

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.851/Ahd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

The Janseva Trust Opp. Gyandeeep School Nr.Jivanlal Hospital Godhra - 389 001 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The ITO Ward-4(1)(1)(2), Vadodara (Now ITO, Ward-1, Godhra - 389 001)
स्थायी लेखा सं./PAN: AAATT 2888 D		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Ms. Nikhita Bhamblani & Amrin Pathan, ARs	
Revenue by :	Shri Rignesh Das, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 27/01/2025
घोषणा की तारीख /Date of Pronouncement: 29/01/2025

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

The present appeal has been filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"], dated 29.08.2023, for the Assessment Year (A.Y.) 2017-18. The said appeal arises from the assessment order passed by the Income Tax Officer (ITO), Ward 4(1)(2), Vadodara [hereinafter referred to as "AO"], under Section 144 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], on 24.12.2019.

Facts of the Case:

2. The assessee is a charitable trust registered with the Charity Commissioner, Panchmahal, Gujarat (Registration No. Panchmahal E-2243, dated 31.01.1993). It is engaged in providing financial relief to poor and needy individuals by offering small, interest-free loans as part of its micro-finance activities. Despite being operational during the financial year relevant to the assessment year under consideration, the assessee did not file its return of income under Section 139(1) of the Act. The AO, based on information gathered during "Operation Clean Money," observed that the assessee had deposited substantial cash and credits in its bank accounts during the financial year 2016-17, relevant to A.Y. 2017-18. The total deposits noted were as follows:

Bank Name	Account No.	Mode of Deposit	Cash Deposits (Rs.)	Other Credits (Rs.)	Total Deposits (Rs.)
The Janta Co-op Bank	898	Cash	56,86,500	10,43,059	67,29,559
The Janta Co-op Bank	14421	Cash	2,02,000	10,28,650	12,30,650
The Godhra Urban Co-op Bank	1889	Cash	1,76,73,000	19,29,240	1,96,02,240
The Godhra Urban Co-op Bank	430020	Cash	3,00,000	39,814	3,39,814
The Godhra Urban Co-op Bank	13029	Cash	7,50,000	2,01,659	9,51,659
Total			2,46,11,500	42,42,422	2,88,53,922

2.1. The AO issued multiple notices under Sections 142(1) and 133(6) of the Act to the assessee, requiring the assessee to file its return of income for the A.Y. 2017-18 and an explanation regarding the nature and source of the deposits. While the assessee submitted certain details, including audited financial statements, transactional data, and supporting evidence, the AO found these explanations unsatisfactory. Subsequently, a show-cause notice was issued on 12.12.2019, granting the assessee a final opportunity to explain why the deposits should not be treated as unexplained income under Section 69A of the Act. The assessee responded to the show cause notice by seeking additional time on 19.12.2019, citing the absence of its trustees. However, the AO passed the assessment order on 24.12.2019. Treating the entire amount of Rs.2,88,53,922 as unexplained, the AO invoked Section 69A of the Act, deeming it as undisclosed income. The AO proceeded to tax this amount under Section 115BBE of the Act at the rate of 60%, initiated penalty proceedings under Sections 271AAC and 271F, and levied interest under Sections 234A, 234B, and 234C of the Act.

3. Not satisfied with the assessment order, the assessee preferred an appeal before the CIT(A), challenging the additions and procedural lapses. However, the CIT(A), vide its order dated 29.08.2023, confirmed the addition and dismissed the appeal. While doing so the CIT(A) observed that the assessee failed to file its return of income for the A.Y. 2017-18 despite being served with a notice under Section 142(1) of the Act. The CIT(A) noted that the assessee failed to provide specific, satisfactory evidence to substantiate the nature and source of the cash deposits and other credits.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us with following grounds:

All the grounds raised in this appeal are mutually exclusive and without prejudice to each other.

Invalid Proceedings:

1. *The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [“CIT(A)”] erred in fact and in law in confirming the action of learned Income Tax Officer, Ward 4(1)(2), Vadodara (“the AO”) in passing the order which is invalid in law and therefore liable to be quashed.*
2. *The learned CIT(A) erred in fact and in law in confirming the action of learned AO in passing the assessment order without granting an opportunity of being heard before transfer of case from Godhra to Vadodara as per provisions of section 127 of the Income Tax Act, 1961 (“the Act”).*

Best Judgment u/s 144:

3. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in passing the order u/s 144 of the Act.*
4. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in passing the order u/s 144 without considering the facts on record in proper perspective.*
5. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in passing the order u/s 144 of the Act despite the fact that details pertaining to cash deposit during demonetisation period were duly submitted to the Income Tax Officer, Ward – 1, Godhra (“previous AO”).*
6. *The learned CIT(A) erred in fact and in law in confirming the action of learned AO in passing the order u/s 144 of the Act merely on the basis of assumptions and presumptions.*

Invalid Appellate Proceedings:

7. *The learned CIT(A) erred in fact and in law in passing an appellate order without granting personal hearing as mandated under clause 12 of Faceless Appeal Scheme despite the fact that the request for personal hearing through video conferencing was requested by the Appellant vide submission dated 01.08.2023.*
8. *The learned CIT(A) erred in fact and in law in passing an appellate order in violation of the principles of natural justice.*
9. *The learned CIT(A) erred in fact and in law in passing an appellate order without granting proper opportunity of being heard.*

Addition u/s 69A – Rs.2,88,53,922:

10. *The learned CIT(A) erred in fact and in law in confirming the action of learned AO in invoking provisions of section 69A of the Act and thereby making addition of Rs.2,88,53,922/-.*
11. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in making addition u/s 69A without satisfying the conditions prescribed therein.*
12. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in treating the cash deposits as unexplained without appreciating the nature of activities undertaken by the Appellant.*
13. *The learned CIT(A) erred in fact and in law in confirming the action of learned AO in making addition of cash deposited during the year despite the fact that source of cash deposits was duly explained to the learned AO.*
14. *Without prejudice to the above, the learned AO erred in fact and in law in making the addition of Rs.2,88,53,922 total credits (cash and credit entries) in the bank accounts despite the fact that the cash deposited in the bank accounts during demonetization period was only Rs.40,11,500.*

Other Grounds:

15. *The learned CIT(A) erred in fact and in law in confirming interest u/s 234A of the Act.*
16. *The learned CIT(A) erred in fact and in law in confirming interest u/s 234B of the Act.*
17. *The learned CIT(A) erred in fact and in law in confirming interest u/s 234C of the Act.*
18. *The learned CIT(A) erred in fact and in law in initiating penalty proceedings u/s 271F of the Act.*
19. *The learned CIT(A) erred in fact and in law in initiating penalty proceedings u/s 271AAC of the Act.*
20. *Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.*

5. During the course of the hearing before us, the Authorized Representative (AR) of the assessee stated the primary activity of the assessee involves providing small, interest-free loans to poor and needy individuals and the deposit of cash represents recovery from the borrowers. The AR also

stated that the assessee replied to the notices of AO and submitted the details such as Trust Deed, details of trustees, copy of income and expenditure account along with the balance sheet for A.Y. 2017-18, copy of bank statements, details of cash balance on various dates of financial year end and cash book of the assessee (*rojmel*). The AR further stated that the details of cash deposit during the period of demonetization along with copies of ledger accounts were also submitted to the AO in response to his notice dated 11-11-2019 u/s 142(1) of the Act. The AR pointed out that the transfer of jurisdiction from Godhra to Vadodara was made without granting an opportunity of being heard. The AR also submitted that the CIT(A) did not give video hearing even after the written request by the assessee. The AR requested to set aside the order of CIT(A) and send the matter back to AO for verification.

6. The Departmental Representative (DR) pointed out that the assessee is a non-filer and has not filed the return of income even in response to notice u/s 142(1). The DR relied on the orders of lower authorities. The DR did not object to restoring the matter back to AO and left the decision to the bench.

7. We have heard the rival contentions and perused the material available on record. The records indicate that the AO passed the assessment order under Section 144 due to the non-filing of the return of income by the assessee and the alleged non-compliance with notices under Section 142(1) of the Act. While the assessee claims to have submitted certain details such as the trust deed, bank statements, and other financial records in response to the notice dated 11-11-2019, it is evident that these submissions were incomplete and insufficient to satisfy the AO's inquiries.

7.1. The assessee submitted that it requested a personal hearing during appellate proceedings before the CIT(A). However, the CIT(A) dismissed the appeal without granting a personal hearing. This constitutes a procedural lapse, as the denial of a hearing violated the principles of natural justice. However, the assessee's failure to provide adequate details and cooperate during the assessment stage cannot be ignored.

7.2. The assessee failed to file its return of income for A.Y. 2017-18, even after receiving a notice under Section 142(1) of the Act. This non-compliance is a critical factor that weakened the assessee's position and necessitated the passing of the best judgment assessment order under Section 144 of the Act. Despite repeated demands by the AO and the CIT(A), the assessee failed to furnish complete and satisfactory details to substantiate the nature and source of deposits totalling to Rs.2,88,53,922/- in its bank accounts. Furthermore, the assessee did not produce any new documents or evidence during the proceedings before us.

7.3. The assessee claims that the cash deposits represent recoveries from borrowers in the course of its charitable micro-finance activities. However, no reconciliation of these deposits with individual borrower accounts or adequate supporting evidence was provided at any stage of the proceedings. The AO invoked Section 69A of the Act to treat the deposits as unexplained income. While the assessee's explanation of loan recoveries was not properly verified by the AO, the onus was on the assessee to substantiate its claim, which it failed to do.

7.4. The assessee's contention that the transfer of jurisdiction from Godhra to Vadodara was made without granting an opportunity of being heard under Section 127 is valid. This procedural lapse violates the principles of natural justice, warranting a reconsideration of the assessment.

7.5. The denial of a personal hearing before the CIT(A) despite a written request by the assessee constitutes a significant procedural lapse. While the assessee's failure to file its return of income and provide complete details during the assessment stage is a serious non-compliance, it is essential to ensure that the principles of natural justice are upheld at every stage of the proceedings.

7.6. The AO treated the entire deposits of Rs.2,88,53,922/- as unexplained income without conducting proper inquiries into the explanations and documents submitted by the assessee. The AO is required to verify the claim that the deposits represent loan recoveries from borrowers in the course of the assessee's charitable activities. While the addition under Section 69A requires verification, the failure of the assessee to furnish sufficient evidence during assessment and appellate proceedings is equally notable.

7.7. Based on these findings, we observe that the assessee's non-filing of the return of income and its failure to provide adequate explanations despite repeated opportunities demonstrate non-cooperation and disregard for compliance obligations under the Act. While there were procedural lapses in the assessment and appellate stages, such lapses cannot absolve the assessee of its primary obligation to file a return of income and provide satisfactory explanations for the deposits.

7.8. In the interest of justice and fair play, and considering the charitable nature of the assessee's activities, the matter is remanded back to the file of the AO for fresh adjudication. The assessee is directed to fully cooperate with the reassessment proceedings and promptly submit all necessary documents and evidence as required by the AO. Any failure or delay on the part of the assessee may result in adverse inferences being drawn against it.

7.9. While recognizing the charitable nature of the assessee's activities, we also note its non-compliance in filing the return of income and furnishing complete details during the assessment and appellate proceedings. In the interest of justice, we impose a nominal cost of Rs.5,000/- on the assessee, payable to the Income Tax Department within two weeks of receipt of this order and production of receipt before the AO. This cost is intended to promote adherence to procedural obligations under the Act and ensure timely compliance in future proceedings, without undermining the trust's charitable objectives.

8. In the result, the appeal of the assessee is allowed for statistical purposes, subject to the above directions.

Order pronounced in the Open Court on 29th January, 2025 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 29/01/2025

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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