

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1152/SRT/2024

Assessment Year: (2011-12)

(Physical hearing)

Kishordas Tulsidas Vaishnav 1, Beside Dilkush Dabeli, Surya Hospital Road, Gunjan GIDC, Vapi - 396195	Vs.	The ITO, Ward – 5, Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AKRPV8376R		
(Appellant)		(Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	17/02/2025
Date of Pronouncement	29/04/2025

आदेश / ORDER

PER BIJAYANANDA PRUETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 10.10.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2011-12.

2. Grounds of appeal raised by the assessee are as under:

"1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Assessing Officer has erred in re-opening the assessment u/s 147 of the Income Tax Act, 1961 and issuing notice u/s 148 of the Income tax Act, 1961.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.69,34,863/- on account of alleged cash deposited and credit entries in the bank account treated as alleged income u/s 69A of the Income Tax Act, 1961.

3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has not offered adequate opportunities to hear the case and passed the order, hence the as may please be set aside and restored back to the CIT(A) or AO.

4. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.

5. On the facts and in the circumstances of the case as well as the law on the subject, the learned Assessing Officer has erred in charging interest u/s 234A/B/C of the Act.

6. It is therefore prayed that the above addition may please be deleted as learned Members of the Tribunal may deem it proper.

7. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing.”

3. Facts of the case in brief are that as per the information available in AIR, the assessee had deposited of cash of Rs.54,67,690/- in his bank account. On verification of the ITD data, the Assessing Officer (in short, 'AO') found that the assessee had not filed return of income for AY.2011-12. Hence, notice u/s 148 of the Act was issued on 27.03.2018. The AO issued notice u/s 143(2) of the Act on 13.12.2018 and supplied reasons for re-opening through e-mail on the same date. Further, the AO collected information from HDFC bank by issuing notice u/s 133(6) of the Act. A show cause notice was issued on 04.12.2018 asking the assessee as to why cash deposits and credits of Rs.80,59,380/- should not be treated as unexplained sources. The assessee has disclosed total sales of Rs. Rs.58,50,120/- for AY.2011-12 in the return of income. The AO did not accept the submission as the business activities remained unproved. The assessee has not furnished complete details such as address, PAN, contact number. The

assessee has also failed to furnish the address of his shop, godown, name and style of the business concern, bill book, cash book, ledger account etc. The assessee also received gift of Rs.7,50,000/- in cash and but creditworthiness of father (donor) was not proved. The AO observed that assessee had deposited cash/ credits amounting to Rs.80,59,380/- in his bank A/c No. 08961930001875, maintained with HDFC Bank. The assessee has failed to prove the source of cash/credit with supporting evidence. Accordingly, the AO assessed the total income of Rs.85,21,190/- against the return of income of Rs.4,61,810/-. Penalty proceedings also initiated u/s 271(1)(c) r.w.s. 274 of the Act.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). In the Statement of Facts, the appellant has stated that he carried out retail business in the name and style of Mansi Dresses. However, in the submission, he stated that he was employee in M/s Rajeshwar Trading, proprietary concern of Narsinghram Jethramji Choudhary, which was engaged in wholesale trading of garments. The CIT(A) observed that the appellant changed his explanation at different times. Before AO, he tried to explain part of the cash deposit as gift from his father, past savings and the remaining amount from the proceeds of his business. But, in his submission, he claimed that the account was illegally used by his employer. The CIT(A) allowed Rs.2,25,057/-, being credit entries of earlier period and Rs.8,99,460/-, being amount pertaining to returned cheques. He confirmed additions of Rs.69,34,863/- made u/s 69A of the Act.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The appellant has raised grounds on validity of reopening u/s 147 of the Act, inadequate opportunities given by the AO and CIT(A) and merits of addition. The learned Authorized Representative (Id. AR) of the assessee, at the outset, submitted that notice u/s 143(2) of the Act was issued on 13.12.2018. No show cause notice was issued to the assessee before completing the assessment after notice u/s 143(2) of the Act. However, the assessment order was passed on 13.12.2018, the very day on which notice u/s 143(2) of the Act was issued. The assessee was not given any opportunity to file objection to the notice u/s 148 of the Act and details called for by the AO. He submitted that the order has been passed in clear violation of the principles of natural justice. He, therefore, requested that the case may be restored to the file of AO.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. He submitted that notice u/s 148 of the Act was issued on 27.03.2018, but the assessee filed return on 10.12.2018, much after the time allowed in the notice u/s 148 of the Act. He further submitted that the contention of the assessee has been duly rebutted by the AO. Further, details submitted before AO and CIT(A) are different. Hence, he requested that the addition sustained by the CIT(A) may be upheld.

7. We have heard both the parties and perused the materials available on record. Let us first discuss and decide the jurisdictional issue raised by the appellant in his grounds of appeal. As stated earlier, the appellant has

challenged validity of re-opening and has also argued that adequate opportunity was not provided by the lower authorities. On perusal of the case records including the assessment order and the appellate order, we find that the first notice u/s 143(2) was issued and served on the assessee on 13.12.2018 through ITBA portal. The reasons for re-opening were also supplied to assessee on 13.12.2018 through e-mail. This fact is evident from page 2 of the assessment order. However, order u/s 143(3) r.w.s. 147 of the Act was also passed on 13.12.2018, meaning thereby the assessment order was passed on the very same day when notice u/s 143(2) was issued and the reasons for re-opening were supplied to the assessee. It is further found that the CIT(A) has also mentioned in the appellate order that the assessment order is dated 13.12.2018. It is, therefore, clear that no time was given to the assessee to raise objection for the re-opening of assessment nor was he allowed time to file explanation and details in support of his return of income. The action of the AO is in clear violation of the principles of natural justice. The impugned order has been passed fastening substantial tax liability on the assessee without proper hearing of the case. The Id. AR has submitted that the assessee is prepared to furnish explanation and supporting details before the authorities if another chance is granted to him. After considering the facts of the case, we are of the view that another opportunity should be given to the assessee to plead his case on merit in the interest of justice. Accordingly, we set aside the order of CIT(A) and restored the matter to the file of AO for fresh adjudication after granting

reasonable and adequate opportunity of hearing to the assessee. The assessee is also directed to be vigilant and filed necessary submission and details as required by the AO by not seeking adjournment without valid reason. Accordingly, the ground No.3 is allowed.

8. Since we have set aside the order of CIT(A) and restore the matter to the file of AO for fresh adjudication, the other grounds become academic in nature and do not require adjudication.

9. In the result, appeal of the assessee for allowed for statistical purpose.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on
29/04/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 29/04/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat