



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपीलसं./ITA No.393/RJT/2024
Assessment Year: (2012-13)
(HybridHearing)

Chhaganbhai Mohanbhai Limbasiya. Ame, 4 Marutinagar, Kuvadava Road, Rajkot.	Vs.	The ITO Ward-2(1)(2), Rajkot.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACJPL4091K		
(Appellant)		(Respondent)

Appellant by : Shri Brijesh Parekh, Ld. A.R.
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Date of Hearing : 27/12/2024
Date of Pronouncement : 22/01/2025

PER DINESH MOHAN SINHA, JM:

1. Captioned appeal filed the assessee is against the order passed by the Commissioner of Income Tax (Appeals) vide his order dated 10/05/2024 which inter arises out of order passed by the Ld. AO vide order dated-18/11/2019

2. Grounds of appeal raised by the assessee.

- 1] The grounds raised in this appeal are without prejudice to one another.
- 2] The Ld.A.O erred on law and on facts is re-opening the assessment and the Ld.CIT[A] erred in upholding the action of the Ld.A.O. On the facts and circumstances of the case the reopening of the assessment be held to be bad in law and without jurisdiction.
- 3] The Ld. A.O. grievously erred in law and on facts in making an addition of Rs.20 Lacs for the alleged reason stated by him in the in the assessment order and the Ld.CIT[A] erred in upholding the addition made by the Ld.A.O . On the facts and circumstances of the case it is contended that the same deserves to be deleted.



- 4] Without prejudice the addition of Rs 20 Lacs is not called for and final dispute in the Court was of Rs.15 Lacs only.
- 5] Without prejudice it is submitted that the transaction of this kind does not call for the addition as done in the case of the appellant as the same is not "income", nor covered u/s.41 of Income Tax Act.
- 6] It is submitted that the Ld.A.O. & the Ld.CIT[A] erred in not appreciating the facts of the case that the Civil Court has passed the order against assessee making him liable to pay the amount to Shri Laxmanbhai Mavjibhai Kalola.
- 7] The Ld A.O. erred in law and on facts in making various incorrect averments in the assessment order and the same are objected too.
- 8] The Ld.AO erred in charging interest under the various provision of the Act and the Ld.CIT[A] erred in retaining the same.
- 9] The additional evidences as may be filed in the course of hearing of this appeal may kindly be admitted. A separate application will be made in this regard.
- 10] Your appellant craves leave add, alter, amend or withdraw of any of the grounds stated here above.

3. Facts of the case as per the Ld. CIT (A) is that The case of the assessee was re-opened. In response to the notice of re-opening the assessee filed the return under protest with objections. The case of the department was that the assessee had towards the repayment of the loan taken from Shri Laxmanbhai Mavjibhai Kalola given cheques totalling Rs.20 lakhs which were dishonoured. The lender had initiated the legal proceedings against assessee in civil and criminal court. The assessee only to save his skin had taken the plea for non-payment and dishonour of the above cheques that he is not liable to pay to Mr. Kalola; however the civil court has held that the assessee is liable to pay the sum of Rs.20 lakhs to Shri Laxmanbhai Mavjibhai Kalola. The fact is that the court has passed the verdict holding that the assessee is liable to pay the amount to Shri Laxmanbhai Mavjibhai Kalola. Yet the Ld. AO has made an addition of Rs.20 lakhs in the re-opened assessment order. Being aggrieved by the order of the Ld. AO vide order dated 18.11.2019 the assessee filed appeal before the Ld. CIT(A).



4. That the appeal decided by CIT (Appeals) vide his order dated 10/05/2024 with a view that during the appellate proceedings, adequate opportunities have been given to the assessee but the assessee has not furnished any written submission or any other documentary evidence in support of its grounds of appeal. Under such circumstances, the Ld. CIT(A) had no reason to interfere with the assessment order and addition of Rs.20,00,000/- in the assessment order was accordingly confirmed on merits. The Ground of appeal were dismissed on the above issue.

5. Aggrieved by the order dated 10/05/2024 passed by the CIT(A) the assessee is in appeal before us.

6. That the Ld. Counsel on behalf of the assessee (AR) submitted that the assessee was not aware of the proceedings going before Ld. CIT(A) no notices were served on the assessee. Ld Counsel requested for one more opportunity to the present case before the authority. On the contrary Ld. Sr. DR on behalf of the revenue relied on the order of the CIT (A). However Ld. Sr. DR did not objected the request of the assessee.

7. We have heard both the parties and perused the material available on record. Order of the Ld. CIT(A) speaks about issue of notices to the assessee but not about the service of the same notices on the assessee. However, Ld. CIT (A) has passed an ex-parte order and appeal of the assessee was dismissed. We also note that Ld. Counsel requested for one more opportunity to present the case before Ld. CIT(A). We also note that the assessee has not complied with the notices issued by the Ld. CIT(A) because notices were not served on assessee. We further note that the assessee has fully complied with the notices issued by the Ld. AO and has co-operated with the assessment proceedings.



We are in view of above circumstances and according to the principle of natural justice the assessee should be granted one more opportunity to explain his case before lower authorities. 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 after giving due opportunity to the assessee.

8. The appeal of the assessee is allowed for statistical purposes.

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

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

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL 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

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot