आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी ", अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.175/Ahd/2022
Assessment Year : 2012-13

Karia Hareshbhai Bhagwandas HUF 2, B/618, B.G.Tower Outside Delhi Gate Shahibaugh Ahmedabad – 380 004 (Gujarat)	Vs	The Income Tax Officer Ward-1(3)(3), Ahmedabad
PAN: AACHK 6847 B		

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Aseem L. Thakkar, AR
Revenue by :	Shri Ahsok Kumar Suthar, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **22/02/2024**
घोषणा की तारीख /**Date of Pronouncement:** **28/02/2024**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

This appeal filed by the Assessee is directed against the order of Learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "Ld. CIT(A)" for short] dated 17/03/2022 passed for Assessment Year (AY) 2012-13.

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

" 1. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in passing an Ex Parte order without providing reasonable opportunity of being heard to the appellant hence the same being against the principles of natural justice and equity require to be quashed.

2. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in passing an Ex Parte order without rejecting the adjournment application dtd.14.03.2022 uploaded on portal by the appellant.

3. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the Ex Parte assessment order passed by the Assessing Officer u/s. 144 rws.147 of the Act which is illegal and bad in law.

4. The learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.95,92,786/- made by the Assessing officer treating the same as unexplained without appreciating the fact that the assessee does not maintain books of accounts and therefore does not constitute unexplained cash credits.

5. The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance made by the Assessing Officer for the interest expenses on loans taken on such FDRs."

3. At the outset itself, Ld.Counsel for the assessee stated that the order passed by the Ld. CIT(A), which is in challenge before us, is an *ex-parte* order and the only relief being sought before us is the restoration of the issue back to the file of Assessing Officer for adjudication afresh. Pointing out the facts of the case, Ld.Counsel for the assessee stated that the assessee-HUF was assessed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for short), and on the basis of information available with the Department, it was noted that while the assessee had not filed any return of income, it had earned interest income of Rs.36,14,126/- from Union Bank Dudheshwar and Punjab National Bank, Dudheshwar and also there were various deposits in the bank accounts of

the assessee-HUF. In the absence of any explanation of both the above, an addition of Rs.95,92,786/-was made to the income of the assessee. The Ld.Counsel for the assessee, in this regard, drew our attention to Paragraph No.2 of the assessment order, wherein the details of various amounts added to the income of the assessee find mentioned are as under:

> *"2. It has been noticed from the information (NMS) available that -*
>
> *2.1 the assessee has received interest from of Rs.36,14,126 from Union Bank Dudheswar and Punjab national bank, Dudheshwar.*
>
> *2.2 The assessee has time deposit of Rs 4,50,000 on 3.12.2011 with customer ID-716700DP00001387 and Rs.9,99,999 on 23.8.2011 with customer ID-716700DP00000050 totaling to Rs.14,49,999 in Punjab National Bank*
>
> *2.3 the assessee has time deposit of Rs. 3,00,700 on 3.8.2011 with customer ID/Ac-100651431000378 and Rs.3,60,000 on 28.7.2011 with customer ID/ac-100651431000377 totaling to Rs.6,60,700 with Ratnakar Bank limited*
>
> *2.4 the assessee has deposited Rs.38,67,961 in the bank account 0033009300617581 with Punjab National Bank, Sahibaug, Ahmedabad.*
>
> *2.5 The assessee has not explained the source of deposit made and interest received and has not filed the return of income disclosing the same despite several opportunities provided. In this circumstances, the undersigned has no option but to finalize the order on the basis of the material available on record. The onus lies on the assessee to explain. Since the assessee has not explained the same is treated as unexplained and added to the total income of the assessee Penalty proceeding is initiated for concealing the income. [Addition-Rs.95,92,786]"*

3.1. The Ld. Counsel for the assessee, thereafter pointed out that before the Ld.CIT(A), the assessee neither appeared nor submitted any application seeking adjournment . Accordingly, the Ld.CIT(A) dismissed the assessee's appeal confirming the order of the Assessing Officer.

3.2. The Ld. Counsel for the assessee pointed out that during both the assessment and appellate proceedings the assessee HUF was facing trying circumstances and could not therefore attend the proceedings and offer explanation on the various issues noted as above. He stated that during the pendency of the assessment proceedings the Karta of the HUF had suffered a massive heart attack as a consequence of which he was bed ridden. That the business run by the assessee HUF had suffered huge losses and was closed and had also shifted premises of operation. That therefore no effective compliance could be made during assessment proceedings. That during appellate proceedings the Karta of the HUF passed away and his son, Shri Ravi Karia had taken over the Karta-HUF. That, the son of the assessee was not conversant with the affairs of the HUF and made untiring efforts to collect information so as to make effective representation. However, the efforts were hindered on account of the prevailing Covid circumstances. He, therefore, stated that non-compliance, at the assessment and appellate stage was on account of the ill-health of the Karta of the HUF and his demise ultimately which led to non-furnishing of information and also was the reason for non-compliance before the Ld.CIT(A). He further pointed out that not all the notices remained complied with by the assessee and the last notice was issued by the Ld.CIT(A) was responded by the assessee for seeking adjournment. He drew our attention to the various notices issued by the Ld.CIT(A) which find mentioned at Paragraph No.5.1 of the order as being on 28/12/2020, 14/10/2021, 08/12/2021 and 07/03/2022. He pointed out that the first three notices were issued during Covid period, and the last one was responded by seeking adjournment. The Ld.Counsel for the assessee further submitted that, now necessary and requisite information for dealing with the issue in hand had been collected

by the assessee. He pointed out that the assessee is now in possession of Form 26AS reflecting that the interest received by the assessee was far less than the amount added by the Assessing Officer. He further stated that the assessee had also collected the bank account statements, which would reveal that the addition made on account of unaccounted cash deposits were explainable, that in fact double addition had been made in this regard. He filed the following documents to substantiate his explanation:

> *"1. Copy of Adjournment application dtd. 14.03.2022 filed online on 14.03.2022 with ackn receipt thereof.*
>
> *2. Copy of Form 26AS for the interest received of Rs. 18,07,063/- and not Rs.36,14,126/- as per A.O.*
>
> *3. Copy of Bank Statement for account No.0033009300617581 with PNB.*
>
> *4. Copy of Bank statement for account with of PNB- A/c. No. 716700PC00000011.*
>
> *5. Copy of Bank statement for account with of PNBA/c. ID. 003300PR00032184.*
>
> *6. Copy of letter dtd. 16.10.2022 to RBL Bank with their Confirmation dtd.20.01.2022 as no such FDRs with them.*
>
> *7. Copy of Bank Statement of account No. 716700PC00000020 with PNB.*
>
> *8. Copy of Bank Statement of account No. 000500PC00000798 with PNB.*
>
> *9. Copy of Death Certificate of H. B. Karia".*

3.3. He filed an application also detailing the circumstances which led to non-compliance of the assessee both during the assessment proceedings and the appellate proceedings as also an application seeking admission of

additional evidences as noted above by us. Affidavit of the son of the Karta of HUF, i.e. Ravi Haresh Kariya was also filed stating the reasons for non-compliance before the authorities below. Death Certificate of Shri Haresh Karia was also filed before us.

3.4. In view of the above, the ld.Counsel for the assessee stated that it would be appropriate & in the interest of justice, if the assessee is granted one more opportunity to present its case before the Assessing Officer.

4. The Ld.DR has no objection.

5. We have heard both the parties and gone through the orders of the authorities below. Noting the averments made by the ld.Counsel for the assessee duly substantiated with relevant documents and additional evidences filed, as also the Affidavit of the son of the Karta of HUF, we find that the assessee has adduced reasonable cause for not appearing before the Assessing Officer and the Ld.CIT(A), demonstrating the difficult circumstances preventing it from doing so, on account of the demise of the Karta of HUF and the financial turmoil which followed. Further, taking note of the fact that the assessee is now able to produce necessary details for assessment of its correct income, by way of Form 26AS for determining the correct interest income earned by it as also bank statements for explaining the deposits therein which was added by the Assessing Officer to the income of the assessee, we consider it fit and in the interest of justice to restore the appeal back to the file of Assessing Officer for assessment afresh. The assessee is at liberty to file all the necessary documents to support its

case and the Assessing Officer is directed to give due opportunity to the assessee to represent its case before him.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Court on 28th February, 2024 at Ahmedabad.

Sd/-	Sd/-
(SUCHITRA KAMBLE)	**(ANNAPURNA GUPTA**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad, Dated 28/02/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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)- (NFAC)
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोकट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित **//True Copy//**सत्यापित प्रति //

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad