



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH,
RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

**आयकर अपील सं./ITA No.473/RJT/2024
(निर्धारणवर्ष / Assessment Year: (2017-18))**

(Physical Hearing)

Pallav Near Bank of Baroda, Beside Dayaram Library, Ranjit Road, Jamnagar, Gujarat 361001	Vs.	DCIT Circle- 2, Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAOFP3575D		
(Assessee)		(Respondent)

Assessee by : Shri Chetan Agarwal & Shri Brijesh Parekh,
Ld. A.Rs.
Respondent by : Shri Sanjay Punglia, Ld. CIT. DR
Date of Hearing : 10/10/2024
Date of Pronouncement : 07/01/2025

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'NFAC/Ld. CIT(A)'], dated 19.06.2024, which in turn arises out of an assessment order passed by the Assessing Officer (in short 'AO') u/s 147 r.w.s. 144B of the Income tax Act, 1961, dated 20.03.2022.



2. The grounds of appeal raised by the assessee are as follows:

- “1. The Ld. CIT(A) erred in law as well as on fact in upholding addition of Rs.7,20,96,670/- made by Id.assessing officer being total amount deposited in bank account u/s.68 of the Act without considering facts and circumstances of the case and remand report of assessing officer.*
- 2. Ld. CIT(A) erred in law as well as on fact in upholding reopening of assessment on insufficient, invalid, incorrect and vague reasons recorded for reopening.”*

3. Succinctly, the factual panorama of the case is that assessee before us is a Firm. The income tax return was filed by M/s Pallav (assessee) for assessment year (A.Y.) 2017-18, on 16/10/2017, declaring total income of Rs. 6,00,410/-. As per information available with the department that the assessee is having bank A/c no. 03670200000679 in Bank of Baroda Jamnagar. On verification of the above bank statement for the period Financial Year (F.Y) 2015-16, it was noticed by the assessing officer that the Bank account of the assessee, M/s Pallav was credited with amount of Rs. 7,20,96,670/-.The assessing officer noticed that as the assessee had not disclosed fully and truly all material facts, the case of the assessee, was re-opened u/s 147 of the Act, after recording reasons and obtaining necessary approval. On perusal of the details available on record it was observed by the assessing officer that account of the assessee, has been credited with amount of Rs. 7,20,96,670/-, during the Financial Year (F.Y.) 2016-17, relevant to the assessment year (A.Y.) 2017-18. Due to absence of submission from the assessee and lack of documentary evidences, the cash credits could not be examined and source of cash credits could not be justified from the above information. Thus, it is clear that the assessee has not disclosed fully and truly all material facts while filing return of income.



4. The case of the assessee was reopened u/s 147 of the Act and the notice u/s 148 of the Act, was issued to the assessee, on 31/03/2021. The assessee filed his return of income, in response to the notice u/s 148 of the Act, declaring total income of Rs. 6,00,410/- on 28/05/2021. Subsequently the notice u/s 143(2) was issued on 27/08/2021. The assessee did not comply to this notice. The notice u/s 142(1) was issued on 25/11/2021. The assessee, again did not comply to this notice also. Further, notices u/s 142(1) of the Act, was again issued on 27/01/2022 & 28/02/2022 respectively, however, there were no compliance of these notices by the assessee. Non-compliant attitude of the assessee, towards various notices issued to the assessee, clearly indicates that the assessee is intentionally avoiding to make any compliance to the notices issued to the assessee, despite the fact that ITR in response to the notice u/s 148 of the Act, has been filed by the assessee. Despite sufficient number of opportunities given to the assessee, no compliance has been made by the assessee. Therefore, the details related to source of cash credit of Rs. 7,20,96,670/- could not be verified.

5. In view of the above facts, circumstances of the case and in absence of any reply/documentary evidences/information/details in support of cash credit of Rs. 7,20,96,670/-, the assessing officer did not have other option except to complete the assessment on the basis of material available on record. Therefore, the cash credit of Rs. 7,20,96,670/- was treated as unexplained cash credit u/s 68 of the I.T. Act, 1961 and taxed in accordance with the provisions of the Act.

6. Aggrieved by the order of the assessing officer, the assessee, carried the matter, in appeal before the Ld. CIT(A), who has confirmed the action of



the assessing officer. The Id. CIT(A) noticed that reopening of assessment done by the assessing officer is valid and not only that commencement of reassessment proceedings was also valid, and in reassessment proceedings, it has only to be seen that whether there was prima facie some material on the basis of which the department could reopen the case. Therefore, the ground raised by the assessee, under section 147 of the Act, challenging the reassessment proceedings, was dismissed by Id. CIT(A). On merit, Id. CIT(A) noticed that assessee has not furnished any documentary evidences such ledgers of the sundry debtors, creditors or name and address of the persons from whom the amounts were received during the year under consideration. During the present proceedings, the assessee failed to explain the source of receipts. The assessee has never come forward to explain the entries in the bank account even after providing various opportunities to do so at various levels of the proceedings. Therefore, the Ld. CIT(A) confirmed the addition of Rs. 7,20,96,670/- treating the same as unexplained credits u/s 68 of the Act.

7. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before us.

8. Learned Counsel for the assessee, argued that reasons recorded by the assessing officer for reopening of assessment are bad in law and there is no application of mind by the assessing officer. Therefore, the reassessment proceeding may be quashed.

9. On merit, the Learned Counsel for the assessee, argued that the addition made by the assessing officer was based on the wrong premises. The assessee has given the instruction to the Bank that whenever the bank



balance is available, the bank will do automatically 'fixed deposit' (FD) in the bank account and that FD will be utilized whenever the assessee feels need in future. Therefore, the Ld. Counsel for the assessee submitted before us, that there is no reason to make addition in the hands of the assessee.

7. On the other hand, ld. DR for the Revenue, argued that reasons for reopening of assessment have been recorded by the assessing officer, with help of the tangible material. The tangible material in the assessee's case is the bank statement, wherein the assessee has deposited lot of money, in bank account, by way of cash and cheque, and no explanation have been provided by the assessee in respect of the entries made in the bank statement. Therefore, reopening of assessment is valid in the eye of law, as the assessing officer was having sufficient material to initiate the reassessment proceedings.

8. On merit, ld. DR for the Revenue, argued that the assessee failed to explain the source of receipts, in bank account, before the assessing officer, as well as before the ld. CIT(A), therefore, addition made by the assessing officer may be confirmed.

9. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We find that section 147 of the Act, lays down that the reopening the assessment can be done by the Assessing Officer, if he has 'reason to believe' that the income has escaped assessment. Escapement of income chargeable to tax can be due to not filing of return of income by the assessee despite having taxable income, receipt of information from other



agencies, or failure on part of the assessing officer during the initial assessment proceedings to account for a portion of the income or allowing of excess loss or depreciation etc. In such a case, the provisions of Section 147 of the Act, would be applicable and the assessment can be reopened. The very fact that reasons are recorded and notice u/s 148 of the Act was issued, goes to show that the assessing officer had applied his mind and was satisfied himself about the re-opening of the case. The Income Tax Act, envisages that the assessing officer should only have a reason to believe to re-open a case, he need not establish beyond doubt that there is escapement of income before issuing the notice. The assessing officer is not required to carry out any investigation before reopening as held by Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd v ITO 236 ITR 34(SC). The Hon'ble Apex Court held that in determining whether commencement of reassessment proceedings was valid, it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at the stage of reopening. In view of this, the action of the assessing officer to re-open the case by issuing of notice u/s.148 was held to be valid by Id. CIT(A). We have gone through the above findings of the Id. CIT(A) and noticed that there is no infirmity in the conclusion reached by the Id. CIT(A). Therefore, we dismiss the ground number two raised by the assessee.

10. In the result, ground No.2, raised by the assessee, is dismissed.

11. On merit, we find that assessee has submitted the following reconciliation and explanation, about the entries in the bank statement, which are reproduced below.



“1. The assessee is a partnership, engaged in the business of retail trading of man, women and children cloths and wearing accessories over the counter.

2. Appellant has filed his return of income u/s. 139(1) of the Act for A. Y. 2017-18 on 16.10.2017 declaring total income at Rs.6,00,410/-.

3. Notice u/s 148 was issued on 31.03.2021, on the basis of reasons recorded for reopening as mentioned on page no. 2 and 3 of assessment order.

4. During the course of assessment, Ld. assessing officer had made an addition of Rs. 7,20,96,670/- being total credits appearing in and treated as deposits in bank accounts no. 03670200000679 with Bank of Baroda, Jamnagar, in order passed u/s 147 r.w.s. 144 of the IT act. Since, all notices were served on inoperative email ID, the assessee was not aware of ongoing assessment proceeding resulting into ex-parte order.

5. Following is detailed bifurcation of amount of Rs. 7,20,96,670/- deposited in bank of baroda.

1. Auto Fixed Deposit (Sweep Account) – Rs.4,42,26,000

As per arrangement with bank whenever bank balance exceeds specified limit, it get automatically converted into fixed deposit and when assessee issues cheque / withdrawal and bank balance is not sufficient then amount from fixed deposit get transferred to current account.

All fixed deposits were made from said bank account only and duly reflected on credit side to bank statement and re-conversion is reflected on debit side of bank statement. Ld. assessing officer had considered only debit side and made an addition.

We enclose herewith bank statement and ledger account of Auto FD from books of accounts. In view of such clear facts, this cannot be treated as income and unexplained deposit.

2. Interest on Fixed Deposit (Sweep Account) – Rs.1,16,802

Interest income on fixed deposit as explained above is duly accounted for, credited to profit and loss account and declared as income in tax audit report and income tax return. Hence, same cannot be treated as unexplained deposit. Also addition was made of income. already disclosed amounts to double addition. We enclose herewith tax audit report and audited accounts and ledger of interest income from books of accounts

3. Cash Deposit – Rs.1,80,88,225

The said deposit out of cash sales and receipts from debtors duly account for in books of accounts. We enclose herewith cash book, sales register, tax audit report and audited accounts.

4. Cheque return (New Favorite Garments) – Rs.85,870



Cheque return unpaid duly reflected in bank statement on credit and debit side. Ld. assessing officer has only considered debit side of bank statement.

5. Sales through Cheques / POS / Credit Card – Rs. 95,42,141

Sales is duly accounted for, credited to profit and loss account and declared as income in tax audit report and income tax return. Hence, same cannot be treated as unexplained deposit. Also addition was made of income already disclosed amounts to double addition. We enclose herewith sales register of entire year, tax audit report, audited accounts and VAT returns

12. We note that assessee has not furnished any documentary evidence such ledgers of the sundry debtors, creditors or name and address of the persons from whom the amounts were received during the year under consideration. During the proceedings before assessing officer, as well as before Id CIT (A), the assessee failed to explain the source of receipts. The assessee has never come forward to explain the entries in the bank account even after providing various opportunities to do so at various levels of the proceedings. Now before us, the assessee has submitted reconciliation and explanation of the entries in the bank statement, therefore, we are of the view that such reconciliation and explanation of the assessee, should be examined by the assessing officer, with documentary evidences, and supporting documents, which the assessee, now, ready to submit before the assessing officer.

13. For the reasons given above, we are of the view that the order of the CIT(A) on this issue requires to be set aside and the issue needs to be looked into afresh by the assessing officer, in the light of the observations as set- out above. We hold and direct accordingly. The assessing officer, will afford opportunity of being heard to the Assessee before deciding the issue. The Assessee will also be at liberty to let in further evidence to



substantiate it's case. For statistical purpose, the appeal of the assessee is treated as allowed.

14. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 07/01/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 07/01/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot