

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 1868, 1869 & 1879/Ahd/2024
(निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14)

Yogesh Chandulal Sheth B/46, Jivraj Park Society, Jivraj Park, Ahmedabad, Gujarat - 380014	बनाम/ Vs.	DCIT Circle - 3(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AMDPS7781H		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Samit L. Jain, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri B. P. Srivastava, Sr. DR

Date of Hearing	02/01/2025
Date of Pronouncement	08/01/2025

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These three appeals are filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), all dated 30.08.2024 for the Assessment Years 2012-13 & 2013-14. The appeal in I.T.A. Nos. 1868 & 1869 pertain to A.Y.2012-13 against the assessment prder and penalty order u/s 271(1)(c) of the Act respectively while the appeal in I.T.A. No. 1879 pertins to assessment order for A.Y.2013-14. As common facts are involved, the three appeals were heard together and, therefore, are being disposed of vide this common order.

ITA Nos. 1868/Ahd/2024 for A.Y. 2012-13

2. The brief facts of the case are that the assessee did not file his return of income for A.Y. 2012-13. On verification of ITS data, the AO found that the assessee had made cash deposit of Rs.14,20,000/- in his bank account with Vijaya Bank. An enquiry was made by AO by issue of notice u/s 133(6) of the Income Tax Act, 1961 (in short 'the Act'), which was not responded by the assessee. Thereafter, the AO recorded his reason for escapement of income u/s.147 of the Act and issued notice u/s.148 of the Act on 26.03.2019. However, neither the assessee filed any return of income in response to notice u/s.148 of the Act nor any compliance was made in response to subsequent notice u/s.142 of the Act. Therefore, the AO completed the assessment ex-parte u/s.144 r.w.s. 147 of the Act on 16.10.2019 at total income of Rs.14,20,000/-. The penalty proceeding for escapement of income was also initiated by the AO and subsequently the AO passed penalty order u/s.271(1)(c) of the Act on 16.03.2022 imposing penalty of Rs.7,93,090/- on the assessee.

3. Aggrieved with the order of the AO, the assessee had filed appeals before the First Appellate Authority, which was decided vide the impugned orders and the appeals of the assessee were dismissed.

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

- “1. That the learned CIT(Appeal)/ National Faceless Appeal Centre, Delhi has erred in law and facts by not quashing the issuance of notice under

section 148 of the Act and all the subsequent proceeding and therefore the Order passed by Assessing Officer is required to be quashed and the addition made therein are to be deleted in full.

2. *That the learned CIT(Appeal)/ National Faceless Appeal Centre, Delhi has erred in law and facts by confirming the addition of unexplained cash deposit of Rs. 14,20,000/- on the ground that it remains unexplained, therefore the learned AO should be directed to delete the said addition while computing the total income.*
3. *That your appellant craves a leave to add, alter or amend any grounds at the time of hearing.”*

5. Shri Samit L. Jain, the Ld. AR of the assessee submitted that no compliance was made by the assessee in the course of assessment as well as the penalty proceedings for the reason that no notices were received by him. He contended that proceeding initiated u/s.147 of the Act was not valid as the notice u/s.148 of the Act was not served on the assessee. The Ld. AR further submitted that the Ld. CIT(A) had dismissed the appeal of the assessee without adjudicating the grounds taken by the assessee on merits. He submitted that the reopening was challenged before the Ld. CIT(A), which was not adjudicated on merits. The ld. AR requested for another opportunity to the assessee to explain the cash deposits.

6. Per contra, Shri B. P. Srivastava, the Ld. Sr. DR submitted that no compliance was made by the assessee either before the AO or before the Ld. CIT(A). He, therefore, justified the orders passed by the lower authorities.

7. We have considered the rival submissions. Since, the assessee has contended that the notice u/s.148 of the Act was not served on him, a direction was given to the Revenue to bring on

record the evidence for service of the notice u/s.148 of the Act. In this regard, the ld. Sr. DR has filed a copy of letter dated 01.01.2025 from the AO (DCIT, Circle-33(3), Ahmedabad). The AO in his letter dated 01.01.2025 has reported that the assessee did not file his return of income for A.Ys. 2012-13 & 2013-14 and the address of the assessee as available in ITBA Portal was "B 46, Jivraj Park Society, Jivraj Park, Ahmedabad 380051". Further that no email ID of the assessee was mentioned in the ITBA Portal. It was further reported that the notice u/s.148 of the Act was sent to the address of the assessee as appearing in ITBA Portal through Speed Post, which was returned by the postal authority with the remark "Left". The subsequent notice dated 23.05.2019 was also sent through Speed Post to the assessee's address for compliance in the course of assessment proceedings, which was also returned by the Postal Authority with the remarks "Not Known". Thereafter, show cause notice was issued on 03.10.2019 which was sent through Speed Post, which too was returned with the remark "Left". A copy of these evidences have been brought on record by the AO. In the course of hearing, the Ld. AR of the assessee did not dispute these evidences and facts presented by the Revenue. The Ld. AR, however, conceded that there was a change in the address of the assessee, as a result of which, the notices sent by the Department at the earlier address were not received. Further, he fairly admitted that change of address of the assessee was also not communicated to the Department in time. In view of these facts and the evidences as brought on record by the Revenue, we hold that the notice u/s 148 of the Act was rightly issued by the AO and duly served on the assessee at the address as available with the Department at the

relevant point of time. The ground no-1 taken by the assessee is dismissed.

8. At the same time, the fact remains that the assessee did not make any compliance before the AO and, therefore, the order was passed ex-parte. Before the Ld. CIT(A), who had allowed four opportunities to the assessee, the assessee had sought adjournment on two occasions and no compliance was made on the other two occasions. As a result of the non-compliance by the assessee, the Ld. CIT(A) had dismissed the appeal of the assessee. The assessee has not explained the reason for non-compliance before the Ld. CIT(A). We, therefore, deem it proper to impose a cost of Rs.10,000/- (Rupees Ten Thousand only) on the assessee which should be paid to the Income Tax Department within two weeks of receipt of this order.

9. Since the issue of cash deposit in the bank account of the assessee was not examined on merits, we deem it proper to set aside the matter to the file of the AO with a direction to allow another opportunity to the assessee to explain the source of cash deposits. Needless to mention, the assessee is required to make compliance before the AO and not to seek adjournment without any compelling reason. The Ld. AR of the assessee informed that the correct address of the assessee has now been updated in the ITBA Portal. In case, the assessee doesn't make compliance, the AO is free to pass the order as deemed fit. The AO will proceed in the matter after verifying that the cost as imposed is paid by the assessee. The ground no-2 taken by the assessee is allowed for statistical purpose.

10. In the result the appeal in ITA No. 1868/Ahd/2024 is partly allowed for statistical purpose.

ITA Nos. 1869/Ahd/2024 for A.Y. 2012-13

11. This appeal pertains to penalty order u/s.271(1)(c) of the Act dated 16.03.2022 imposing penalty of Rs.7,93,090/- on the assessee for the A.Y. 2012-13. The grounds taken by the assessee are as under:

- “1. *That the learned CIT(Appeal)/National Faceless Appeal Centre, Delhi has erred in law and facts by confirming the penalty u/s 271(1)(c) of the Act of Rs.793090 and therefore, the learned AO should be directed to delete the said penalty.*
2. *That your appellant craves a leave to add, alter or amend any grounds at the time of hearing.”*

12. We have heard the ld. AR and the Sr. DR in the matter. Since the matter of quantum addition has been set aside to the AO, this appeal is also set aside to the file of the AO with a direction to re-decide the issue of levy of penalty after completion of fresh assessment.

13. The appeal in ITA No. 1869/Ahd/2024 is allowed for statistical purpose.

ITA No.1879/Ahd/2024 for A.Y. 2013-14

14. This appeal pertains to A.Y. 2013-14 and the facts are identical as in ITA No.1868/Ahd/2024 and the grounds are also identical. In this year, the assessee had made cash deposit of

Rs.51,91,000/- in his bank account. As the facts are identical, the decision of ITA No.1868/Ahd/2024 for A.Y. 2012-13 is applicable mutatis mutandis as well. However, there will be so separate cost on the assessee for this year as the appeals were decided by the Id. CIT(A) on the same date. Therefore, the matter for A.Y. 2013-14 is also set aside to the AO with a direction to allow another opportunity to the assessee.

15. The appeal in ITA No. 1879/Ahd/2024 is partly allowed for statistical purpose.

16. In the final result, the appeals in ITA Nos. 1868/Ahd/2024 and 1879/Ahd/2024 are partly allowed for statistical purpose whereas the appeal in ITA No. 1869/Ahd/2024 is allowed for statistical purpose.

This Order pronounced on 08/01/2025

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 08/01/2025

S. K. SINHA

True Copy

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अद्येषित/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 फाइल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad