



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND**

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA Nos.729/RJT/2024

(निर्धारणवर्ष /Assessment Years: (2012-13))

Ashvinbhai Bhavanbhai Kyada Nr. Pitroda Nivas, Opp. Sadguru Jyot Complex, Pedak Road, Rajkot – 360003	Vs.	Assistant Commissioner, Income Tax, Circle – 2(2)(1), Rajkot - 360005
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AITPK7924Q		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

Assessee by : Shri Darshan Rakholiya, Ld. AR
Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 06/03/2025
Date of Pronouncement : 21/05/2025

आदेश / O R D E R

PER DINESH MOHAN SINHA, JM

Captioned filed by the assessee, pertaining to Assessment Year (AY) 2012-13, are directed against the order passed by the National Faceless Appeal Centre (NFAC), Delhi / Commissioner of Income-Tax (Appeal) (for short 'Ld. CIT(A)/NFAC'), order dated 29.07.2024 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961, vide order dated 23.12.2019.

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

“A. That, the learned Assessing Officer has erred in invoking Section 147 without conducting any kind of independent inquiry and without application of mind.



B. That, principles of natural justice are violated in as much as: i) No material whatsoever, relied upon and/or gathered by the learned assessing officer is provided to the appellant, despite of specific request made by the appellant. ii) Opportunity to cross-examine is not provided to the appellant, despite of specific request.

C. That, the learned Assessing Officer has erred in making an addition of Rs. 24,49,889/- to the total income of the assessee without considering the facts and circumstances of the case and only on the basis of presumptions.

D. That, the learned Assessing Officer erroneously treated alleged receipts of income without considering that there are no such receipts in the hands of the appellant.”

3. Brief facts of the case that the assessee the appellant is an individual engaged in the business of trading of silver ornaments in the legal name of Shri Ram Silver, filed his return of income for A.Y 2012-13 under Section 139 on 06.12.2012 declaring net total income of Rs. 1,19,61,380/-. A notice under Section 148 of the Act was served on appellant on 27.03.2019 intimating him that his case is selected for assessment under Section 147 of the Act In response to that notice, the appellant filed his return of income on 16.08.2019 declaring his total income to be Rs. 1,19,61,380/-, the case of the appellant was re-opened on the basis of the information received by the learned assessing officer (referred to as AO) from the investigation wing of the department that the appellant was one of the beneficiaries of M/s National Shroff & Co. engaged in the business of Shroff/angadiya who has issued cheques/DDs in lieu of cash and also cash was delivered which has been deposited in the bank account from location sprit across the country. During the course of assessment proceedings, the documents as called for were submitted and the appellant was asked to furnish the source of cash transaction of Rs 85,96,100/- with M/s National Shroff & Co Rajkot in lieu of cheques/DD. In response to the above, the appellant categorically denied of having entered into any such transaction with M/s National Shroff & Co. Rajkot. The AO without taking into account the submissions made by the



appellant denying his involvement in the cash transactions with M/s National Shroff & Co came to the conclusion that the said amount of Rs.85,96,100/- represents unexplained income of the appellant. Based on the information received by the A.O. and without making any independent inquiry, AO proceeded to pass an order u/s 143(3) r.w.s 147 of the I.T. Act adding an amount of Rs 24,49,889/- (being 28.5% of 85,96,100/-) to the total income declared by the assessee in return of income. The Ld. CIT(A) has passed an order with remarks of total income of the assessee is computed as under:

Particulars	In Rs.
Retuned Income as per ROI filed on 03/05/2019	1,19,61,380/-
Addition on account of undisclosed income as discussed above.	24,49,889/-
Total assessed income	1,44,11,269/-

4. That the assessee filed an appeal before the Ld. CIT(A), against the order of the Ld. AO, dated 23.12.2019. The Ld. CIT(A) has dismissed the appeal with following observation;

*“In view of the above, considering all the facts and circumstances of the case and in absence of any plausible reply with supporting documents by the appellant, the addition made by the AO for Rs. 24,49,889/- (being 28.5% of Rs.85,96,100/-) is confirmed. In view of the fact that there is no material on record to warrant interference in the order of Assessing Officer, the Grounds of Appeal no. 3 is hereby dismissed.
8. In the result, the appeal is dismissed.”*

5. That the assessee filed an appeal before us, against the order of the Ld. CIT(A), vide order dated 29.07.2024.

6. During the course of hearing, the Ld. AR of the assessee submitted that the written submission filed during the course of hearing and stated that the



no opportunity given to assessee to explain the case and passed ex-parte order, and it was confirmed by the Ld. CIT(A). further, the Ld. AR of the assessee submitted written submission, relevant para are reproduced below:

“1) The assessing officer failed to consider the fully and truly disclosure made by the appellant of their income in their return of income filed on 13/08/2019 against notice issued under Section 148.

2) That, the learned Assessing Officer erred in making an addition of Rs.24,49,889/- to the total income of the assessee and arriving at the conclusion merely relying on the information borrowed from the investigation wing of the department without having their own satisfaction. On the other hand, the assessing officer jumped to the conclusion that appellant has not disclosed the impugned transaction. It is also observed that the assessing officer has not mentioned the details such as Name of the beneficiary, Instrument No, Date of the transaction, Name of account holder of bank from which the cheque was issued and so on pertaining to the impugned transactions in the reasons. It seems crystal clear that the reasons presented by the learned authority in the impugned order are a result based on "borrowed satisfaction".

3) That, the learned Assessing Officer has erred in invoking Section 147 merely relying upon borrowed satisfaction and also failed to justify the expression "reasons to believe" whereby the reasons recorded must demonstrate link between tangible material and formation of reason to believe that income had escaped assessment. Further, the ruling given by the Hon'ble Delhi High Court in the case of M/s. Meenakshi Overseas (P.) Ltd. V. Principal Commissioner of Income-tax-6 ([2017] 395 ITR 677 (Delhi) [26-05-2017]) has been relied upon.

4) That, the learned Assessing Officer was not justified in arriving at the conclusion based on a document found in the premises of a third person without making any independent inquiry, without providing opportunity to cross examine the gatherings nor ascertaining the authenticity of the transaction. Further, ruling given in the case of M/s. Surani Steel Tubes Ltd. V. Income-Tax Officer (R/SCA Nos.13245 & 13324 of 2021) has been relied upon.

5) That, the entire assessment proceedings have been conducted merely by relying on the information report received from the O/o DCIT, Rajkot. The bone of addition is the loose sheets / documents /information gathered by investigation team during the search/survey at the premises of M/s. The National Shroff. The appellant has not been provided with any kind of opportunity to raise a cross objection to examine the evidences that the learned assessing officer mentioned to have been found at the premises of M/s. The National Shroff nor he has been given any glimpses of the report of the investigation wing despite of specific request, however the assessing officer has relied on such report and made an addition without having found any corroborative evidence to support his findings.

6) However, the assessment should not be made merely based on a suspicion, whereas each and every contention should be backed by corroborative evidences and the reasons recorded should be self-explanatory that derives the flow of the proceedings. Considering the facts of the case, the assessing officer has failed to



discharge its duty, instead made up a case on conjectures and surmises. Wherein it is held by the Supreme Court of India in the case of M/s. Dhakeshwari Cotton Mills Ltd v. Commissioner of Income Tax (West Bengal) (1955 AIR 65 I 1955 SCR (1) 941) held that "The powers given to the income tax officer do not entitle him to base an assessment on pure guess without reference to any evidence or material. An assessment cannot be made only on bare suspicion there must be something more than bare suspicion to support the assessment."

10) The appellant craves leave of this Hon'ble ITAT to add, amend, alter, vary, rescind or modify any of the grounds/averments made above, in the interest of justice."

7. On the contrary, the Ld. Sr. DR for the revenue, relied on the order of the Ld. CIT(A).

8. We have heard both the parties and perused the material available on record. We noted that the case was related to Nation Shroff Company. We note that the grounds of appeal states that in reopening proceedings of assessment are without independent inquiry, that reopening of assessment also upon borrowed satisfaction and also failed to justify the expression "reasons to believe" that income had escaped assessment. No, tangible link between materials to believe that income escaped between the assessment. We note that the no opportunity was given to the assessee to explain the case before the Ld. AO, and the addition made on the basis of presumption, the order passed on the statement of third person without providing any opportunity given to the assessee to cross-examination to the person whose statement recorded. Principle natural justice is violated, we note that the assessee submitted the written submission and the same were not duly considered. The receipt of money was considered to be the income of the assessee without any basis. Since, there was no receipt in the hand of the appellant. During the course of argument, the assessee has submitted that, they have not dealt with the national shroff company, we note that the order of AO was duly confirmed by the Ld. CIT(A), without considering the reply



of the assessee. In view of the above, we are of the view that the assessee did not get the opportunity to explain the case before the Assessing Officer. The assessee deserved an opportunity to explain the case before the Lower Authority. Considering the above facts and circumstances, in order to prevent the miscarriage of justice, we would like to give an opportunity of being heard to the appellant. The impugned order passed by the Ld. CIT(A), arising out of the order passed by the Ld. AO under Section 143 r.w.s. 147 of the Act are set aside and the matter remitted back to the file of the Ld.AO, with direction for fresh adjudication after giving due opportunity to the assessee to explain the case.

10. In the result, the appeal (ITA No.729/RJT/2024) of assessee is allowed.

Order pronounced in the open court on 21 -05-2025.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER
Rajkot

दिनांक/ Date:21/05/2025

Copy of the Order forwarded to

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

(True Copy)

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot