

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

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.408/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2017-18

Kamakshiben Mayashankar Vyas Gundarana Mahuva Bhavnagar - 364 295 (Gujarat)	<u>बनाम/ v/s.</u>	The Income Tax Officer Ward-1(9) Bhavnagar
स्थायी लेखा सं./PAN: AQHPV 6393 E		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri B.R. Popat, AR	
Revenue by :	Shri Rignesh Das, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 19/09/2024
घोषणा की तारीख /Date of Pronouncement: 26/09/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee is directed against the order of the CIT(A), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "CIT(A)") dated 24/01/2024, confirming the addition made by the Assessing Officer (AO) under Section 69A of the Income Tax Act, 1961(hereinafter referred to as "the Act"), amounting to Rs.2,64,72,058/- as unexplained money and taxed under Section 115BBE of the Act at the rate of 60%. The AO passed the order under Section 144 of the Act for the A.Y. 2017-18.

Facts of the Case:

2. The assessee is engaged in the business of petroleum products dealership under the name and style of Bapa Sitaram Petroleum, operating as a dealer of Indian Oil Corporation Limited (IOC), a public sector undertaking since 2006. For the Assessment Year 2017-18, the appellant filed her return of income under the PAN AFBPV2339B, declaring a total income of Rs. 3,73,000/-, based on the audited books of account. The tax audit report in Form 3CB was also prepared and filed using the original PAN.

2.1. The AO observed, on the basis of AIMS module of ITBA Application, that the assessee had deposited cash of Rs. 33,58,500/- in her bank account with State Bank of India (Account No. 66007896565) during the window period of demonetisation. The assessee was required to file reply on online portal, but assessee failed to do so. The AO also observed that the assessee under PAN AQHPV6393E has not filed the return of income. Therefore, a notice u/s.142(1) of the Act was issued to the assessee requiring her to furnish the return of income. Thereafter three notice u/s.142(1) were issued on various dates including notice u/s 142(1) r.w.s. 129 of the Act. but the assessee failed to comply with the notices.

2.2. A show-cause notice was issued proposing to pass order u/s. 144 of the Act on the basis of material available on records. The assessee filed online reply to the show-cause notice stating that she has filed her return of income under PAN AFBPV2339B and the PAN on which the notice was served was allotted to her by mistake when she applied for duplicate PAN. The AO noted that the assessee failed to provide evidence that the issuance of PAN-AQHPV6393E was a result of an application for a duplicate PAN due to the

loss of the original PAN. The AO found this explanation unsubstantiated, and without documentary proof, the AO questioned the credibility of the appellant's claim that the second PAN was mistakenly issued. The AO also concluded that the appellant's use of two PANs appeared to be intentional, aimed at compartmentalizing financial transactions. The AO believed that the appellant used the original PAN (AFBPV2339B) for filing returns while using the duplicate PAN (AQHPV6393E) to handle substantial cash deposits, thereby avoiding full disclosure in the return filed.

2.3. Due to the assessee's failure to furnish any explanation or details about the cash deposits, the AO invoked Section 144 of the Act to make a best judgment assessment based on the available material. The AO treated the cash deposits and credit entries amounting to Rs.2,64,72,058/- in the assessee's bank account as unexplained money under Section 69A of the Act. The AO determined that these transactions represented the assessee's income from undisclosed sources as the assessee failed to provide a satisfactory explanation. The failure to file a return under this PAN and the lack of cooperation during the assessment proceedings led the AO to conclude that these deposits were not accounted for in any of the financial statements associated with the original PAN. The AO initiated penalty proceedings under Section 272B of the Income Tax Act for holding two PANs, as possession of multiple PANs without proper justification or cancellation of the duplicate was seen as a violation of the law.

2.4. Not satisfied by the order of AO, the assessee filed an appeal before CIT(A), who upheld the order of AO. The CIT(A) concurred with the AO's finding that the failure to file the return under the PAN associated with the

cash deposits (AQHPV6393E) indicated an intent to avoid proper disclosure of these transactions. The CIT(A) observed that during the assessment proceedings, the appellant did not present the return of income filed under the original PAN (AFBPV2339B) or provide the documentary evidence. Relying on some judicial precedents, the CIT(A) upheld the assessment order, emphasizing that the onus was on the appellant to prove that the cash deposits were not unexplained.

3. Aggrieved by the order of CIT(A), the assessee is in appeal before us with following grounds of appeal:

1. *The learned CIT(A) erred in law and on fact in confirming the action of the AO in assessing the income at Rs.2,64,72,058/- that was done by him for the untenable reasons as specified in the order.*
2. *The learned CIT(A), while dismissing the appeal, erred in law and on fact in not appreciating that all the transactions carried out through the specified banking account were - i). recorded in the books of account regularly maintained; ii). the same stood fully explained; iii). these books of account were audited by an independent Chartered Accountant who had issued unqualified audit report; (iv). the transactions recorded in the books of account were considered as such for quantification of the total income chargeable to tax; and (v). the return of income under section 139 of the Act was very much furnished, albeit under the original PAN.*
3. *The learned CIT(A), while dismissing the appeal, erred in law and on fact in not appreciating that merely because the Appellant was inadvertently allotted two PANs and merely because the specified banking account was linked with the other PAN, this clearly had no adverse consequence in so far as the quantification of the income liable to be assessed is concerned.*

4. During the course of hearing before us, the Authorised Representative (AR) of the assessee stated that the assessee is having the bank account with the said bank since 2006, and earlier bank account was not linked with the PAN. Later on, presumably, to complete the Know Your Customer (KYC) formalities bank wanted a legible copy of PAN Card and since, the card was

lost, the assessee applied for the duplicate PAN Card. The assessee applied for the duplicate PAN and instead of issuing a duplicate card for the original PAN, the authorities issued a completely new PAN which was mistakenly provided to the bank during the KYC update. Consequently, the bank account (Account No. 66007896565 with the State Bank of India) became linked with the duplicate PAN (AQHPV6393E). The AR stated that the assessee acknowledged holding two PANs and had already paid the penalty imposed under Section 272B of the Income Tax Act for this non-compliance without contesting it, demonstrating her intent to rectify the mistake. Despite having two PANs, the AR stated that there was no intent to evade taxes or conceal income, as all transactions were duly accounted for in the books maintained under the original PAN. The AR also stated that there was not sufficient opportunity given to provide documentary evidence of the application of the new PAN.

4.1. The AR also explained with the help of a copy of profit and loss account that the assessee in her return of income has disclosed sale of Rs. 3,02,21,195/- and since the business is in small town, most of the sale is cash sale which is deposited in bank accounts. The AR also stated that the AO has added all credit side of the bank to the income without taking note of debit entries which are payments to IOC i.e. against purchases.

5. On the other hand, the Departmental Representative (DR) argued that the appellant's intention in holding two PANs was unclear, and there was no evidence on record to confirm whether the appellant applied for a duplicate PAN or a new PAN. The DR emphasized that the assessee failed to comply

with statutory notices requiring her to submit details of cash deposits during demonetization, which justified the addition under Section 69A of the Act.

6. We have carefully considered the submissions of the assessee, the findings of the AO and the CIT(A), and the material on record. It is evident that the primary dispute revolves around the use of two PANs—AFBPV2339B (the original PAN) and AQHPV6393E (the second PAN)—and the resulting addition under Section 69A of the Income Tax Act, 1961, treating the cash deposits as unexplained money. The AO initiated assessment proceedings under second PAN-AQHPV6393E, observing significant cash deposits in the bank account linked to this PAN during the demonetization period. However, the AO failed to properly investigate or correlate the PAN-related facts, especially after becoming aware that the assessee had consistently filed her returns of income under the original PAN (AFBPV2339B), where all business transactions were duly recorded.

6.1. The record shows that during the assessment proceedings, the AO could not verify the books of account, tax audit report, or the return of income filed under original PAN-AFBPV2339B. This failure led to an unsustainable assessment under Section 69A of the Act, based solely on the existence of substantial cash deposits linked to the second PAN. The AO's assessment lacked a proper verification process that should have involved cross-referencing the deposits with the appellant's audited financial statements, which were maintained under the original PAN. The CIT(A), in upholding the assessment order, also did not make any independent effort to verify the appellant's submissions, resulting in a confirmation of an addition that was based on incomplete and uncorrelated facts.

6.2. In our considered view that the AO did not make necessary inquiries with the PAN issuing authority (UTI) to ascertain whether the second PAN was inadvertently issued as a duplicate or whether steps were taken to cancel the second PAN. The appellant's consistent filing of returns under the original PAN and the payment of penalties for holding two PANs without contesting reflects an effort to comply with the provisions of the Act rather than an intent to conceal any income. Furthermore, it was the duty of the AO to verify the return filed under the original PAN and consider the appellant's submissions regarding the regular business operations and the accounting of cash deposits in the audited books of accounts. This omission has led to an unsustainable assessment that fails to consider the complete factual matrix of the appellant's case.

6.3. In light of these findings, it is apparent that the addition under Section 69A of the Act was made without proper examination of the appellant's books of account and relevant financial records. To ensure a fair and judicious outcome, we hereby set aside the orders passed by the lower authorities and restore the matter to the file of the JAO with specific directions to :-

- Complete the assessment solely under the original PAN, i.e., PAN-AFBPV2339B, after ensuring that the second PAN (AQHPV6393E) is cancelled. The AO must not rely on any data associated with the second PAN for assessing the appellant's income.
- Verify all the details related to the impugned bank account, especially the cash deposits during the demonetization period, with reference to the books of account maintained by the appellant under original PAN-AFBPV2339B.
- Conduct the assessment based on a detailed examination of the financial records maintained under the original PAN and ensure that

all transactions are properly accounted for in the appellant's books of account.

- Verify whether all information available with the department relating to transactions on the second PAN (AQHPV6393E) is properly considered in the books of accounts maintained by the assessee.

6.4. The AO is further directed to provide the appellant with a reasonable opportunity to submit any additional evidence or clarifications that may assist in the verification process. The assessment shall be completed afresh based on the proper verification of all relevant documents, ensuring that the true nature of the appellant's income and transactions is correctly determined. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 26th September, 2024 at Ahmedabad.

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

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 26/ 09/2024

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), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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