

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA No. 18/Ahd/2024
Assessment Year 2011-12**

Mr. Brijeshkumar Jayantibhai Patel, Limdi Chowk, Tarapur, Anand-388180, Gujarat PAN: AURPP6052E (Appellant)	v.	The Income Tax Officer, Ward-1(3)(1), R K Building, Near Railway Station , Sherpura, Nagarkuva, Petlad-388450, Gujarat (Respondent)
---	----	---

Assessee by: Shri Vinit Mundra, A.R.
Revenue by: Smt. Trupti Patel, Sr. D.R.

Date of hearing : 03-07-2024
Date of pronouncement : 15-07-2024

आदेश/ORDER

This appeal in ITA No. 18/Ahd/2024 for assessment year 2011-12 filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad Bench , Ahmedabad for assessment year 2011-12 is directed against the appellate order dated 7th November, 2023 passed by Id. Commissioner of Income

Tax(Appeals),National Faceless Appeal Centre(NFAC), Delhi for assessment year 2011-12 in DIN and Order No. ITBA/NFAC/S/250/2023-24/1057757898(1), which in turn has arisen from the assessment order passed by Id. Assessing Officer u/s. 144 r.w.s. 147 of the 1961 Act.

2. The Grounds of appeal raised by the assessee in Memo of appeal filed with the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad, reads as under:-

“1. In his order dated 30/11/2018, the Ld. AO has erred in law by making an addition of Rs. 2369000 u/s 69A of the Income Tax act without identifying the facts of the case and real nature of transactions involved. The Ld. CIT A has erred in law by confirming the same.

2. In his order dated 30/11/2018, the Ld. AO has erred in law by making an addition of Rs. 147700 u/s 69A of the Income Tax act without identifying the facts of the case and real nature of transactions involved. The Ld. CIT A has erred in law by confirming the same.

3. In his above order, the Ld. AO has erred in law by making an addition of Rs. 15350 in form of undisclosed interest income without identifying the facts of the case and real nature of transactions involved. The Ld. CIT A has erred in law by confirming the same.

4. Any other facts and grounds will be submitted at the time of hearing.”

3. The brief facts of the case are that the assessee has not filed return of income u/s. 139 of the Act. As per information available with the Department, the assessee had deposited cash of more than Rs 10,00,000/- in Central Bank of India account during the financial year 2010-11 relevant to the impugned assessment year 2011-12. The source of cash deposits were subjected to verification by the Assessing Officer. The case of the assessee was re-opened by Assessing Officer u/s. 147, and notice u/s 148 was issued by the AO to the assessee on 27-03-2018 which was claimed by the AO to

have been served upon the assessee. The assessee did not file any return of income in response to the aforesaid notice issued by the AO u/s. 148. The assessee also did not responded to the notices/letters issued by the AO. The Show Cause Notice (SCN) dated 19.11.2018 was issued by the AO to the assessee, which is reproduced by the AO in its assessment order. The assessee was asked to explain as to why the cash deposited of Rs. 23,69,000/- and other credits of Rs. 1,47,700/- made by the assessee with Central Bank of India account should not be added to the income of the assessee as an unexplained money u/s. 69A of the Act. The assessee was also show caused to explain as to why interest income of Rs. 15,350/- should also be not added to the income of the assessee. The assessee did not furnish the detail and documents in response to the aforesaid show cause notice issued by the Assessing Officer to the assessee. The Assessing Officer observed that the assessee has nothing to show, and the cash deposit of Rs. 23,69,000/- and credit of Rs. 1,47,700/- , which were deposited by the assessee with Central Bank of India bank account were brought to tax as unexplained money u/s 69A being income from undisclosed sources of the assessee . Further, an undisclosed interest income of Rs. 15,350/- was also added by the Assessing office as income of the assessee from undisclosed sources. Thus, total additions were made to the income of the assessee by the AO totaling to Rs.

25,32,050/- vide assessment order dated 30.11.2018 passed by the AO u/s 144 read with Section 147 of the 1961 Act.

4. Aggrieved, the assessee filed first appeal with ld. CIT(A), and the ld. CIT(A) issued notices to the assessee, but the assessee did not file any details/documents before the ld. CIT(A). The assessee sought adjournments before ld.CIT(A) on 15.07.2022 , 01.08.2022 and finally w.r.t. final opportunity granted by ld. CIT(A) for compliance on 03.10.2023. The ld. CIT(A) did not grant adjournment sought by the assessee w.r.t. compliance dated 03.10.2023, and the appellate order was passed by ld. CIT(A) on 07.11.2023. The CIT(A) dismissed the appeal of the assessee on the ground that the assessee is not interested in prosecuting the same as the documents/information were not received by ld. CIT(A) during appellate proceedings. The ld. CIT(A) further held that the assessee is not aggrieved with the assessment order passed by the Assessing Officer. Thus, for non-prosecution and non-filing of any detail/information during the appellate proceedings before the CIT(A), the appeal of the assessee was dismissed by the ld. CIT(A) ex-parte in limine. On the last date of compliance on 03.10.2023 , the assessee moved adjournment application before ld. CIT(A) but the adjournment was not granted by ld. CIT(A), and the appeal of the assessee was dismissed by ld. CIT(A) exparte in limine without adjudicating the grounds of appeal on merits.

5. Still Aggrieved , the assessee filed second appeal with the Tribunal , and the ld. counsel for the assessee submitted that the assessee is a farmer having only agricultural income which is not taxable. The assessee is not maintaining any books of account from its farming activities. It was submitted that section 69A was wrongly invoked by the Assessing Officer as the assessee is not maintaining any books of account. The ld. counsel for the assessee drew my attention to the statement of facts filed by the assessee before the ld. CIT(A) and the documents relied upon by the assessee. My attention was drawn to the appellate order passed by ld. CIT(A). It was submitted that no inquiry was made by the CIT(A)/Assessing Officer. The assessee has filed paper book containing 62 pages before the Tribunal, which is placed on record in file. My attention was drawn to page 34 of the Paper book , which is an Affidavit dated 16.03.2022 executed by Mr Jayantibhai Vallabh Bhai Patel aged 73 years(father of the assessee) , wherein it is averred that Mr. Jayantibhai Vallabh Bhai Patel is holding agricultural land which was cultivated by him while he was in good health, and for last 15 years owing to his aging , the entire agricultural activities are carried out by his son Mr. Brijesh Jayantibhai Patel(i.e. the assessee) who undertook all the agricultural activities including sale of agricultural produce and collection of sale proceeds. It is averred in the aforesaid affidavit that land records are filed. All the sale

proceeds of agriculture were deposited by his son Mr. Brijeshkumar Jayantibhai Patel in his bank account. It is also claimed that the assessee had a total cash of Rs. 74 lacs available for deposit in the bank account. My attention was drawn to page nos. 8-9 of the paper book , and was submitted that these are cash book summary(additional evidence before ITAT). My attention was drawn to page 10-14 of paper book to submit that this is the cash book of the assessee(additional evidences filed before ITAT). Further, it was submitted that the assessee is filing additional evidences before the Tribunal which are placed in the paper book of page nos. 8 to 23 and 37 to 55, and prayers were made to admit the same as per Income Tax Appellate Tribunal Rules, 1963. It is also claimed that computation of income is filed at page 23, and the taxable income of the assessee is Nil , as the assessee has agricultural income. The ld. counsel had pleaded that section 69A has no applicability in the instant case as the assessee is not maintaining books of accounts , and the AO erred in invoking provisions of Section 69A. It is also claimed by ld. Counsel for the assessee that notices as well assessment orders were not received by the assessee, and the affidavit dated 16.03.2022 is filed by the assessee(PB/Page 36) to that effect. It is averred in the affidavit that only when inspector visited the residence to recover the tax demand, the assessee came to know of the outstanding demand, and then the wife of the assessee gave

envelop containing assessment order. The assessee then took step to file appeal with ld. CIT(A). The assessee has also filed ledger account of agricultural income and the P&L account, which are placed in Paper book. The ld. Counsel for the assessee relied upon the judgment and order of Hon'ble Delhi High Court in the case of CIT v. Hersh Washesher Chadha in ITA No. 676/2023, also ld. Counsel relied upon the decision of ITAT Ahmedabad Bench in the case of Hiteshkumar Naginbhai Parmar v. ITO in ITA No. 107/Ahd/2023 dated 05.07.2023 . My attention was also drawn to the page of 61-62 of the paper book , wherein show cause notice dated 19.11.2018 issued by the Assessing Officer is placed. It was submitted that no draft assessment order was provided to the assessee. The Ld. Departmental Representative on the other hand submitted that assessee has now filed additional evidences before the Tribunal which requires verification , and prayers were made to set aside the matter to the file of ld. CIT(A).

6. I have heard rival contentions and perused the materials on record. I have observed that the assessee did not file return of income u/s 139. There were cash deposits of more than Rs. 10,00,000/- made by the assessee in his bank account with Central Bank of India. The information to that effect was received by the AO. The Revenue invoked provisions of Section 147 to frame reassessment in the case of the assessee, and this led to issuance of notice u/s 148. The

assessee did not file return of income in response to notice issued by the AO u/s 148. There were other notices/letters issued by the AO, but only part compliance was done by the assessee. The assessee filed part details with the AO as claimed by the AO, and ultimately the AO made the additions to the income of the assessee towards cash deposits in Central Bank to the tune of Rs. 23,69,000/- and also additions were made to the income of the assessee towards credits to the tune of Rs. 1,47,700/- in the Central Bank, as an unexplained money u/s 69A . Further, addition of Rs. 15,350/- was made by the AO towards undisclosed interest income. The assessee filed first appeal with ld. CIT(A). In SOF/grounds of appeal filed by the assessee before ld. CIT(A), the assessee has claimed that the assessee is farmer and the only source of income is agricultural produce, and the cash deposited in the bank was from sale of agricultural produce. It is claimed that the assessee is not having any taxable income, and hence the assessee is not liable to file return of income. It was submitted that various notices issued by the AO were not received by the assessee, but by the father of the assessee who is illiterate and/or by the family members of the assessee. It is only when the AO(sic. Inspector) visited the residence of the assessee for tax recovery and told wife of the appellate to ask assessee to attend office of the AO, that the assessee came to know of the outstanding demand against the assessee, and took steps to

file appeal. The assessee in its appeal with ld. CIT(A) has filed land records , bank statement and copies of agricultural produce bills , and also produced alongwith affidavit of family members , were filed before ld. CIT(A) as is discernible from para 11, 12 and 12.1 of Form No. 35. These were filed as additional evidence before ld. CIT(A). The assessee has filed copies of these documents in the paper book filed with ITAT, carrying 62 pages , which is placed on record in file. The ld. CIT(A) dismissed the appeal of the assessee ex-parte in limine without deciding the issues arising in the appeal on merits in accordance with law , which appellate order of ld. CIT(A) is not in compliance of Section 250(6). The ld. CIT(A) has not adjudicated any grounds of appeal raised by the assessee in its memo of appeal filed with ld. CIT(A). The ld. CIT(A) did not gave its decision on the additional evidences filed by the assessee , and no remand report u/r 46A was called by ld. CIT(A) on these additional evidences filed by the assessee with the ld. CIT(A). The assessee has claimed himself to be a farmer deriving income from agricultural activities and it is claimed that cash deposits were made in the bank from sale produce of agricultural product. It is claimed that the land belonged to father of the assessee who has now aged and for last 15 years, the assessee is carrying on the activities of agriculture on the said land. The land records are produced along with affidavit of father. The ld. CIT(A) did not made any inquiry/verification

nor caused AO to make enquiry/verification, as to truthfulness of the claim of the assessee. The ld. CIT(A) issued notices to the assessee and the assessee sought adjournments on three occasions, of which two were granted , but on the last occasion when the appeal came up for hearing before ld. CIT(A) on 03rd October, 2023 , the assessee sought adjournment but the same was not granted by ld. CIT(A), and the appeal of the assessee was dismissed by an exparte order in limine by ld. CIT(A), dated 07.11.2023. The ld. CIT(A) dismissed the appeal on the ground of non prosecution as the ld. CIT(A) observed that the assessee has not filed any documents/ details to support its claim. It is painful to note that ld. CIT(A) observed that the assessee is not aggrieved by the assessment order passed by the AO, despite the fact that the assessee filed its appeal with ld. CIT(A) challenging the assessment order and the assessee was seeking adjournment on 03.10.2023 which was denied by ld. CIT(A) leading to appellate order dated 07.11.2023. Had the assessee been not aggrieved, there was no reasons for the assessee to have filed appeal with ld. CIT(A) or to have filed adjournment applications and now that the assessee has even filed appeal with the ITAT. The Ld. CIT(A) chose not to adjudicate the grounds of appeal raised by the assessee on merits in accordance with law , and rather the appeal of the assessee was dismissed ex-parte in limine without deciding the issues

arising in the appeal on merits , and hence the order of the Ld. CIT(A) is not in consonance with provisions of Section 250(6) of the Act. The assessee has claimed in SOF/grounds of appeal filed before ld. CIT(A) that the assessee is farmer and the cash deposited in the bank represented sale of agricultural produce. It is also claimed that the assessee is not having any taxable income and hence no return of income was filed. The land records were filed, agricultural produce bills were filed, bank statements were filed and affidavit of father of the assessee was filed averring that the assessee is carrying on agricultural land owned by father who is not able to carry out agricultural activities owing to ageing. The Ld. CIT(A) ought to have called for the assessment records for verification of the contention of the assessee or ought to have made necessary enquiries/verification to unravel truth or could have called AO to make necessary inquiries/verifications, before dismissing the appeal of the assessee ex-parte in limine without deciding the issues arising in the appeal on merits. It is further observed that the Ld. CIT(A) has not called for any information directly from the father of the assessee nor from land revenue authorities at village/taluka/district level before dismissing appeal of the assessee , and hence no inquiry / verification was done by the Ld. CIT(A) nor the ld. CIT(A) directed AO to make necessary inquiries/verifications. The ld. CIT(A) did not adjudicated on the issue of admission of additional evidences

filed by the assessee , in terms of Rule 46A nor any remand report was called by ld. CIT(A) from the AO. The power of ld. CIT(A) are co-terminus with the power of Assessing Officer which even includes power of enhancement(Section 251(1)(a)). The ld. CIT(A) is required to adjudicate the issues arising in the appeal on merit in accordance with law , as is provided u/s. 250(6). The ld. CIT(A) has to state point for determination, his reasons for decision and the decision thereof as provided u/s 250(6). The CIT(A) has power to make such inquiries as he thinks fit and may also direct AO to make such enquiries and report to ld CIT(A), as is provided u/s 250(4), and to adjudicate issues arising in the appeal before him on merits in accordance with law. The CIT(A) could have issued summons u/s. 131 to the assessee and/or could have called for information from third parties i.e. land revenue authorities, father of the assessee , other relevant persons/authorities etc.. The ld. CIT(A) could have called for assessment records to verify the contentions of the assessee raised in ground of appeal/statement of facts filed before ld. CIT(A). There are other powers vested with ld. CIT(A) as is provided under the 1961 Act. The ld. CIT(A) has not rebutted the claim of the assessee, but dismissed the appeal of the assessee on ground of non compliance by the assessee with respect to the notices issued by ld. CIT(A) by holding that the assessee is not interested in prosecuting its appeal , and

simply upheld the additions as were made by the AO. The ld. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as ld CIT(A) is required to pass reasoned and speaking order on merits in accordance with law, but the appellate order passed by ld. CIT(A) is a non speaking and non reasoned appellate order which is not in compliance with provisions of Section 250(6), and is liable to be set aside. The appellate order passed by ld. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by ld. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issue are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of ld. CIT(A) in deciding the issues. If the ld. CIT(A) simply dismiss the appeal merely because the assessee did not appear before ld. CIT(A) or did not comply with the notices, ex-parte in limine without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also

higher appellate authorities will be deprived to see what weighed in the mind of the ld. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits . It is equally true that the assessee also did not complied with the notices issued by ld. CIT(A) and did not file the requisite details/documents to support his contentions. The assessee is also equally responsible for its woes. The assessee has also filed additional evidences before us placed on record in file in paper book at page 8-23 and 37-55, which are in form of cash book summary, details of cash deposits , statement of income, Profit and Loss Account , ledger of agricultural income and cash for financial year 2009-10. These additional evidences filed for the first time before the ITAT also requires verification by the authorities below. Under these facts and circumstances and fairness of both the parties, in the interest of justice, the appellate order passed by ld. CIT(A) is set aside and the matter can go back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. The ld. CIT(A) shall pass the appellate order in compliance with the provision of section 250(6) of the Act on merit in accordance with law, in set aside proceedings ,after giving opportunity to both the parties in compliance with principles of natural justice. I also direct ld. CIT(A) to admit additional evidences filed by the assessee, and adjudicate

them on merits in accordance with law including conducting such verifications and inquiries as may deem fit by ld. CIT(A). The assessee on his part is also directed to comply with the direction/notices of CIT(A) , and in case of failure of the assessee, the ld. CIT(A) shall be free to pass such appellate order as deemed fit ex-parte in accordance with law on merits and after complying with the provisions of section 250(6) of the Act. Thus, the matter is restored back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law. I clarify that I have not commented on the merits of the issues in the appeal. Thus, the appeal of the assessee is allowed for statistical purposes. I order accordingly.

7. In the result, the appeal of the assessee in ITA No. 18/Ahd/2024 for assessment year 2011-12 is allowed for statistical purposes.

Order pronounced on 15.07.2024 at Ahmedabad in terms of Rule 34(4) of the Income-tax Appellate Tribunal Rules, 1963

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated:15/07/2024

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