



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

&

DINESH MOHAN SINHA, JM

आयकर अपील सं./ITA No. 364/RJT/2023

(निर्धारण वर्ष / Assessment Year: (2017-18))

(Hybrid Hearing)

Late Abdulkadar Lashkari L/H Abdulsatar Lashkari Prop. Noori Fruit Agency Minara Fari, Vora Wad Subhash market Jamnagar- 361001, Gujarat India	Vs.	The ITO Ward -2(7), Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEPL0027C		
(Appellant)		(Respondent)

Appellant by : Shri Ashta Maniyar, Ld. AR

Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

सुनवाई की तारीख/ **Date of Hearing** : **02/01/2025**

घोषणा की तारीख/**Date of Pronouncement** : **01/04/2025**

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre [(in short “NFAC/Ld. CIT(A)”) vide order dated 23.08.202, which in turn assessment order passed by Assessment Unit, Income Tax



Department / Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short “the Act”).

Grounds of Appeal:

1. The Ld. CIT(A)-NFAC, Delhi has erred in law and on facts in confirming the action of the AO in treating the cash deposits of Rs.50,02,000/- during the demonetization period as unexplained cash credit u/s 68 of the Act.
2. The Ld. CIT(A)-NFAC, Delhi has erred in law and on facts in confirming the action of the AO of invoking the provisions of Section 44AD of the Act and confirming the addition of Rs. 12,71,260/- as business income without appreciating that since the turnover exceeds Rs.1 crore, the provisions of Section 44AD are not applicable and the books of account are duly audited.
 - 2.1.1. The Ld. CIT(A)-NFAC, Delhi has further erred in law and on facts in confirming the action of estimating the business income at Rs. 16,91,264/-, being 8% of the balance cash deposits of Rs.2,11,40,800/- in the bank accounts, as against the business income of Rs.4,20,000/- declared by the Appellant.

Statement of Facts:

Fact of the case as recorded by Ld. CIT(A) in the order are that Assessee being individual filed return of income on 18.8.2017 declaring total income of Rs.4,50,250/-. The case of the assessee was selected under CASS whereby the notice u/s 143(2) was issued on 13.8.2018. The assessee is a proprietor of Noori Fruit Agency and runs a business of purchase and sales of fruit on wholesale basis. The assessee is purchasing the different types of fruits from different part of India as per seasons and availability of fruits. Fruits are a perishable item and involves high risk. The business of the assessee is purely on cash basis. The AO issued notice and questionnaire u/s 142(1) dated 7.11.2019 calling upon the assessee to file certain details in respect of return of income on or before 15.11.2019. The AO again vide notice dated 7.12.2019 call upon the assessee as to why the assessment u/s 144 should not be made. The AO on the basis of information available with the revenue called details u/s 133(6) from Bank of Baroda and State Bank of India where the assessee has maintained bank accounts. The AO observed that the assessee has deposited Rs.48,20,500/- in Bank of Baroda and Rs.2,13,22,300/- in State Bank of India during the year under consideration. The AO observed that the assessee during the period from 9.11.2016 till 31.12.2016 (demonetization period), has deposited an amount of



Rs.50,02,000/- in old currency. The AO added this amount u/s 68 of the Act to the total income of the assessee. The assessee also deposited an amount of Rs.2,11,40,800/-, the AO added 8% of this amount being Rs.16,91,264 to the total income of the assessee. Accordingly, the AO added an amount of Rs.67,23,510/- to the total income of the assessee under section 143(3) of the Act.

The AO made the assessment u/s 143(3) of the Act. With undermentioned remark:

Since the assessee neither appeared before the A.O., nor has filed the return submission. The assessment completed within following remarks:

Unexplained cash deposit as discussed in Para-06 above	Rs.50,02,000/-
Addition as per para-07 above	Rs16.91.264/-
Income from other sources as per return of income	Rs.40,248/-
Less. Deduction under chapter VIA	Rs. 10,000/-
Total income	Rs.67,23,512/-
Total taxable income (Rounded off u/s 288A)	Rs.67,23,510/-

4. The assessee filed an appeal against the order of A.O. dated 23-12-2019 before the office of CIT (A) (NFAC). The CIT has disposed of the appeal with following remarks:

"AO has passed the assessment order u/s 144 on the basis of record available. I find no infirmity in respect of assessment order u/s 144 passed by AO.

The appeal is summarily and unceremoniously dismissed.

5. The Assessee is in appeal against the impugned order dated 03-08-2023 of the Ld. CIT(A) before us.

- (i) During the course of hearing, AR submitted that no proper opportunity was given by the Ld. A.O. passed an order u/s 144 of the act with an addition of Rs. 67,23,510/- and CIT appeal has approved the judgement of the A.O. without any cognate reason. The Assessee has passed away on 24-09-2022 and the assessee is requested for an opportunity to explain the case before the lower authority.
- (ii) DR has submitted return submission and the same is reproduced



“Sub: Written Submission along in the matter of Late Abdulkadar Lashkari Legal Heir-Abdulsatar Lashakri Limited., ITA 364/RJT/2023 for AY-2017-18-reg.

DOH: 30/09/2024

Kindly refer to the above.

2. Legal Argument Based on Supreme Court Judgments and Muslim Personal Law

3. Introduction:

Under Muslim Personal Law (Shariat) Application Act, 1937, the concept of legal heir differs significantly from other personal laws in India. Islamic law prescribes fixed shares for successors and prohibits testamentary succession for the entire property, which ensures equitable distribution among all legal heirs upon the deceased's death.

4. Prohibition of Testamentary Succession:

Islamic law restricts the testamentary power of a Muslim to one-third of the total property. As held in Kaniz Fatima v. L.T. Lt. Col. Anisur Rahman, (2015) 1 SCC 593, the Supreme Court stated that a Muslim cannot will away more than one-third of their estate to any heir without the consent of other heirs. This limitation ensures that no single individual can be favoured over others in succession.

5. Equal Rights of All Heirs:

All successors, including children, spouses, and parents, have specific shares assigned as per Islamic law. Upon the death of a Muslim, the property is automatically divided among these heirs based on their prescribed shares. The Supreme Court in Ahmed G. H. Ariff v. Commissioner of Wealth Tax, (1970) 1 SCC 608, held that under Muslim law, there is no concept of a single heir, and all successors inherit their respective shares simultaneously upon the death of the individual.

6. Relevance in Income Tax Appellate Proceedings:

In the context of Income Tax Appellate proceedings, this implies that no single heir can claim to be the exclusive legal representative or owner of the entire estate of a deceased Muslim. The estate must be



represented collectively by all heirs, or by someone authorized by all heirs, to avoid legal inconsistencies.

7. Conclusion on legal heir right issue:

The prohibition of full testamentary succession and the immediate vesting of property in all heirs upon death support the argument that no individual can claim sole heirship under Muslim law. This principle should be upheld in income tax proceedings to ensure lawful representation and compliance with Islamic inheritance laws. Therefore, the rights of legal heir in filing of this appeal are not absolute and as he does not have rights to be treated as exclusive legal heir, the appeal is not maintainable till the rights of appellant legal heir are not decided and settled in accordance of the personal law and income tax law.

8. Claim of being a fruit merchant not established:

The assessee admitted that he is a wholesale trader of agricultural products (fruits) however under as per the provision of Gujarat APMC Act, 1964, he must produce a valid license for trading in APMC market yard or a commodity listed as Agricultural produce, which he failed on two occasions where opportunity was given to him, before the Assessing officer and before the CIT (A), so his admission itself are going against him. As Per schedule VII of the Gujarat APMC act 1964 [Under section 2 (i)] fruits are also treated as APMC market yard tradable produce only.

9. Consequence of not establishing a fruit merchant under APMC Act of Gujarat:

The Gujarat Agricultural Produce Markets Act, 1964 governs the regulation of agricultural produce markets in Gujarat. Section 8 of the Act mandates that no person shall operate as a trader without a valid license. Engaging in trading without this license is punishable under Section 36, with up to 1 month imprisonment and fine of 21,000 per offense.

*For the judicial precedent, the principle that fraud committed in one place cannot be used as evidence elsewhere is supported by **S.P. Chengalvaraya Naidu vs Jagannath (1994) 1 SCC 1**, where the court held that fraudulent documents cannot form the basis of any legal claim in subsequent proceedings.*



If indeed the Appellant was a wholesale trader in agricultural products as per his own admission, he failed to produce his license.

Due to these reasons this appeals is liable to be rejected.”

We have heard the matter and perused the document available on record. We note that the assessee doing the business of Trading of Fruits and have filed the return of income declaring Rs. 4,50,250 during the year. The assessee has deposited cash of Rs. 5,40,000 in Bank of Baroda and Rs. 4,52,32,800 in Jamnagar Cooperative Bank Ltd., Jamnagar, Gujarat. That the assessee's sales proceed are mostly in cash. That the cash sale proceed deposit in bank is the regular feature of the assessee.

We further note that assessee has submitted Copy of Ledger, Copy of Comparative Chart, Copy of Turnover of GP/NP chaat, Bank Statement for relevant period, and APMC licence, etc, during the course of the assessment. However, the Ld. A.O. while making the assessment not considered the above documents. The A.O in order itself admitted “the assessee neither attended the office in response to the above notice, nor submitted any submission.” Therefore, Undersigned is compelled to complete the present assessment proceeding by way of passing Best Judgement Assessment Order under Section 144 of the Income Tax Act, 1961. We further note that the impugned order Ld. CIT has approved the deletion of Ld. A.O. without any valid material, which appears to be unjustified. In order to prevent the miscarriage of Justice, we would like to give one more opportunity of being heard to the assessee, Since the order was passed by A.O. ex parte. In the light of above discussion and in the interest of justice and fair play, we are inclined to restore the issue to the file of Ld. A.O. for denovo adjudication on merit and pass a speakup order. After giving due opportunity to be heard to the assessee and the assessee is further directed to furnish required details in support of cash deposits, etc. in supported of the return. It is further directed that the LR may also be placed on record.

In the view of the appeal is accepted for statistical purpose.

Order pronounced in the Open Court on 01 /04/2025.

Sd/-

**(Dr. A.L SAINI)
ACCOUNTANT MEMBER**

Sd/-

**(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

Rajkot
दिनांक/ Date: 01 /04/2025



ITA NO. 364/RJT/2023
LATE ABDULKADAR LASHKARI

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