessee in not filing the appeal in time.

4. Looking into the instant facts, we are of the considered view that the assessee has made out a fit case for condoning the delay of 96 days in filing of the present appeal and accordingly, the delay in filing of the present appeal is condoned.

5. The brief facts of the case are that during the course of assessment, certain additions were made by the AO in the hands of the assessee on account of unaccounted cash found during the course of survey proceedings amounting to Rs.2,10,530/- and on account of unexplained investment of Rs.20,06,356/-. Further, an addition of Rs.1,45,00,000/- was also made on account of unexplained money u/s.69A of the Act. During the course of assessment, the AO observed that aforesaid additions were made in absence of any submissions/details/supporting documents furnished by the assessee during the course of assessment proceedings.

6. Aggrieved the assessee filed an appeal before the Ld.CIT(A), but in spite of issuance of several notices of hearing to the assessee, the assessee did not file any explanation along with supporting documents, in respect of various additions made during the course of assessment proceedings. While upholding the assessment order, the Ld.CIT(A) observed that during the course of appellate proceedings also, the assessee has not filed any written submission, even after issuing various notices u/s.250 of the Act and even after lapse of more than three years and 10 months from the date of filing of appeal, the assessee has not furnished any submission related to its appeal. Accordingly, Ld.CITG(A) confirmed the additions made by the Assessing Officer.

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

8. Before us, the ld.counsel for the assessee submitted that during the course of assessment proceedings, the assessee had filed various details, like Balance-sheet & Profit and Loss account of the company, bank statement, month-wise sales and purchase register, copies of ledger account of related parties, ledger account of all sundry creditors and debtors exceeding Rs.50,000/-, copy of group summary of expenses, VAT Audit Report, etc. Accordingly, the ld.counsel for the assessee submitted that substantial details were filed by the assessee during the course of assessment proceedings, which were not appreciated by the Ld.AO. In appeal, the assessee could not appear before the Ld.CIT(A) since the notices were served on the email-ID of its Accountant, who failed to inform the assessee. The ld.counsel for the assessee further submitted that the assessee has a good case on merits and if given an opportunity of hearing, the assessee is in a position to furnish necessary evidences in support of it's claim.

9. We have heard both the parties and perused the material available on record. On going through the record of the case, we find in the interest of justice, the matter is directed to be restored back to the file of Ld.CIT(A) for *de novo* consideration. However, we observe that since the assessee has been largely non-complainant and non-co-operative both during the course of assessment proceedings as well as during the course of appellate proceedings before the Ld.CIT(A) (where the assessee neither appeared nor filed any written submissions), we are inclined to impose a cost of Rs.5,000/- on the assessee. The cost shall be deposited to the credit of the Government within

30 days of the receipt of this order, and proof of payment shall be submitted before the CIT(A). In case, it is found that the assessee continues to remained non-co-operative before the Ld.CIT(A), then the Ld.CIT(A) would be at liberty to pass appropriate orders on the basis of material available on record, in accordance with law.

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

Order pronounced in the Open Court on 17th December, 2024 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 17/12/2024

T.C. NAIR/Tanmay, 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), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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