

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T. R. Senthil Kumar, Judicial Member**

**ITA No: 1852/Ahd/2024
Assessment Year: 2017-18**

Shreeji Gopalbhai Patel 7, Avanti Nagar, Kanjari Road, Halol-389350, Gujarat PAN: BHUPP0203Q (Appellant)	Vs	The ITO, Ward-1, Godhra (Previously Income Tax Officer, Ward-1, Lunawada) Dit. Mahisagar, Gujarat (Respondent)
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**Assessee Represented: Shri Jigar Adhyaru, A.R.
Revenue Represented: Shri S.K. Agal, Sr.D.R.**

Date of hearing : 23-04-2025
Date of pronouncement : 19-06-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 13.09.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the exparte assessment order passed under section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. Brief facts of the case is that the assessee is an individual. For the Asst. Year 2017-18, assessee filed his Return of Income belatedly on 22-12-2017 declaring total income of Rs.3,22,570/-. The return was taken for scrutiny assessment as there were cash deposits of Rs. 24,00,000/- during the financial year. The assessee was issued with notices u/s. 142(1) which was not responded by the assessee and resulted in making exparte assessment order and addition of Rs.24,00,000/- being the cash deposits in his bank accounts.

3. Aggrieved against the exparte order, assessee filed an appeal with the delay of 67 days which was condoned by the Ld. CIT(A). However in the absence of any explanation, proof and evidences of cash deposits, Ld. CIT(A) confirmed the addition and dismissed the appeal filed by the assessee.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The order u/s 144 of the Act as passed by the ld. AO in the case of appellant for the year under consideration is illegal and bad in law ab initio as no opportunity of being heard was accorded to the appellant u/s 127 of the Act despite the fact that the case of the appellant was transferred from the charge of ITO Ward 2, Godhra to the charge of ITO Ward 1, Lunawada i.e. from one city to another city. Failure on the part of the department with regard to according of opportunity of being heard for transferring his case from one city to another city makes the assessment order u/s 144 of the Act illegal and bad in law ab-initio and therefore the same may be quashed.

2. The order u/s 144 of the Act as passed by the ld. AO in the case of appellant for the year under consideration is illegal and bad in law ab initio as the Id. AO (i.e. ITO Ward 1, Lunawada) to whom the case of appellant was transferred from the ITO Ward 2, Godhra has failed to issue fresh notice u/s 143(2) of the Act which is mandatory. The notice issued by the ITO Ward 1, Lunawada u/s 142(1) r.w.s. 129 of the Act dated 21/11/2019 to the appellant during the course of assessment proceedings was without jurisdiction as there was no valid notice

u/s. 143(2) of the Act issued and served on the appellant by the subsequent AO i.e. ITO Ward 1, Lunawada. In view of this, your honour is requested to quash the assessment order u/s 144 of the Act as this impugned assessment order completed without issue of valid notice u/s 143(2) of the Act is void ab initio.

3. The Id. CIT (A) on the facts and in the circumstances of the case and in law has grossly erred in confirming the addition of Rs.24,00,000/- as made by the Id. AO u/s 69A of the Act in the assessment order. This addition of Rs.24,00,000/- as made u/s 69A of the Act may kindly be deleted being the same devoid of any merit and bad in law.

4. The Id. CIT (A) on the facts and in the circumstances of the case and in law has miserably failed to consider the additional evidences as filed to him under Rule 46A of the IT Rule and has illegally confirmed such addition of Rs.24,00,000/- on the flimsy and baseless ground that no evidence whatsoever has been filed by the assessee to substantiate and buttress the grounds of appeal. This addition of Rs.24,00,000/- as made by the Id. AO u/s 69A of the Act may kindly be deleted as such addition as confirmed by the CIT(A) is totally against the merit of the case and also contrary to the facts available on record.

5. The Id. CIT (A) on the facts and in the circumstances of the case and in law has grossly erred in confirming the addition of Rs.24,00,000/- as made by the Id. AO u/s 69A of the Act. The Id. CIT (A) has confirmed this addition of Rs. 24,00,000/- as made u/s 69A of the Act without rejecting the application of the appellant as filed under Rule 46A of the IT Rule for admission of additional evidences/documents. The addition of Rs. 24,00,000/- as confirmed by the Id. CIT(A) without rejecting the application of the appellant as made under rule 46A of the IT Rule is illegal and gross violation of natural justice and therefore such addition may kindly be deleted.

6. The Id. CIT (A) on the facts and in the circumstances of the case and in law has grossly erred in holding that the appellant did not file any submission supported by proper evidence along with a petition under rule 46A for admission of evidence in the appellate proceedings. But these findings of the Id. CIT (A) is absolutely contrary to the facts on record as this is very much evident from the submission of the appellant dated 20.08.2024 that he had filed all the relevant evidences i.e. summary of cash withdrawal and cash deposit in the bank, copy of bank statements and copy of Gam Namuno Number 12 i.e. evidence with regard to holding of agricultural land along with application under rule 46A of the IT Rule. The Id. CIT (A) while deciding the appeal has conveniently ignored all these evidences and his finding in this regard is misleading. In view of this, this addition of Rs.24, 00,000/- as made by the Id. AO u/s 69A of the Act may kindly be deleted being the same bad in law and in gross violation of natural justice.

7. Kindly stay the demand.

8. The appellant craves leave to add, alter or amend any of the aforesaid ground or grounds if necessary.

5. Ld. Counsel appearing for the assessee submitted that during the appellate proceedings before Ld. CIT(A), the assessee filed application under Rule 46A of the I.T. Rules which is available at Page No. 115 to 217 of the Paper Book, which contain the summary of the cash withdrawal and cash deposit, copy of bank statement and also evidences with regard to holding of agricultural land. Since the Ld. CIT(A) has not considered Rule 46A application, the case may be remanded back to the Assessing Officer to look into the cash deposit and cash withdrawal by telescoping the income thereon. Ld. Counsel also endorsed that he is not pressing Ground No. 4.

6. Ld. D.R. appearing for the Revenue has no serious objection in setting aside the matter back to the file of Jurisdictional Assessing Officer to look into the additional evidences filed by the assessee. Recording the same, the matter is hereby set aside back to the file of Jurisdictional Assessing Officer with direction to pass order on merits by giving proper opportunity of hearing to the assessee.

7. In the result, the appeal filed by the Assessee allowed for statistical purpose.

Order pronounced in the open court on 19-06-2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT
Ahmedabad : Dated 19/06/2025

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद