

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.965/SRT/2024

Assessment Year: (2017-18)

(Hybrid hearing)

Kiritbhai Bhikhabhai Patel 48, Paradi, Balak Valsad, Navsari-396 475	बनाम/ Vs.	Income Tax Officer, Ward-3, Navsari, Room No.206, Income Tax Officer, Char Pool, Awabaug, Navsari-396 445
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AWSP 7295 C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.830/SRT/2024

Assessment Year: (2017-18)

Income Tax Officer, Ward-3, Navsari, Room No.206, Income Tax Officer, Char Pool, Awabaug, Navsari-396 445	बनाम/ Vs.	Kiritbhai Bhikhabhai Patel 48, Paradi, Arak Valsad, Navsari-396 475
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AWSP 7295 C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Sujesh C. Suratwala, CA
राजस्व की ओर से /Respondent by	Shri Mukesh Jain, Sr-DR
सुनवाई की तारीख/Date of Hearing	27/02/2025
उद्घोषणा की तारीख/Date of Pronouncement	25/04/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These cross-appeals by assessee and Revenue emanate from same order passed under section 250 of the of Income-tax Act, 1961 (in short, 'the Act') dated 19.06.2024 for assessment year *i.e.*, 2017-18 of the National Faceless Appeal Centre (NFAC)/Commissioner of Income-tax (Appeals) [in

short, "Ld. CIT(A)"], which in turn arose out of assessment order passed by Assessing Officer (in short, "AO") under section 144 of the Act on 16.10.2019.

2. In cross-appeals, both parties have raised grounds of appeal emanating from the same orders of AO and CIT(A) for AY 2017-18. With consent of parties, both appeals are clubbed, heard together and are decided by consolidated order for sake of convenience and brevity. The assessee has raised the following grounds of appeal:

"1. Learned CIT(A)/NFAC has erred in disallowing cash deposited into his various bank/loan accounts to the extent of R.3,79,660/- (15,18,640 @25%) which was out of agriculture income and accumulated cash on hand hence required to be deleted.

2. Learned CIT(A)/NFAC has erred in disallowing cash deposited into assessee wife namely Sudhaben Kiritbhai Patel bank account with IndusInd Bank, bearing S/b A/c no.10041676353 to the extent of Rs.1,66,000/- (6,64,000/- @ 25%). But as a matter of facts the entire cash deposited of Rs.6,64,000/- belongs to assessee wife namely Sudhaben Kiritbhai Patel which was in fact not taxable in the hands of assessee hence required to be deleted.

3. Learned CIT(A)/NFAC has erred in disallowing of sum of Rs.32,66,000/- received as unsecured loan from family members, relatives and friends. Assessee has produced all the cogent evidences in support of unsecured loan which was grossly ignored by CIT(A)/NFAC which was pervert.

4. The appellant craved leave to add, alter, delete, amend or rescind any of the above grounds of appeal as and when necessary, with the permission of ITAT."

3. The Revenue in its cross-appeal ITA No.830/SRT/2024 has raised the following grounds of appeal:

“(i) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in allowing 75% of cash deposits without any evidence of agriculture receipts and cash-on-hand?

(ii) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in directing the AO to verify the agriculture income, loans obtained through OD/CC/pledging of gold and not to make any addition if the income earned from exempted sources and institutional loans?

(iii) Whether on the facts and circumstances of the case Ld. CIT(A) has exceeded his powers given on section 251(1)(a) of the I.T. Act and setting aside the case to AO as the cash deposit and credit entries are unexplained by the assessee.

(iv) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the addition made by the AO.

(v) It is, therefore, prayed to set aside the order passed by the CIT(A) and that of the order passed by the AO be restored.”

4. Perusal of record shows that there is delay of 32 days in filing appeal in ITA No.965/SRT/2024 before Tribunal. The assessee has filed an affidavit giving reasons for delay in filing of appeal before the Tribunal. In the affidavit, it has been stated that the assessee suffered heart disease and underwent surgery on 02.04.2023 in CIMS Hospital, Ahmedabad. Due to the surgery, assessee could not come back to work within time limit for which there is delay of 32 days in filing appeal. The Ld. AR has requested to condone the delay in filing appeal in the interest of justice. The Ld. AR submitted that delay of 32 days was neither deliberate nor intentional.

5. On the other hand, Ld. Senior-Departmental Representative (Ld.Sr-DR) for the Revenue did not oppose the delay and submits that Bench may take appropriate view.

6. We have considered the reasons given by the Ld. AR and perused the accompanied documents along with the affidavit. We find that the delay of 32 days in filing the appeal was not deliberate and intentional on the part of assessee. It was primarily due to heart surgery of the appellant Moreover, assessee is not going to be benefited by filing appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, the delay in filing the appeal is condoned and we proceed to decide the case on merit.

7. Facts in brief are that assessee did not file his return of income for AY 2017-18 on 26.06.2019. Notice u/s 142(1) was issued on 10.03.2018 and assessee filed return of income. As the return was filed beyond the time allowed in notice u/s 142(1) of the Act, it was treated as *non-est*. On the basis of data analytics and information, the Department gathered a list of assessee who had deposited substantial cash in their bank accounts during demonetization period but have not filed return of income for AY 2017-18. Assessee had deposited cash of Rs.23,07,640/- in his bank account. There were

other credit entries of Rs.76,67,253/-. During assessment proceedings, assessee failed to adduce cogent documentary evidence to explain the nature and source of cash deposit and other credit entries and he did not comply with various notices. Hence, the AO added the total of cash and credit entries of Rs.95,04,253/- u/s 69A and taxed the same u/s 115BBE of the Act.

8. Aggrieved by this order of AO, assessee filed appeal before Ld.CIT(A). The issue in the appeal was the addition Rs.95,04,253/- made towards the unexplained credit entries appearing in the bank account of the appellant. Before CIT(A) appellant filed various details and written submission, which is reproduced at para-4(pages 2 to 13) of the appellant order. The assessee enclosed various details along with written submission. He also explained the credit entries and their sources in tabular form. He submitted that the assessee is an agriculturist and having is a Kisan Credit Card (KCC) with State Bank of India. He, therefore, requested that the addition of Rs.95,04,253/- made by the AO should be deleted. Thereafter, the CIT(A) has extracted relevant paras of the assessment order of the AO at para-5 (pages 13 to 19) of the appellate order. The discussion and decision of CIT(A) is at para-6 of his order. He has observed that in absence of complete details, it was imperative that income needs to be estimated on total cash deposit. Considering the facts of the case and cash deposit of Rs.23,07,640/-, he held that 25% of cash deposit was unaccounted income of the assessee. Regarding cheque deposits

of Rs.76,67,253/, the CIT(A) classified them as (i) sale proceeds from agricultural activity, (ii) loans obtained through OD/CC account, (iii) loans obtained through kisan credit card, (iv) loans obtained through pledging gold (gold loan) and (v) loans obtained from friends and relatives. He directed the AO to obtain break up of the total cheque deposits and not make any addition on first four items after verification. However, he upheld the hand loans obtained from friends and relatives because appellant has not provided any documentary evidence and explained the identity and genuineness of the loan transactions during assessment as well as appellate proceedings. In the result, the appeal of assessee was partly allowed. Further aggrieved, both assessee and Revenue have filed their appeals before the Tribunal.

9. The Ld. AR for the assessee has filed paper book consisting of 77 pages giving various details; such as bank accounts, copy of bills issued by various by The Pune Seva Sahakari Mandli Ltd. Sahakari Khand Mandali etc., copy of SBI accounts, gold loan statement and has certified that these papers and documents were submitted before CIT(A). However, CIT(A) has granted only part relief and disallowed Rs.32,66,000/- received as unsecured loan from family members, relatives and friends. He submitted that addition sustained by CIT(A) is not correct in view of details submitted before him.

10. On the other hand, Ld. Senior DR for the Revenue supported the order of AO. He submitted that CIT(A) was not correct in allowing part relief of 75% of the cash deposit without any evidence regarding cash-on-hand and agricultural receipts. He also submitted that CIT(A) exceeded his power given u/s 250(1)(a) of the Act in setting aside the case of AO. He further submitted that CIT(A) has clearly violated the provisions of Rule 46A(3) of the Income-tax Rules, 1962 which requires that the additional evidence submitted for the first time before CIT(A) should be admitted only after recording the reasons and after giving reasonable opportunity to AO to refute and reject such evidence. He, therefore, requested to set aside the order of CIT(A).

11. We have heard the rival submissions of the parties and perused the materials available on record. We have also gone through the details including additional evidence submitted by the appellant before CIT(A), which is filed before us in the form of a paper book. There is no dispute that the AO passed the order u/s 144A of the Act because assessee did not file any evidence or details before AO. Moreover, order u/s 144 was passed by the AO because assessee had not filed his return of income u/s 139 or in response to notice issued u/s 142(1) of the Act within the time permitted in the said notice. The assessee subsequently filed return of income on 26.06.2019 which was after one year and three months from the time allowed by AO upto 31.03.2018. The AO treated the return as *non est*. He also held that source of cash deposit and

other credit entries were not explained. He has invoked provisions of Section 144 and issued show cause notice in response to which assessee submitted a brief reply without any supporting evidence and proper explanation. Therefore, he has passed best judgment assessment order u/s 144 of the Act. We find that all these details submitted before CIT(A) were additional evidences, which were never filed before AO. However, the CIT(A) has decided the appeal after considering the submission and materials filed by the assessee without forwarding same and calling for remand report from the AO. This is in clear violation of Rule 46A(3) of the IT Rules. As per Rule-46A(1), (2) and (3), if additional evidence is permitted to be produced, then firstly, there must be reasons to be recorded in writing and secondly, reasonable opportunity has to be given to the AO to refute and reject such production. The CIT(A) is under statutory obligation to put any additional evidence/evidence taken on record by him to AO before making any decision adverse to him on the basis of that material. Rule-46A(3) is mandatory provision and non compliance same would vitiate the order itself. Where assessee produced additional evidence before CIT(A) not on direction of CIT(A) but by itself and CIT(A), on being satisfied with assessee's explanation regarding non production of the evidence before AO, had permitted assessee to lead an evidence in terms of Rule-46A(3), he was bound to give an opportunity to AO to examine documents and to produce any evidence to the contrary, if he so desires. We find that CIT(A) has not followed the mandatory requirement of Rule-46A(3) and has directly allowed partial

relief to the assessee. Therefore, we deem it proper to set aside the order of CIT(A) and remit the matter back to the file of CIT(A) with a direction to pass appellate order in accordance with law after following the procedure under Rule-46A of the IT Rules, 1962. The additional evidence and submission of assessee before him may be forwarded to AO and the remand report obtained from him shall be confronted to the appellant before passing the appellate order. With this direction, the grounds of cross-appeal raised by the assessee and Revenue are treated as allowed for statistical purposes.

12. In the result, both appeal of the assessee and Revenue are allowed for statistical purposes.

Order is pronounced in accordance with Rule 34(3) of the ITAT Rules, 1963 on 25/04/2025 in the open court.

Sd/-
(SIDDHARTHA NAUTIYAL)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 25/04/2025
Dkp Outsourcing Sr.P.S*

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रोषित/ Copy of the order forwarded to :

- **अपीलार्थी/ The Appellant**
- **प्रत्यर्थी/ The Respondent**
- **आयकर आयुक्त/ CIT**
- **आयकर आयुक्त (अपील)/ The CIT(A)**
- **विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT**
- **गार्ड फाईल/ Guard File**

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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत