



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

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No.397/RJT/2024

निर्धारणवर्ष / Assessment Year: (2012-13)

(Hybrid Hearing)

Ramji HarakhjiFefar(HUF), “Gayatri”, 3- Navjyot Park, Kalawad Road, Off 150Feet Ring Road, Rajkot - 360001	Vs.	The ITO, Ward-1 (1) (3), Aaykar Bhavan, Race Course Ring Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AANHR5839R		
(Appellant)		(Respondent)

Appellant by : Shri Mehul Ranpura, Ld. AR
Respondent by : ShriAbhimanyu Singh Yadav, LdSR DR
Date of Hearing : **20 /12/2024**
Date of Pronouncement : **06 /03/2025**

आदेश / ORDER

PER DINESH MOHAN SINHA JM;

Captioned appeal filed by assessee pertaining to Assessment Year 2012-13, is directed against order passed by Commissioner Of Income Tax (Appeal), vide order dated 10/05/2024, which in turn arises out of an order passed by the Assessing Officer dated 18/12/2019 u/s. 143(3) r.w.s.147 of the Income Tax Act, 1961.



2. GROUNDS OF APPEALS:-

1. *The grounds of appeal mentioned hereunder are without prejudice to one another.*
2. *The Id. Addl./Jt Commissioner of Income-tax (Appeals)-12, Mumbai erred in rejecting the ground of appeal related to validity of notice issued u/s 148 of the Income tax Act, 1961. That on facts as also in law, initiation of action u/s. 147 of the Act is invalid and assessment made on such invalid initiation deserves to be quashed and may kindly be quashed.*
3. *The Id. Addl./Jt Commissioner of Income-tax (Appeals)-12, Mumbai erred on facts as also in law in confirming the addition of Rs.9,83,000/- made u/s.69A of the Act being alleged unexplained credit entries in bank account no.56069043767 held with State Bank of India. The addition confirmed is unjustified and uncalled for, which is deserved to be deleted, may kindly be deleted.*
4. *The Id. CIT(A)/NFAC erred on facts as also in law in dismissing the appeal ex parte, without considering the written submission of the appellant uploaded on the portal. The Id. Addl / Joint CIT(A)/NFAC mya kindly be directed to delete the addition on this ground only.*
5. *Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.*

3. Brief facts of the Case as recorded by that the appellant, a HUF, having income from agriculture activity. Return of income for A.Y. 2012-13 was not filed due to the reason that total income was below the exemption limit. Notice u/s.148 of the Income tax Act, 1961 ("the Act") was issued on 26-03-2019. Return in response to notice u/s.148 was filed by the appellant on 28-06-2019 declaring total income at Rs.16, 900/- and agriculture income at Rs. 1, 95, 230/-. Reasons recorded for re-opening of assessment was given by the Assessing Officer ("the AO") that;

"As per the information/data available with this office, it is noticed that the assessee has entered into transaction of purchase of immovable property worth of Rs.52, 11, 415/-.However, the assessee has not filed his return of income for the year under consideration. Therefore, source of purchase of immovable property remains unexplained."

In fact, the appellant was holding 25% share in property i.e. Rs.13, 02, 854/- only. So, the information on which notice u/s.148 issued was itself wrong and hence assessment based on such wrong information is invalid and void-ab-initio.However, to co-operate



with the department the appellant has submitted all the details as required by the AO on e-proceeding portal. A show cause notice dated 12-12-2019 & hearing fixed on date 16-12-2019 was issued in which the AO proposed an addition of Rs.9, 83, 000/- being credit entries reflected in bank account of the appellant. The AO has given a time period of 4 days and required to submit the details within just 4 days. An assessment was finalized by an order dated 18-12-2019 adding Rs.9, 83, 000/- to the returned income u/s.69A of the Act.

Subject to the above remarks, total income of the assessee is determined as under:

Total income as per the return of income filed in response to the notice u/s. 148	.Rs. 16,900/-
Addition on account of credit transactions in bank account treating as unexplained money u/s. 69A of the I.T. Act, 1961	Rs. 9,83,000/-
Assessed Income	Rs.9,99,900/-
Rounded off	Rs.9,99,900/-

4. That the Ld AO make an order with under mentioned observation:

“In response to the above show notice, the assessee did not file any reply till date. It is understood that the assessee has no objection for the proposed addition. Thus, the total amount of credit transaction of Rs. 9,83,000/- in his bank account held with SBI a/c. 56069043767 prior to the purchase of the immovable property is added back to the total income of the assessee u/s: 69A of the I.T. Act, 1961 on account of unexplained money in the bank account of the assessee in absence of substantial supporting evidences.”

(Addition of Rs. 9,83,000/-)

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

“That the addition made into the assessee's income u/s 69 in respect of purchase of property eventhough the assessee stated that he had taken loan from 1 person through banking channel to purchase the said property, yet, in view of failure of assessee to satisfactorily to explain the source of investment in said property, at any stage, the impugned order passed by authorities below did not require any interference.”



6. That the assessee filed an appeal against the impugned order date 01.05.2024 before us.

(i) During the course of hearing the Ld AR has submitted that the assessee is a HUF share in the acquired property in 30% detail has been submitted in Assessment Proceeding. The assessee file in bank statement also file computation income and balance sheet. The assessee has submitted reply before the Ld. CIT(A) and the same was not concluded. Further re- opening of assessment is bad.

(ii) On the contrary the Ld. DR has relied on the order of lower authority. ITR was filed by the assessee property of worth Rs. 52,11,415/- was purchased during the year. The Ld DR submitted that in case the matter restore back to the lower the DR has no objection.

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

(a) We note that the appellant is Hindu Undivided Family (HUF) having main source of income was agriculture along with rent income and interest income from bank. As there was no taxable income for the year under consideration the appellant has not filed return u/s. 139 of the Act. Notice u/s. 148 of the Act received by the appellant. In response to the notice return of Income for the year under consideration was filed on 28.06.2019 declaring total income at Rs. 16,896/- and agriculture income of Rs.2,12,126/-. All the details as required by the AO were submitted during the course of assessment proceedings. Thereafter, the AO made an assessment of total income by adding Rs.9,83,000/- in the total income being credit entry in bank pan book of the appellant as unexplained money u/s.69A of the Act.



8. We note that in this case no return of income was filed for the year under consideration and hence no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceeding u/s. 147 is reason to believe which has been duly.

9. We note that the assessee entered into transaction for purchase of immovable property worth of Rs.50,10,111/- and assessee has not filed return of income for the year. Therefore, source of purchase of immovable property remains unexplained, hence therefore the case was reopened. The information given in reason recorded by the AO is not correct and immovable property jointly purchase alongwith other three persons (1) Meenaben Vallabhbbhai Fefar, (ii) Nanalal Harakhji bhai Patel and (iii)' Vashrambhai Harakhji bhai Fefar (HUF) in equal share (i.e. 25.00%). The amount mentioned in reason is also not correct. In reason recorded by the Assessing Officer. The assessee has paid Rs.12,52,528/- being twenty five percent (25.00%) share in property.

10. We note that all the information received for reopening of assessment is not correct. Information, base and issuing of notice for re-opening the assessment is transaction in purchase of immovable property of Rs.52,11,415/- . We note that the Ld. CIT(A) has observed in order that the:

“In this regard the appellant has also not whispered anything about admission of new evidence before the appellate authority and is simply stating that he has produced all documents before the AO”

When the Ld. AO has observed in order that the:

“In response to the above show cause notice, the assessee did not the any reply till date. It is understood that the assessee has no objection for the proposed addition. Thus, the total amount of credit transaction of Rs. 9,83,000/- in his bank account held with SBI a/c. 56069043767 prior to the purchase of the immovable property is added back to the total income of the assessee u/s. 69A of the I. T. Act,



1961 on account of unexplained money in the bank account of the assessee in absence of substantial supporting evidence.”

11. We note that the appellant has maintained books of account and recorded the transaction with five persons in books of account which was duly submitted before the AO as mentioned in para 3.0 of the assessment order. In such circumstances provision of section 69A is not applicable in the case of appellant.

“In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT - Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No.2292/Mum/2016 dated 23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 69A of the Act cannot be made in respect of those assets/monies/entries which are recorded in the assessee's books of account. In my considered view, the aforesaid decision of the ITAT - Mumbai Bench (supra) is squarely applicable to the facts of the case on hand, where the entries are recorded in the assessee's books of account. In this view of the matter, I am of the opinion that the addition of Rs.33,23,425/- made under section 69A of the Act is bad in law in the facts and circumstances of the case on hand and therefore delete the addition of Rs. 33,23,425/- made thereunder.”

12. Considering the above discussion, it appears that the AO committed a mistake in considering that assessee has entered into transaction of purchase of involved property worth of Rs. 52,11,415/- while assessee was having share only 30% on the property. Therefore, the reopening proceedings of assessment is bad in law and the Ld. AO would not get valid jurisdiction to proceed for reassessment. We are agree with this judgement sited by Ld. AR that

R. S. share & Securities Ltd. v. ITO in ITA No. 8031/Del/2018 for AY 2010-11.

In view of the above discussion, set aside the orders of the authorities below and quash the reopening of the assessment. Resultantly additions u/s. 69A of the Act stand deleted.



In result the appeal of the assessee allowed.

Order pronounced in the open court on 06 / 03/2025.

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

Rajkot
Date: 06 /03 /2025

(True Copy)

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