



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.

&

DIESH MOHAN SINHA, JM

आयकर अपीलसं./ITA No.698/RJT/ 2024

(निर्धारण वर्ष / Assessment Year: (2008-09)

(Hybrid Hearing)

Late Chhotalal Vallabhadas Doshi (Legal Heir Smt. Prabhavatiben Chhotalal Doshi). 505 Ajitnath Apartment, Near Indraprasth Tower, Jamnagar.	Vs.	ITO Ward-1(3), Jamnagar.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACDPD9371Q		
(Appellant)		(Respondent)

Appellant by : Shri Dushyant Maharshi, Ld. AR

Respondent by : Shri Shramdeep Sinha, Ld. CIT(DR)

सुनवाईकीतारीख/ **Date of Hearing** : **23/12/2024**

घोषणाकीतारीख/**Date of Pronouncement** : **22/01/2025**

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre [(in short “NFAC/Ld. CIT(A)”] vide order dated 24/07/2024, which in turn assessment order passed by Assessing Officer vide order dated 22/03/2016 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short “the Act”).

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

1. Hon. CIT(A) erred in law as well as on facts in dismissing the appeal by contending that no response has been received from assessee although the response has been submitted through samadhan.faceless.appeal@incometax.gov.in as there was no income tax registration due to death of the assessee i.e. Chhotalal Doshi on



12/10/2010. Hon. CIT(A) decided the case without verifying the facts of the case on merits.

2. Hon. CIT(A) has passed the ex-parte order without considering the facts on records and without adjudicating the case on merits.

3. Re-opening u/s 148 of The IT Act is bad in law as there was no 'reason to believe' and there is no new material coming to the possession of Assessing Officer as Reopening was merely based upon information received from ADIT (Investigation). Hon. CIT(A) erred in confirming reopening of assessment.

4. Learned AO erred in law as well as on facts in not providing complete copy of reasons recorded for reopening u/s 148 and no proper opportunity of being heard was granted to the appellant during assessment proceedings. Hon. CIT(A) erred in confirming reopening of assessment.

5. The notice issued u/s 148 of the IT Act is improper and without jurisdiction as it is issued by obtaining sanction of JCIT as per section 151 of the IT Act in mechanical manner and therefore, notice issued u/s 148 is invalid and reassessment proceedings are liable to be quashed. Hon. CIT(A) erred in confirming reopening of assessment.

6. Learned A.O. erred in law as well as on facts in making addition of total of credits appearing in bank accounts amounting to Rs. 6,17,03,509/- as unaccounted income. Hon. CIT(A) erred in confirming the amount of addition without verifying the facts of the case on merits.

3. Facts of the case are that assessee has not filed his return of income for Assessment Year 2008-09 within due date of filing return of income. Further, assessment proceedings u/s 147 of the I. T. Act, 1961 was initiated and notice u/s 148 of the I. T. Act, 1961 was issued to the assessee on 30/03/2015 by the Income Tax Officer, Ward-2(1), Jamnagar after getting prior approval from the competent authority to deliver return of his income within 30 days of receipt of the notice. In response, assessee neither filed his return of income nor furnished any reply. Further, an opportunity letter was issued to the assessee on 24/06/2015 along with copy of reasons recorded to issue notice u/s 148 of the I. T. Act, 1961 fixing hearing on 30/06/2015 at 01.00 P. M. Thereafter, Shri Dharmendra Doshi son of the assessee furnished a letter stating that he is not the legal heir of the assessee instead his mother Smt. Prabhaben C. Doshi is legal heir of assessee. Further, notice u/s 142(1) of the Act along with questionnaire was issued to the assessee on 16/11/2015 to furnish the details fixing hearing on



23/11/2015 at 3:30 P.M. In response, to notice nobody attended nor furnished any reply. Further, assessee filed a letter seeking adjournment.

4. Further, notice u/s 143(2) & 142(1) of the Act was issued to the assessee on 10/02/2016 fixing hearing on 17/02/2016 at 11:30 A.M. In response, assessee neither attended nor furnished any reply.

5. In this case, information was received from the Assistant Director of Income Tax (Inv.), Jamnagar vide Letter No. ADIT (Inv.)/Jam/CLD/2014-15 dated 24/03/2015 alongwith it's enclosure. As per above information, Late Shri Chhotalal Doshi used to lend his bank accounts to other persons for a commission of Rs. 300 per lakh. Moreover, his bank accounts were used to receive unaccounted cash deposits of various parties from all over India and through cash withdrawal/cheque clearance, the cash was handed over to the concerned persons and he has made transaction of Rs. 4,04,70,29: with 14 different pros during the A. Y. 2008-09. During the course of assessment proceedings, on perusal of the details, it is noticed that there are cash/cheque deposits of Rs. 9,90,66,875/- in assessee's bank account held with The Jamnagar Peoples Co-operative Bank Ltd., Jamnagar & ICICI Bank Ltd., Jamnagar. However, the assessee has not furnished any satisfactory source of these cash/cheque deposits in his bank account. Further, the assessee has not declared above income in his return of income filed for the year under consideration.

6. In view of the above, notice u/s 142 (1) of the I. T. Act, 1961 along with show cause notice was issued to the assessee on 03/03/2016 fixing hearing on 10/03/2016 at 11.15 A.M. The relevant portion of the show cause notice is reproduced as under:

"Please refer to the above.

2. In this connection, it is to intimate you that on perusal of the details available on record, it is found that there are deposits of Rs. 9,90,66,875/- in your bank account held with .

The Jamnagar Peoples Co-operative Bank Ltd., Jamnagar & ICICI Bank Ltd., Jamnagar, however, you have not furnished any satisfactory source of these cash/cheque deposits in your bank account. Further, you have not declared above income in your return of income filed for the year under consideration. Therefore, you



are requested to show cause as to why above mentioned amount of Rs. 9,90,66,875/- should not be added to your total income on account of your unaccounted income for A. Y. 2008-09.

3. In this regard, you are requested to furnish your explanation in the office of the undersigned on or before 10/03/2016 at 11:15 P.M.

7. In response to the above mentioned show cause notice, the assessee filed his reply/explanation on 21/03/2016 stating that the unaccounted cash/cheque deposits of Rs. 4,06,90,379/- in his bank account no. 020505003485 held with ICICI Bank Ltd., Jamnagar is the amount which belongs to 14 parties whose name, address and unaccounted amount deposited in this bank account is mentioned in the submission dated 20/07/2012. The assessee stated that the source of deposits is unaccounted income of these parties credited in ICICI Bank account. Assessee further stated that Late Shri Chhotalal Doshi used to make deposits in his bank account on behalf of abovementioned 14 persons which was given to them after withdrawal from bank account and charge a sum of Rs. 300/- as commission for transaction of Rs. 1,00,000/- from these parties and the income of Late Shri Chhotalal Doshi was commission income only. Assessee has filed his return of income for the year under consideration on 01/08/2011 declaring total income of Rs. 1,22,071/- on account of commission income, which is filed after expiry of due date of filing of return of income. Further, the assessee has stated that the deposits made in Account No. 2001004499 held with The Jamnagar Peoples Cooperative Bank Ltd., Jamnagar are withdrawals from ICICI Bank Account No. 020505003485 and the deposits made in Account No. 3002000963 held with The Jamnagar Peoples Cooperative Bank Ltd., Jamnagar are withdrawals from Account No. 2001004499 held with The Jamnagar Peoples Co-operative Bank Ltd.

8. The reply furnished by the assessee has been duly considered, however, it is not found satisfactory and acceptable. During the course of assessment proceedings, notices u/s 133(6) of the I. T. Act, 1961 were issued to abovementioned 14 persons to verify the genuineness of transaction as stated by the assessee. In response, all the above persons submitted their reply and stated that they do not know the assessee and they have not made any business or banking transaction with the assessee during the year under consideration.



Further, as per reply furnished by the assessee, amount of Rs. 3,73,63,366/- was deposited in the bank account of the assessee as transfer of assessee's another bank account out of his three bank account. Therefore, assessee is responsible for deposits of Rs. 6,17,03,509/- (Rs. 9,90,66,875/- less Rs. 3,73,63,366/-) made in his bank accounts during the year under consideration and onus to furnish satisfactory source of these deposits is upon the assessee. However, assessee did not furnish satisfactory source of these deposits as well as supporting documents. Therefore, assessee's claim regarding abovementioned commission business is not acceptable.

9. In view of the above facts, addition of Rs. 6,17,03,509/- was added to the total income of the assessee by the Ld. AO on account of unaccounted income earned by the assessee during the year under consideration.

10. Aggrieved by the order passed by the Ld. AO on 22/03/2016 assessee carried the matter to the Ld. CIT(A).

11. During the appellate proceedings before the Ld. CIT(A). Ld. CIT(A) issued notices u/s 250 of the I.T. Act, 1961 and was asked to submit the written submission along with documentary evidences in support of its ground of appeal. The Ld. CIT(A) issued seven notices to the assessee on different occasions but there was no compliance to the notices by the assessee. Ld. CIT(A) has dismissed the appeal of the assessee on account of non compliance with notices issued for the hearings.

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

13. During the course of hearing Ld. Counsel for the assessee submitted that assessee could not comply with notices issued by the Ld. CIT(A) for the hearings because no notices were received by the assessee and requested for one more opportunity to explain the case before the lower authority. On the other



hand Ld. Sr. DR on behalf of the revenue has not objected to the prayer of the assessee and relied on the order of the Ld. CIT(A).

14. We have heard both the parties and perused the material available on record we note that assessee could not plead his case successfully before the ld. CIT(A). We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. CIT(A) for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits.

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

Order pronounced in the open court on 22/01/2025

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

Rajkot

दिनांक/ Date:22/01/2025

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

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot