

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

आयकर अपील सं./ITA No.813/SRT/2024

Assessment Year: (2016-17)

(Hybrid hearing)

The ITO, Ward – 1(3)(1), Surat	Vs.	Nita Ravi Khandelwal, 33, Pratistha Awas, Ghod Dod Road, Surat – 395007, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AGSPS2820A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Mukesh Jain, Sr. DR
Respondent by	Shri Jaikishan Goel, CA
Date of Hearing	13/02/2025
Date of Pronouncement	29/04/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the revenue emanates from order dated 12.06.2024 passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2016-17.

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

“i. On the facts and circumstances of the case and in law the Ld. CIT has erred in deleting the addition made of Rs.1,92,96,447/- by the AO on account of unexplained cash credit within the meaning of section 68 of the Act for not substantiating the opening capital as on 01.04.2016 along with supporting evidences, particularly when this closing balance as on 31.03.2015 was Nil.

ii. On the facts and circumstances of the case and in law the Ld. CIT has erred in deleting the addition made of Rs.24,68,904/- by the AO on account of unexplained cash credit within the meaning of section 68 of the Act for not substantiating the addition capital under various heads along with supporting evidences.

iii. On the facts and circumstances of the case and in law, the Ld. CIT(A) has violated the principles of natural justice while admitting the additional evidences and not providing opportunity of being heard to the Assessing Officer as per the

provisions of section 250(2) of the Income tax Act, 1961 and Rule 46A(3) of the income tax Rules, 1962.

iv. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in admitting the additional evidences, which were not produced before the AO during the course of the assessment proceedings, without appreciating the fact that the assessee has not satisfied the basic conditions laid down under Rule 46A(1) of the Income tax Rules, 1962.

v. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

vi. It is therefore prayed that the order of Ld. CIT(A) may kindly be set aside that of the Assessing Officer be restored.

vii. The appellant craves leave to add, alter, amend and/or withdraw any ground of appeal either before or during the course of hearing of the appeal.”

3. Facts of the case in brief are that the assessee filed her return of income for the AY.2016-17 on 31.03.2017, declaring total income of Rs.3,80,820/-. The case was selected for limited scrutiny under CASS. The Assessing Officer (in short, 'AO') issued notices on 17.07.2018 and 13.11.2018 and requested to explain the each and every credit entry in her capital accounts. In reply to the notices, the assessee made her part compliance. As per balance sheet, AO noticed that there is closing capital balance of Rs.2,06,47,607/- as on 31.03.2016 and Rs. Nil as on 31.03.2015. Hence, there is increase of Rs.2,06,47,607/- in the capital of the assessee. As per the capital account for AY.2016-17, there is opening capital of Rs.1,92,96,447/- as on 01.04.2015 and closing capital of Rs.2,06,47,607/- as on 31.03.2016. The AO issued show cause notice dated 26.11.2018 and requested assessee to furnish details of opening capital and credit in capital account with supporting evidence. As the assessee failed to furnish explanation in respect of opening balance of Rs.1,92,96,447/-, the same remained unexplained and accordingly, the AO added the same to total income of the assessee as

unexplained cash credit u/s 68 of the Act. He also added various small amounts and determined total income at Rs.2,15,44,370/- against returned income of Rs.3,80,820/-.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The appellant filed written submission and various details to the CIT(A). The CIT(A) has extracted the Statement of Facts in Form No.35, the grounds of appeal, assessment order, submission of the appellant dated 08.03.2021 and 22.02.2024 and thereafter decided the case by deleting the addition of Rs.1,92,96,447/-, which was added u/s 68 by the AO. He has also deleted the other additions made by the AO and in the result, the appeal of the assessee is allowed.

5. Aggrieved by the order of CIT(A), the revenue filed appeal before the Tribunal. The learned Senior Departmental Representative (ld. Sr. DR) relied on the order of both lower authorities. He took us through the assessment order and appellate order passed by the lower authorities. He submitted that the addition of Rs.1,92,96,447/- in respect of opening cash balance was made by the AO u/s 68 of the Act because assessee did not furnish any explanation regarding the opening balance. The AO verified the details furnished by assessee on the system of the Department and found that proprietor's capital shown therein was Rs. Nil for AY.2015-16. Therefore, the opening balance in AY.2016-17 should have been Rs. Nil but assessee has shown the same at Rs.1,92,96,447/-. Since assessee failed to furnish the explanation, the AO has rightly added it u/s 68 of the Act. The ld.

Sr. DR further stated that assessee has not given proper explanation along with supporting documents in respect of the additions on other issues. He submitted that assessee filed various details and explanation, which had not been filed before the AO. The CIT(A) has reproduced the same at pages 10 to 22 of the appellate order. The CIT(A) has considered the submission of the assessee and allowed full relief to him. However, the details and explanation were not forwarded which is in clear violation of Rule 46A(3) of the Income-tax Rules, 1962. He, therefore, pleaded that the matter may be set aside to the file of AO for proper examination / verification of the details and submission of the assessee.

5. On the other hand, the learned Authorized Representative (Id. AR) of the assessee supported the order of the CIT(A). He submitted that assessee has regular income as well as exempt income, due to which the capital of the assessee has increased from Rs.8,21,689/- to Rs.2,06,47,607/- over the period from AY.2002-03 to 2016-17. Hence, the CIT(A) has rightly allowed the appeal of the assessee.

6. We have heard both the parties and perused the material available on record. The Id. AR has filed paper book containing 290 pages without indexation. However, we find that the assessee had made written submission to the CIT(A) on 08.03.2021 and 22.02.2024, which are extracted by the CIT(A) in the appellate order at pages 10 to 22. Thus, the appellant had also filed two written submissions before the CIT(A) along with various details, which were not

forwarded to the AO for remand report. This fact has not been controverted by the Id. AR. It is also seen from the appellate order that no remand report was called from the AO, which the CIT(A) was statutorily required to obtain in view of sub-Rule (3) of Rule 46A of the Income-tax Rule, 1962. It is well-settled that the CIT(A) is vested with co-terminus power that the AO has in making an assessment order. The Hon'ble Bombay High Court in the case of Smt. Prabhavati S. Shah vs. CIT, (1998) 100 Taxman 404 (Bombay) held that on a plain reading Rule 46A, it is clear that the same is intended to put fetters on the right of the appellant to produce before the AAC, any evidence, whether oral or documentary, other than evidence produced by him during the course of proceedings before the ITO except in the circumstances set out therein. The Hon'ble Gujarat High Court in case of CIT vs. Valimohmad Ahmadbhai, 134 ITR 214 (Gujarat) held that mere fact that notice of hearing of appeal was given to the AO would not meet the requirements of Rule 46A(3) where assessee produced additional evidence in his appeal to the AAC. Since something adverse to the ITO was sought to be done in the course of appeal by way of augmenting the record, the ITO ought to have been heard and given an opportunity to meet the additional material by way of cross-examination, counter evidence and urging submissions in the context of the augmented record. We find that the CIT(A) has not followed the mandatory requirement of giving opportunity of hearing to the AO before passing the appellate order, where all additions were deleted and appeal was allowed. In view of the clear statutory provisions discussed above and decision cited supra,

we set aside the order of the CIT(A) and remit the matter to the AO for *de novo* assessment order after considering the explanation and evidence produced by the appellant. The AO shall be at liberty to call for further details and evidence, if the details given are not adequate. The appellant is directed to be vigilant and submit all details and evidences as may be required by the AO by not seeking any adjournment without any valid reason. Accordingly, the ground No.3 is allowed for statistical purpose.

7. Since we have set aside the order of CIT(A) and remitted the matter to the AO, the other grounds raised by the appellant are academic in nature and do not require adjudication.

8. In the result, appeal of the revenue is 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

सुरत /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

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat