

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, 'एस. एम. सी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT
MEMBER

ITA No. 370/Ahd/2024
Assessment Year : 2017-18

Vivek Prahladbhai Patel B-302, Balaji Greens, B/H Sitaram Complex, Chhani- Canal, Vadodara-391740 Gujarat	Vs	The Income Tax Officer, Ward-4(1)(10), Vadodara
PAN: BABPP7859 N		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Jigar Adhyaru, CA
Revenue by :	Shri N.J. Vyas, Sr.DR

सुनवाई की तारीख/Date of Hearing : 16/05/2024
घोषणा की तारीख /Date of Pronouncement: 31/05/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order of the Additional/Joint Commissioner of Income Tax (Appeals)-1 Visakapatnam (hereinafter referred as "CIT(A)"), dated 5-1-2024, for the assessment year 2017-18, whereby the CIT(A) upheld the addition made by the Assessing Officer (hereinafter referred as "AO") under section 69A of the Income Tax Act, 1961 (hereinafter referred as "the Act").

Facts of the Case:

2. The assessee filed his return of income on 12.8.2017 declaring total taxable income of Rs. 6,49,001/-. The case was selected for limited scrutiny through CASS as during the period of demonetization, the assessee made substantial cash deposits in his bank account amounting to Rs. 9,04,000/- Out of this total amount the AO treated Rs. 4,28,000 as unexplained money and added the same to the income of the assessee under section 69A of the Act.

3. The assessee contended that the said cash deposits were from the accumulated savings and agricultural income of his parents. Rs.2,13,000/- were given by assessee's father Shri Pralhadbhai Kantilal Patel and Rs.2,15,000/- by assessee's mother Smt. Govadvariben Palhadbhai Patel for the purpose of renovation of house. In support of this contention, the assessee filed affidavits from his father and mother before the AO. However, the AO was not satisfied with the explanation and proceeded with the addition.

4. The CIT(A) upheld the order of the AO without giving due consideration to the affidavits and the explanation provided by the assessee. The CIT(A) did not appreciate the fact that the affidavits submitted were from credible sources, being the parents of the assessee, and did not investigate further into the matter to ascertain the veracity of the claims made therein.

5. The assessee has now come in appeal before us challenging the addition made under section 69A. The main grounds of appeal are as follows:

1. The ld. CIT(A) has erred in law as well as on facts in confirming the addition of Rs. 4,28,000/-, being cash deposited in the bank account of the assessee by treating the same to be unexplained u/s. 69A of the Act.

2. The ld. CIT(A) erred in law as well as on facts in confirming the addition of Rs. 4,28,000/- without bringing appropriate findings on records.

3. The ld. CIT(A) erred in law as well as on facts in not considering the explanation, justification & supporting documentary evidences furnished by the assessee.

4. The appellant craves leave to add/alter any of the grounds of appeal before or at the time of hearing.

6. We have heard the rival submissions and perused the material available on record. It is observed that the affidavits submitted by the assessee's parents were not given due weightage by the lower authorities. These affidavits clearly stated that the cash deposits were from their accumulated savings and income from agricultural activities on their own land.

7. Further, it is noted that the AO did not conduct any independent verification or enquiry into the claims made in the affidavits. The AO has simply dismissed the affidavits without assigning any cogent reasons. The CIT(A), too, has upheld the AO's order without addressing the merits of the affidavits and the explanation provided by the assessee.

8. In the case of CIT v. P.K. Noorjahan [1999] 237 ITR 570 (SC), the Hon'ble Supreme Court held that the burden of proof is on the revenue

to show that the amount in question is income of the assessee. In the instant case, the affidavits provided by the assessee's parents, explaining the source of cash deposits, were disregarded without any substantial counter evidence.

9. Moreover, the Gujarat High Court in *Ranchhodbhai J. Thakkar v. CIT* [2003] 263 ITR 679 (Guj) has held that when the assessee provides a plausible explanation supported by affidavits, it is the duty of the revenue to conduct proper verification before making any adverse conclusion. In the present case, neither the AO nor the CIT(A) conducted any verification of the affidavits, or the claims made therein.

10. In view of the above, we find that the addition made under section 69A is not sustainable. The AO and CIT(A) have failed to discharge their duty of conducting a thorough and fair investigation into the source of the cash deposits. The affidavits provided by the assessee's parents should have been subjected to verification, and the explanation provided should have been considered in a judicious manner.

11. Ld. Departmental Representative, on the other hand, stated that there is no any proof of agricultural income. However, neither AO nor CIT(A) have asked assessee to produce any proof for the agricultural income of father.

12. Therefore, in the interest of justice, we set aside the order of the CIT(A) and direct the AO to delete the addition of Rs.4,28,000/- made under section 69A of the Act.

13. In the combined result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 31 May, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER True Copy
Ahmedabad, Dated 31/05/2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Rajesh

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,

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