

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. Nos. 1331&1332/SRT/2024
(Assessment Years: 2010-11 & 2011-12)

Rakeshkumar Kevalchand Jain, 2974, Rakesh Cloth Centre, Station Road, Bilimora, Navsari, Gujarat-396321	Vs.	Income Tax Officer, Ward-4, Navsari
[PAN No. AA WPJ4452H]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Darshit J Naik, C.A.
Respondent by:	Shri Mukesh Jain, Sr. DR

Date of Hearing	02.04.2025
Date of Pronouncement	03.04.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These are appeals filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 23.10.2024. Since common facts and issues for consideration are both the years under consideration, both the appeals filed by the assessee for the A.Ys. 2010-11 and 2011-12 are being taken up for together.

We shall first start with appeal of the assessee for A.Y. 2010-11

ITA No. 1331/Srt/2024 (A.Y. 2010-11)

2. The assessee has raised the following grounds of appeal:

“1) *The Learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal of the Appellant.*

2) *The Learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal u/s 249(4)(b), when the said provisions of law were not applicable.*

3) *Both the lower authorities erred in holding that the Appellant is a “non-filer” of tax return for the current assessment year when the Appellant was not legally obliged to file a Return of Income.*

4) *The Learned Commissioner of Income Tax (Appeals) erred in relying on Sr. No. 9 of Form 35, when the same was inapplicable to the facts of the present case.*

5) *With due respect, the order of Commissioner of Income Tax (Appeals) is erroneous both in fact and in law.*

6) *The Assessing Officer erred in assuming jurisdiction u/s. 147 when the jurisdictional conditions were not satisfied.*

7) *Without prejudice to all that is stated above and in any event, the Assessing Officer erred in making an addition of Rs. 13,97,650/- in respect of cash deposited in the HDFC Bank Account of the Appellant u/s 69 of the Act, when the said deposits were, in fact, out of explained sources.*

The Appellant craves leave to add to, amend, alter, modify or withdraw any or all the Grounds of Appeal before or at the time of hearing of the Appeal, as they may be advised from time to time.”

3. The brief facts of the case are that as per information available with the Department, the assessee had deposited cash amounting to Rs. 13,97,650/- in his HDFC saving bank account during the impugned year under consideration. The assessee did not file return of income for the year under consideration and accordingly, notice under Section 148 of the Act was issued and served upon the assessee. During the course of assessment proceedings, the assessee did not furnish any details nor file any submissions in response to notices issued by the Department. Accordingly, the Assessing Officer held that since despite having been provided ample opportunities to furnish proof of source of deposits, since the assessee did not file any details,

the cash deposits amounting to Rs. 13,97,650/- are liable to be treated as unexplained income of the assessee under Section 69 of the Act.

4. In appeal, the assessee submitted that the assessee is engaged in the business of trading in cloth and since for the impugned year under consideration, the income of the assessee was below the exemption limit, the assessee did not file return of income for the assessment year under consideration. The assessee also furnished computation of income, purchase register, sales register, sample copies of invoices etc. in support of it's case to substantiate that the assessee was carrying on business of trading in cloth and since assessee's income was falling below the exemption limit, it was not liable to file return of income for the impugned year under consideration. However, Ld. CIT(A) dismissed the appeal of the assessee with the following observations:

"5. I have gone through above reply of appellant. The appellant in his reply has admitted that he did not file return of income for his income was below taxable limit. This explanation is not acceptable as it is not as per computation of income, made by the appellant, but after determination of income unless any changes are made in the assessed income by virtue of rectification or giving appeal effect, which decides the quantum of income. In this case, assessed income is above taxable limit and the appellant was supposed to file return of income. At present appellant has to just tell whether he paid an amount equal to the amount of advance tax which was payable by him and if he had not made such payment whether he wants exemption from operation of provisions of section 249(4)(b) of the Act. The appellant has failed to do so. It is, therefore, clear that the appellant has not made payment of amount equal to the advance tax which was due on its income.

6. Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.

*7. The appeal is **dismissed.**"*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) dismissing the appeal of the assessee.

6. On going through the facts of the instant case, we observe from the perusal of the bank statement of the assessee that there were substantial deposits as well as withdrawals from the bank account of the assessee, held with HDFC Bank. While the total deposits in the bank account were added as income of the assessee during the impugned year under consideration by the Assessing Officer, however, no credit for withdrawals made from same bank account was given to the assessee. Further, assessee, during the course of appellate proceedings, the assessee had given substantial evidence to demonstrate that the assessee was carrying on the business of trading in cloth and from the bank account held with the HDFC Bank, it could be seen that there were deposits in this bank accounts as well as corresponding withdrawals (in cash) for making payment to various parties. Ld. CIT(A) did not doubt the genuineness of the evidence furnished by the assessee in support of it's case. Further, the assessee submitted that for the year under consideration, it's income was below taxable limit and hence, it was not liable to file return of income at all. However, Ld. CIT(A) without taking into consideration the various submissions / details / evidences furnished by the assessee, dismissed appeal of the assessee for want of payments of taxes under Section 249(4)(b) of the Act.

7. In our considered view, Ld. CIT(A) has taken an unreasonable approach while dismissing the appeal of the assessee, without taking into consideration the facts of assessee's case and details / evidences / written submissions filed by the assessee, stating that the assessee was not liable to

file return of income in the first instance, since it's income was falling below the taxable limit. On going through the facts of the instant case, in the interest of justice, the appeal of the assessee is restored to the file of Assessing Officer for de-novo consideration, after taking the consideration the details / evidences produced by the assessee before the Tax Authorities.

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

ITA No. 1332/Srt/2024 (A.Y. 2011-12)

9. The assessee has raised the following grounds of appeal:

“1) *The Learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal of the Appellant.*

2) *The Learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal u/s 249(4)(b), when the said provisions of law were not applicable.*

3) *Both the lower authorities erred in holding that the Appellant is a “non-filer” of tax return for the current assessment year when the Appellant was not legally obliged to file a Return of Income.*

4) *The Learned Commissioner of Income Tax (Appeals) erred in relying on Sr. No. 9 of Form 35, when the same was inapplicable to the facts of the present case.*

5) *With due respect, the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi is erroneous both in fact and in law.*

6) *The Assessing Officer erred in assuming jurisdiction u/s. 147 when the jurisdictional conditions were not satisfied.*

7) *Without prejudice to all that is stated above and in any event, the Assessing Officer erred in making an addition of Rs. 15,72,400/- in respect of cash deposited in the HDFC Bank Account of the Appellant u/s 69 of the Act, when the said deposits were, in fact, out of explained sources.*

The Appellant craves leave to add to, amend, alter, modify or withdraw any or all the Grounds of Appeal before or at the time of hearing of the Appeal, as they may be advised from time to time.”

10. Since the facts and issues for consideration are similar for A.Y.2011-12 the appeal of the assessee for A.Y. 2011-12 is also restored to the file of Assessing Officer for de-novo consideration, in the interest of justice.

11. In the combined result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 03/04/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 03/04/2025

TANMAY, Sr. PS

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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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat