

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE Dr. DINESH MOHAN SINHA, JUDICIAL MEMBER

&SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकरअपीलसं. /ITA No. 485/SRT/2024
(निर्धारणवर्ष / Assessment Year: (2018-19)
(Hybrid Hearing)

Biren Harishchandra Vakharia 1301-A, Shree Labdhi Prinstds, Near Vishama, A.K. Road, Surat-395008	Vs.	Assessment Unit Income tax Department Jurisdictional AO The Deputy Commissioner of Income Tax, Circle-1(3), Surat, Aaykar Bhavan, Majura Gate, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABAPV0247P		
(Appellant)		(Respondent)

Appellant by : Shri P M JAGASETH, CA
Respondent by : Shri AJAY UKE, SR. DR

Date of Hearing : 18/12/2025
Date of Pronouncement : 23/01/2025

आदेश / ORDER

PER Dr. DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2018-19, is directed against the order passed by the National Faceless Appeal Centre (NFAC) vide order dated 04.03.2024, which in turn arises out of an assessment order passed by Income Tax Department / Assessing Officer under section (u/s.) 147 r.w.s 144B of the Income Tax Act, 1961 vide order dated 20.03.2023.



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

- 1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in reopening the assessment u/s 147 of the Act and notice u/s 148 of the Act was issued.*
- 2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in not considering the facts of the case and made addition without any base.*
- 3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.22,50,000/- on account of alleged accommodation entries from the bogus entities run by Kamal J. Zaveri treated as income.*
- 4. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in initiating Penalty proceedings u/s 270A of the Income Tax Act, 1961.*
- 5. It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.*
- 6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.*

3. Facts of the case:-



The assessee has filed return of income for A.Y. 2018-19 declaring total income of Rs.4,90,190/-, showing income under the head of Business & Profession and Other Sources. The case of the assessee re-opened on the basis of information that the assessee has been identified as one of the beneficiaries who has availed the accommodation entries from concerns run and managed by Shri Kamal J. Zaveri. As per the information the assessee has availed accommodation entries amounting to Rs.22,50,000/- during the year in concern. Notice u/s. 148 of the Act has been issued on 27.03.2022 and the assessee has filed return of income in response to notice u/s. 148 of the Act on 25.04.2022. Notice u/s. 143(2) and 142(1) of the Act has been issued by the Ld. AO and the assessee has filed submission along with supporting documents. The Ld. AO finalized the assessment by making addition of Rs.22,50,000/- as accommodation entry and added to the total income of the assessee and hence, this appeal.

4. The assessee filed an appeal against the assessment dated 20.03.2023 before Ld. CIT(A). The Ld. CIT(A) on dated 04.03.2024 has partly allowed the appeal of the assessee.

5. The assessee is in appeal before this tribunal against the impugned order dated 04.03.2024.

5.1. The Ld. AR of the assessee submitted that the assessee has genuine purchase of goods amounting to Rs 22,50,000/- which was wrongly alleged to be the income of the assessee.

5.2. On the contrary DR of the revenue relied on the order of Ld. CIT(A).

6. We heard the rival contention of both the parties and perused the material available on record. We note that the assessee has filed income Tax return for A.Y. 2018-19 claiming total income of Rs 4,90,190/-. We further note that the assessee has calculated income u/s 44AD of the Act @ 6% on total turnover of Rs 28,29,150/- which includes Rs 22,50,000/- which is a part of sale proceed of



goods of the appellant. The return of Income has been accepted by the AO without any modification, we further note that the AO by issuing notice asked from the appellant to explain the purpose of the transaction with supporting documentary evidence like bills, challans etc. However, No satisfactory explanation with supportive document were furnished. We further note that 143(2) notice was issued on 02.03.2023 to be complied with on 03.03.2023 and further show cause notice was issued on 03.03.2023 to be complied on 09.03.2023 the same was complied with on 09.03.2023, we further note that the assessee was not given sufficient time to explain the case before AO. The assessee has asked to provide the copy of statement given by Shri Kamal J. Zaveri and the same was not provided. No opportunity for cross examination of Kamal J. Zaveri was provided to the assessee. We further note that the AO has reopened the case and decided the case only on the basis of information received through investigation branch The AO has not tried to investigate the issue by issuing notice u/s 133(6) to collect more information in order to ascertain the correct total income of the assessee. We further note that while approving the order of AO wherein the assessee has requested for supply of impounded material gathered against the assessee and also provide the relevant material of the case. The Hon'ble CIT has observed the following observation:-

“ With regard to appellant's request to the A.O. to provide copy of approval of PCIT, Surat-1 as mentioned in notice issued u/s. 148 of the I. T. Act the A.O. has already informed the appellant to refer to the order passed u/s. 148A(d) of the I. T. Act dated 27.03.2022 which is passed after necessary approval of the competent authority, therefore this objection raised by the appellant is also not tenable.”

We further note the AO made an addition in income on account of accommodation entry of Rs 22,50,000/- being approved by Id. CIT. We are unable to understand that there is no provision of law to consider the accommodation entry to be the total income and taxed accordingly. The judgements relied by the AO are having no application as are on different facts.



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In view of above observation we are of the view that this case has not been properly adjudicated. So, we set aside the order of Ld. CIT(A) Dated 04.03.2024 and remand the proceeding before the AO for proper investigation of the case un-influenced by his earlier order in any manner after giving due opportunity of being heard to the assessee. The AO is further directed to deal with this case according to law. We further direct the AO to supply the material to the assessee in order to take the proper representation. The assessee is also directed to ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23/01/2025.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 23/01/2025

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

Sd/-
(Dr.DINESH MOHAN SINHA)
JUDICIAL MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot