

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
(HYBRID HEARING)**

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

I.T.A. No. 886/SRT/2024
(Assessment Year: 2017-18)

Deputy Commissioner of Income Tax, Circle-1(3), Surat	Vs.	Ranidan Meghraj Gandhi, 14, D.M. Park Society, Katargam-Singapore Road, Opp. Dhanmora Surat-395001
[PAN No.AASPB9593R]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Mukesh Jain, CIT-DR
Respondent by:	Shri P M Jagasheth, C.A.

Date of Hearing	23.04.2025
Date of Pronouncement	06.05.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Department 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 21.06.2024 passed for A.Y. 2017-18.

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

“(i) On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition cash deposit of Rs. 49,64,300/- during the demonetization period u/s 69A of the Act as the assessee has not produced any cogent evidences to prove that the cash deposits made in the Bank account represent the business receipts.

(ii) On the facts and circumstances of the case and in law, the Ld CIT(A) has erred in deleting the addition made by the Assessing officer u/s.69A of the Act as the onus is on the assessee and not on the Assessing Officer to prove the source of the cash deposits in the Bank account with corroborative evidences.

(iii) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,23,52,257/- made on account of unsecured loan u/s.68 of the income tax Act, 1961 when assessee failed to offer any satisfactory explanation about the unsecured loan credited in the books of accounts of the assessee and also not submitted the evidences to prove the rigors of the provisions of section 68 of the Act w.r.t unsecured loans.

(iv) On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition of Rs.9,68,240/- on account of unexplained cash credit claimed as agricultural income as the assessee had failed to submit supporting documents/ evidences in respect of agricultural activity before the AO.

(v) On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition of Rs. 14,11,780/- on account of exempt income as the assessee has not produced any cogent evidences.

(vi) On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition of Rs.49,50,000/- on account of unexplained investment as the assessee' had not furnished any cogent evidences before the AO and therefore he could not prove the source of the fund for acquisition of the property.

(vii) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 5,46,46,577/- by ignoring the fact that the assessee has not complied with the notices issued during the assessment proceedings and AO has passed order u/s 144 of the Act after giving numbers of the opportunity of being heard and submitting the evidences in his support on all the issues.

(viii) 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?

(ix) On the facts and circumstances of the case and in law, the ld. 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.

(x) 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.

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

(xii) That 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. The brief facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that the assessee had deposited a sum of ₹3.15 lakhs and ₹46.49 lakhs in his bank account, during the demonetisation period. The AO observed that the assessee did not furnish any explanation or evidence in respect of the source of the cash deposited and neither furnished any details to show the nature of the sums so deposited. The AO was of the view that the onus was on the assessee to establish the nature and source of funds, which had been deposited in the form of cash in the bank account held by the assessee during the demonetisation period. Accordingly, in absence of any compliance by the assessee during the course of assessment proceedings, the assessee officer passed ex-parte order under section 144 of the Act and added a sum of ₹49,64,300/-, being the deposits in the bank account of the assessee in cash, as unexplained income of the assessee under section 69A of the Act.

4. In appeal, Ld. CIT(Appeals) gave complete relief to the assessee, with the following observations:

“I have considered the facts of the case, the assessment order, written submissions and evidences of the appellant. The appellant has submitted that addition of Rs.49,50,000/- on account of purchase of land which is duly disclosed in balance sheet and return of income filed and has been purchased from Bharat Bhai manji Bhai Kothiya HUF and also has incurred registration expenses of Rs.3,03,000/-of this land, both of which has been shown in return of income filed by assessee.

I perused the copy of the bank statement/bank book as per page 154-156 of PB that the payment of Rs.49,50,000/- was made through the Bank a/c with the Nasik Coop Bank a/c No SB/145.. The copy of the Purchase document duly registered is enclosed herewith for perusal as per Pg # 157-204 of PB. The purchase of the property is no unexplained and it is duly recorded in the books of account of the assessee and paid for from disclosed Bank a/c. The property is duly reflected in the Balance Sheet of the assessee enclosed herewith as per Pg # 213-215 of PB.

Considering the aforesaid facts and other evidences filed before me I note that the Ld. AO was not justified in making an addition of Rs. 49,50,000/- u/s. 69 of the Income Tax Act, 1961 as unexplained investment in immovable property. Hence, the addition made by the A.O. is deleted. Accordingly, the ground raised by the assessee is allowed.

6. *In the result, appeal of the assessee is **allowed.***”

5. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) giving complete relief to the assessee. The Ld. DR drew our attention to the fact that during the course of assessment proceedings, there was complete non-cooperation on part of the assessee. Accordingly, the assessing officer was left with no choice but to pass ex parte assessment order under section 144 of the Act. Further, the Ld. DR drew our attention to observations made by Ld. CIT(Appeals) at page 18 of the CIT order wherein, it was noted that despite letter issued (dated blank) to the assessing officer, no remand report was received from the assessing officer. The Ld. DR submitted that Ld. CIT(Appeals) had granted complete relief to the assessee, without taking into consideration the remand report dated 10-06-2024 issued by the Assessing Officer, which was issued by the assessing officer and even at page 18 of the CIT order, no date has been mentioned as to on what date the evidences filed by the assessee was sent to the assessing officer for his review and accordingly, it was submitted that the order passed by Ld. CIT(Appeals) was clearly incorrect in law, since it did not take into consideration the remand report filed by the assessing officer dated 10-06-2024.

6. On going through the case records, it is observed that during the course of appellate proceedings, Ld. CIT(Appeals) took on record substantial evidence filed by the assessee in support of its grounds of appeal. However,

we note that Ld. CIT(Appeals) while giving complete relief to the assessee and taking substantial evidence filed by the assessee on record, did not take into consideration the comments of the assessing officer during remand proceedings. Before us, the DR had pointed out that the assessing officer had filed remand report dated 10-06-2024, which was omitted to be considered by Ld. CIT(Appeals), while allowing the appeal of the assessee. Further, we observe that even at page 18 of the order passed by Ld. CIT(Appeals), there is no mention of when these evidences were sent to the assessing officer and also there is a specific mention that there was no remand report received by the Ld. CIT(Appeals) in response to letter issue to the assessing officer. It would be useful to reproduce the relevant extracts of the order passed by CIT appeals for ready reference:

“I have considered the facts of the case, the assessment order, written submissions of the appellant. In the course of the appeal proceedings, the appellant filed evidences in the form of paper book. All these evidences were sent to the Assessing Officer vide letter dated and subsequent reminder dated for his examination/verification/ enquiry and to send a remand report on the evidences filed by the appellant. The Assessing Officer did not send remand report. In the absence of any comments by the Assessing Officer on the evidence which was crucial to the disposal of the grounds of appeal relating to the impugned additions, I proceed to decide the issue of on merit.”

7. From the aforesaid paragraph of the CIT(Appeals) order, it is evident that there is no mention as to when all the additional evidences submitted by the assessee were sent to the assessing officer for his review and further, there is a specific mention that no remand receipt was received from the assessing officer. Accordingly, looking into the totality of circumstances, we are of the considered view that in the instant facts, Ld. CIT(Appeals) erred in facts and in law in not taking into consideration the comments of the assessing officer while granting complete relief to the assessee by taking substantial additional

evidence on record. In our considered view, once the Ld. CIT(Appeals) is taking on record such substantial amount of additional evidence, the comments of the assessing officer concerned should also be taken into record before passing the order. Accordingly, looking into the facts of the instant case, the matter is restored to the file of Assessing Officer for de-novo consideration and the assessee is granted the liberty of filing any evidence in support of its case during the course of assessment proceedings.

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

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 06/05/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 06/05/2025

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.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

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