

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.176/SRT/2024

Assessment Year: (2011-12)

(Hybrid Hearing)

Nikunj Kumar Ghanshyambhai Desai, Panetha Desai Street Paneth, Zaghadia, Bharuch – 393120, Gujarat	Vs.	The ITO, Ward – 1(4), Bharuch
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AMGPD2814B		
(Appellant)		(Respondent)

Appellant by	Shri Piyush Panchal, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	16/01/2025
Date of Pronouncement	21/01/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 18.12.2023 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2011-12.

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

“(i) In fact and in law the assessment of 25% of agricultural income of Rs.7,65,000 credited into BOB A/c No 329 as Income from other source is not justifiable.

“(ii) In fact and in law 25% value of the Maturity of fixed deposit of Rs.4,88,839 credited into BOB A/c No 329 which is not an income liable to be deleted

“(iii) In fact and in law 25% value of the FD mature of wife Viruben Nikunj Kumar Desai of Rs.1,82,000 credited into BOB A/c No 329 is not income and liable to be deleted

(iv) In fact and in law the Amount of cash withdrawal from banks of Rs.21,82,242 and re-deposited in bank account of Rs. 12,23,000 is not income and need to be deleted.

(v) In fact and in law the amount of 25% value of subsidy received of Rs.96,675 credited into BOB A/c No 329 from Govt is not income and need to be deleted.

(vi) Assessee is an agriculturalist and not liable to pay tax. Further appeal become faceless. These all new procedure under income tax with technicality could not understood by assessee and hence could not submit the necessary reply by date before the Commissioner Appeal on portal. Hence there is no acceptance of fact by assessee against which assessee could not submit record based information. Addition of income based on surmise and assumption in absence of evidence supporting clarification of transactions. The addition is bad in law and need to be deleted.”

3. Brief facts of the case are that assessee had not filed his return of income for AY.2011-12. The case of the assessee was re-opened on 23.03.2018 by issuing notice u/s 148 of the Act. In response to the notice, the assessee had filed his return of income on 13.10.2018, showing agricultural income of Rs.6,70,108/-. The Assessing Officer (in short, 'AO') observed that assessee had deposited cash of Rs.12,23,000/- in the bank account No.18290100000329 and Rs.11,500/- in the account No.18290100000628 maintained with the Bank of Baroda, Panetha Branch. The AO requested the assessee to submit the details and evidence, but no supporting evidence was submitted by assessee. The assessee was show caused as to why the deposits should not be added to his total income. In absence of details and evidence, the AO made addition of Rs.12,34,500/- as unexplained and undisclosed income u/s 69A of the Act. The AO also noticed that besides cash deposits, the assessee deposited Rs.19,78,345/- either through cheque or transfer. The AO made addition of Rs.4,94,586/- (i.e., 25% of Rs.19,78,345/-) as unexplained money u/s 69 of the Act. The interest of

Rs.1,365/- credited in the bank account was also treated as undisclosed income from other sources. Total income was determined at Rs.17,18,950/- and penalty u/s 271(1)(c) of the Act was also initiated by the AO for concealment of income.

4. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) extracted the 'Statement of Facts' filed by appellant, which is on pages 2 of his appellate order. The CIT(A) observed that three notices were sent through ITBA portal to the appellant on 08.01.2021, 08.11.2023 and 28.11.2023, but the assessee failed to comply with the notices. Therefore, the CIT(A) has decided the appeal on the basis of the materials available on record including the assessment order. The CIT(A) relied upon the decision of CIT vs. B. N. Banerjee & Ors, (1977) 118 ITR 461 (SC) and stated that "preferring an appeal means more than formally filing it but effectively pursuing it." The CIT(A) also relied upon the decision of ITAT, Delhi in case of CIT vs. Multiplan India Pvt. Ltd., 38 ITD 320 (Delhi) and held that the law assist those who are vigilant and not those who sleep over their rights. The CIT(A) observed that the appellant was given sufficient opportunity to furnish the necessary details or documentary evidence, but he has failed to produce any supporting details to rebut the findings of AO. In absence of any evidence to the contrary, the additions made by the AO were upheld by the CIT(A) and he dismissed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed a paper book and submitted the 'Statement of Fact' along with the application for

correction in grounds of appeal, containing of 8 pages. The Id. AR of the assessee submitted that the AO had not referred in show cause notice, the total credit entry of Rs.19,78,345/- and without providing proper opportunity, he added 25% of credit entry i.e., Rs.4,94,5836/- in the bank account. He submitted that the assessee had withdrawn cash of Rs.9,66,712/- from Bank of Baroda, Rs.6,90,000/- from BDCCB and Rs.4,23,000/- from State Bank of India. In total, there was cash withdrawal of Rs.20,79,712/- and opening cash balance of Rs.1,02,530/-. As there were no other sources of income, deposit of Rs.12,23,000/- in the bank account was from the cash withdrawal. The Id. AR further submitted that credit transactions of Rs.19,78,345/- in Bank of Baroda were out of fixed deposit, advances recovered, banana sale, loans from three parties and miscellaneous receipts. The details are given at para 4.4 of the 'Statement of Facts'. He submitted that there was no movement in appeal during Covid-19 period. When notice was issued by CIT(A), confirmations of agricultural income were pending. The Counsel of assessee was also busy with personal hearing of cases under GST Act, which were to be completed before 31.12.2023. The Id. AR submitted that the assessee could not appear before CIT(A) due to circumstances beyond his control. Adequate opportunity of hearing was not given to the assessee; therefore, one more opportunity should be given to the assessee to plead his case before the CIT(A).

6. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities. He submitted

that during the appellate proceedings, the assessee was negligent and non-cooperative, due to which the additions were confirmed by CIT(A). However, he submitted that appropriate cost may be imposed upon the assessee, if the matter is restored to CIT(A).

7. We have heard both the parties and perused the materials available on record. It is an undisputed fact that assessee has been totally non-cooperative during the appellate proceedings. The assessee had also not filed return of income. In the assessment order u/s 143(3) r.w.s. 147 of the Act, the AO has added (i) unexplained money u/s 69A of the Act of Rs.12,23,000/- (ii) unexplained investment u/s 69 of the Act of Rs.4,94,586/- and (iii) unexplained interest income of Rs.1,365/-. The total addition of Rs.17,18,950/- was confirmed by CIT(A) because the assessee did not respond to the notices issued by him and no details or evidence were filed to support the grounds raised in the appeal. Considering all these facts, we are of the view that the assessee was negligent and non-cooperative before the CIT(A). The Id. AR submitted that the non-compliance was neither deliberate nor intentional, but was due to Covid-19 pandemic, pending confirmations of agricultural income and pre-occupation of CA with time barring GST matter. He submitted that appellant is ready with all details and therefore, he requested one more opportunity to plead his case on merit. We are of the view that the principles of natural justice would call for giving another opportunity of hearing to the assessee. Accordingly, we hold that the interests of justice would be met in case the CIT(A) re-adjudicates the entire

issue afresh subject to payment of cost of **Rs.10,000/- (Rupees ten thousand only)** by the assessee to the credit of the “District Legal Services Authority, Surat” within 2 weeks from receipt of this order. Subject to payment of above cost, we set aside the order of CIT(A) and remit the matter to the file of CIT(A) for fresh adjudication in accordance with law after granting adequate opportunity of hearing to the assessee. The assessee is directed to be more vigilant and diligent and to furnish all the details and explanations as needed by the CIT(A) by not seeking adjournment without valid reasons.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order is pronounced in the open court on 21/01/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 21/01/2025

SAMANTA

Copy of the Order forwarded to:

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat