



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.172/RJT/2024

निर्धारण वर्ष /Assessment Year: 2017-18

Vinayakaanjney Impex Pvt. Ltd. Jay Meenagali, Mandvi Chowk, Nava Naka Road, Rajkot-360 001	बनाम/ Vs.	Assistant Commissioner of Income-tax, Circle-2(1), Rajkot, Aayakar Bhavan, Race Course Ring Road, Rajkot-360 001
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: AACCV 0318 D		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारित की ओर से/Assessee by : Shri D.M. Rindani, Ld. AR
राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr-DR

सुनवाई की तारीख/Date of Hearing : 21/07/2025
घोषणा की तारीख/Date of Pronouncement : 28/07/2025

आदेश / ORDER

PERDR. A. L. SAINI, AM;

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2017-18 is directed against the order passed by the National Faceless Appeal Centre (NFAC)/Learned Commissioner of Income-tax(Appeals) [in short 'Ld.CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 13.03.2024, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act,1961, vide order dated 28.12.2019.

2. At the outset Ld. Counsel for assessee submitted that Assessing Officer has made addition to the tune of Rs.45,00,000/- u/s 68 of the Act holding that



assessee has not furnished any details in response to the show cause notice. On appeal before Ld. CIT(A), the assessee submitted additional evidence, however, the Ld.CIT(A) has confirmed the addition made by the Assessing Officer. The Ld. Counsel submitted that assessee has submitted additional evidences during appellate proceedings before CIT(A), which were not remitted back to the file of Assessing Officer by Ld.CIT(A) for remand report. However, so far as the facts are concerned, the assessee received the amount of Rs.45,00,000/- through banking channel vide paper book page-40 and assessee has also repaid part amount during the same assessment year to the tune of Rs.17,60,000/-. Therefore, if the assessee has repaid part amount through banking channel in the same year then in that circumstances no addition made u/s 68 of the Act should be made. For that Ld. Counsel relied on the judgment of the Hon'ble jurisdictional High Court in the case of PCIT vs. Ambe Trdecorp (P.) Ltd. (2022) 145 taxmann.com 27(Guj) wherein Hon'ble court held "where assessee took loan from two parties and assessee had furnished requisite material showing identity loan givers and that assessee was not beneficiary as loan was repaid in subsequent year, no addition under section 68 could be made on account of such loan". The Ld. Counsel for the assessee also took us through the ledger account of Darshanbhai Dilipbhai Udani for the period of 01.04.2015 to 31.03.2016 which is placed at page-41 of the assessee's paper book. The Ld. Counsel also submitted that transactions were through banking channel and the relevant bank statement is placed at page-46 of the paper book. Therefore, the Ld. Counsel contended that since the assessee filed additional evidence before Ld. CIT(A) the Bench may take appropriate view either to decide appeal or to remit the matter back to the file of Assessing Officer for examination of additional evidence and adjudicate the issue in accordance with law.

3. On the other hand, Ld. Senior DR for the Revenue submitted that since the assessee has filed additional evidences before Ld.CIT(A), therefore one



opportunity should be given to Assessing Officer for examination of documents furnished by assessee. The Ld. Sr-DR submitted that a lot of evidences were filed for the first time before Ld. CIT(A) which were not filed before Assessing Officer by the assessee. Therefore, this issue should be remitted back to the file of Assessing Officer for fresh adjudication.

4. We have carefully considered the facts of the case, the submission of the Learned Counsel for the assessee and ld.Senior DR for the Revenue and evidences on record. We have also deliberated the case law relied upon by Ld. Counsel for the assessee. We find that Ld.CIT(A) in his appellate order has stated that assessee has offered no explanation about the nature and source of the sum or the explanation offered by his is not satisfactory in the opinion of AO. Resultantly, he upheld the action of Assessing Officer. Further, we find that under sub-section (4) of Section 250 of the Act the Ld. CIT(A) is empowered to make further enquiry as he thinks fit or to direct AO to make further enquiry and report the result of such enquiry to him. If the appellate authorities fail to exercise his discretion judicially and arbitrarily refuses to make enquiry in a case where the facts and circumstances so demand, his action would be open to correction by higher authorities. In case of ITO vs. Bajoria Foundation 117 Taxman 126 (Cal) the Kolkata ITAT held that where assessment was done u/s 144 of the Act, the assessee obviously did not have opportunities to produce evidence before the AO. In such circumstance, if the assessee produced some evidence before the Ld.CIT(A), such additional evidence was clearly covered by clause-(c) of Rule-46A of the Income-tax Rules, 1962 and admission of same was within the powers vested in Ld. CIT(A) u/s 250(4) of the Act. In view of these facts and circumstances of the case and the decision cited (supra) we are of the considered opinion that the additional evidence produced before the Ld.CIT(A) should have been admitted. We also



find that the Ld. CIT(A) has not adhered to the principle of natural justice by not providing these additional evidences to AO for his comments. Accordingly, considering all the facts and in the interest of justice, we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO with a direction to pass *de novo* assessment order in accordance with law after granting adequate opportunity of hearing to assessee. The assessee is directed to be more vigilant and to furnish all details and explanation as needed by AO by not seeking adjournment without valid reason. With this direction, the grounds of appeal raised by the assessee is treated as allowed for statistical purposes.

5. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order is pronounced in the open court on 28/07/2025

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/**JUDICIAL MEMBER**
राजकोट/Rajkot

दिनांक/ Date: 28/07/2025

DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्ड फाईल/ Guard File

// True Copy //

By order/आदेश से,

सहायक पंजीकार

आयकर अपीलीय अधिकरण ,राजकोट