



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

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No.424/RJT/2024

निर्धारणवर्ष / Assessment Year: (2018-19)

(Hybrid Hearing)

Janakkumar Somchand Thakkar Ambica nagar society, Jainabad Road, Patdi - 382765	Vs.	Income Tax Officer, Surendranagar - 382765
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AANPT3520B		
(Appellant)		(Respondent)

Appellant by : Shri Devang Ghelani, Ld. AR
Respondent by : ShriAbhimanyu Singh Yadav, Ld SR DR
Date of Hearing : 18/03/2025
Date of Pronouncement : 25/03/2025

आदेश / ORDER

PER DINESH MOHAN SINHA JM;

Captioned appeal filed by assessee pertaining to Assessment Year 2017-18, is directed against order passed by Commissioner Of Income Tax (Appeal), vide order dated 15/04/2024, which in turn arises out of an order passed by the Assessing Officer dated 23/03/2023 u/s 147 r.w.s 144 r.w.s 144(B) of the Income Tax Act, 1961.



2. GROUNDS OF APPEALS:-

Hon'ble CIT(A) did not consider the details and evidences mentioned in Form 35, which were explaining the nature of case deposits in assessee's bank. The books of accounts were duly maintained, and sales proceeds of Rs.54,13,257 received from retail business and its deposit in bank were duly recorded. The cash transactions and cash deposits of the business were fully recorded by the assessee in his books of accounts, but the same were never demanded during the course of assessment. The ledger accounts of parties were also duly maintained. Thus, provisions of section 69A and underlying conditions do not apply. As per assessee's Computation of Income, the income was calculated as per section 44AD, for which no books of accounts are required to be kept. The CIT(A) has also ignored the fact that the assessment was done based on assumptions without following natural principles of justice.

3. Facts Of The Case as recorded by The Ld CIT(A)

“The assessee has not filed any Return of Income for the Asst. Year 2018-19. Hence, declaring the above financial transactions remained unexplained and unverified. Therefore the Jurisdictional Assessing Officer has reopened the case u/s 147 of the IT Act and accordingly a notice u/s 148 of the Income Tax Act, 1961 was also issued to the assessee on 31.03.2022. As per the information available in the departmental database it is seen that, the assessee, Shri. Janakkumar Somchand Thakkar has made cash deposit of Rs. 54,13,257/- in his bank account maintained with M/s. The Patdi Nagarik Sahakari Bank Limited during the financial year 2017-18, relevant to the assessment year 2018-19. In the absence of Return of Income, the source of cash deposit of Rs. 54,13,257/- remained undisclosed and therefore, remains unexplained and same has not been offered for tax and due tax has not been paid. The assessee was issued with a show cause notice u/s.148A (b) of the Income Tax Act, 1961 dated 15.03.2022. There was no compliance from the assessee to the said show cause notice. Hence, an order u/s.148A (d) of the Income Tax Act, 1961 was passed on 31.03.2022 and a notice u/s.148 of the Income Tax Act, 1961 was also issued to the assessee on 31/03/2022 by Jurisdictional Assessing Officer. It is seen from the



computation submitted by the assessee that he had arrived a gross receipt of Rs.44,89,000/- and arrived 8% of profit of Rs.3,59,120/- as total income (estimated income) u/s.44AD of the Income Tax Act. He had not mention anything about his nature of business and how he is coming under the purview of 44AD of the Income Tax Act, it is not clear from any of the replies filed by the assessee.As discussed above, the assessment is completed by making the total addition of Rs. 54,13,257/- to the income of the assessee. As the assessee has not filed return of income in response to notice u/s 148 of the IT Act, hence the assessment is completed u/s 147 r.w.s 144 r.w.s 144B of the IT Act.”

Variation: As per the discussion in para 3.4.9.	Rs. 54,13,257/-
Total Income determined	Rs. 54,13,257/-

4. That the assessee filed an appeal against the order of assessment before Ld CIT(A). That said appeal was disposed of with following observation.

"with the AO's findings of fact and decisions thereof, more particularly in the absence of any meaningful and worthwhile submissions/documentations even during the instant appellate proceedings, to counter effectively the position adopted by the AO on the concerned issues and reduced in writing in the assessment order. It is trite that an appellate authority is essentially called upon to balance the two sides of an argument presented before him as held in Nirmal Singh and Others of the Hon'ble Punjab and Haryana High Court [Cr No. 3791 of 2013 (O&M) dated 01.05.2014] and in the absence of any reasonable, cogent and valid arguments/contentions advanced by the appellant in the instant appeal to counter the AO's decision, the order passed u/s 147 n.w.s. 144 of the Act dated 23.03.2023 is upheld.."



5. That the assessee field an appeal against the impugned order date 15.04.2024 before us.

(i) During the course of argument the Ld AR has submitted that the assessee could not replied to the notice because of the old age of the assessee and the wife of the assessee suffering from the chest cancer and ultimately died on 06.11.2023 and the assessee could not attend the notice because belong to old contestant. The AR requested that one more opportunity may kindly provided.

(ii) On the contrary the Ld DR has relied on the order of the Ld CIT(A) and submitted that number of notice was issued to the assessee, due opportunity was provided to the assessee. However Ld DR has not objected the request of the assessee.

6. We have heard both the representative of the party and perused all the material available on record before us.

We note that CIT(A) has issued five notices on 01.10.2023, 08.12.2023, 08.01.2024, 29.02.2024, 29.03.2024 but no response to notices from the assessee side. We observed that the assessee is negligent in response to notice since two notices issued in 2023 and three notices issued 2024 because of this negligent action a cost of Rs. 5000/- is imposed and the same is to be deposited Prime Minister Relief Fund within 10 days from today and the copy of the receipt is to placed on record. In view of the about we are inclined to give an opportunity to explain the case before the lower authority. We have note that the assessment order also passed ex-party u/s. 147 r.w.s. 144 and 144B of the I.T. Act. Therefore, we set-aside the order of the lower authority and direct the AO to



make a fresh assessment after giving an opportunity to the assessee to submit the document, the AR of the assessee has assured to the Bench that the AR will look after the case is and compiled with notice issued by AO.

7. In result the appeal of the assessee allowed for statistical purpose.

Order pronounced in the open court on 25 / 03/2025.

Sd/-

(Dr. A.L. SAINI)

ACCOUNT MEMBER

Rajkot

दिनांक/ Date:25 /03 /2025

Sd/-

(DINESH MOHAN SINHA)

JUDICAL MEMBER

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