

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER, JUDICIAL MEMBER

ITA No.553/Ahd/2023
With
Cross Objection No.16/Ahd/2023
Assessment Year : 2016-17

ITO, Ward-7(2)(1) Ahmedabad.	Vs.	Shri Piyushbhai Bhailalbhai Hirpara A/24, 1055/1064, Badrinarayan Society Nr.Sub-Station B/h. Thakkarbapa Nagar Ahmedabad 382 350, Gujarat. PAN : ACLPH 3966 M
---------------------------------	-----	--

अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
Assessee by :	Shri Dhrunal Bhatt, AR
Revenue by :	Ms.Saumya Pandey Jain, Sr.DR

सुनवाई की तारीख/ **Date of Hearing** : **19/03/2024**
घोषणा की तारीख / **Date of Pronouncement**: **21/03/2024**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The present appeal has been filed by the Revenue and cross objection by the Assessee against order passed by the Id.Commissioner of Income-Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "Id.CIT(A)"] dated 5.2.2023 under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Asst.Year 2016-17.

We shall first be dealing with the Revenues appeal before us in
ITA No. 553/Ahd/23:

2. At the outset, it is brought to the notice of the Bench that the appeal filed by the assessee is barred by limitation by 91 days. The

ld.DR contended that delay in filing of appeal has been caused due to administrative reasons, such as taking decision and getting necessary approval for filing the present appeal. To support this contention, he filed an affidavit duly sworn by Jaishree Thacker, Income Tax Officer, Ward-7(2)(1), Ahmedabad. The ld.DR accordingly prayed for condonation of the impugned delay of 91 days in filing appeal before the Tribunal.

The ld.counsel for the assessee stated in writing before us that he had no objection to the condonation of delay.

3. Heard both the parties on the issue of condonation of delay. The reasons attributed by the Revenue for the impugned delay of 91 days, is stated to be caused due to administrative reasons in obtaining necessary approval, which cannot be viewed to be a deliberate. We are of the view that such an occasional delay does happen for obtaining permissions from the government functionaries. Therefore, looking to the practical difficulties narrated by the Department in obtaining final approval from the higher authorities, which we find to be plausible and unintentional, in the interest of justice, and the no objection of the ld.counsel of the assessee in writing, we incline to condone the impugned delay of 91 days in filing the appeal before the Tribunal, and proceed to adjudicate the appeal of the assessee on merit.

4. The grounds raised are as under;

(a) The Ld.CIT (A) has erred in law and on facts in deleting the addition of Rs.2,44,60,366/- made by the AO u/s 69A of the IT Act in respect of money received from M/s V. Nitin and cash withdrawn from the bank account.

(b) The Ld. CIT(A) has erred in law and on facts in not appreciating the facts elaborated by the Assessing Officer that the assessee has not furnished any explanation in respect of entries credited in bank account which was immediately transferred to the various entities.

(c) On the facts and circumstances of the case, Ld CIT(A) ought to have upheld the order of the Assessing Officer.

5. As is evident from the grounds raised by the Revenue in its appeal, Revenue's challenge/contest is against deletion of addition made by the AO on account of unexplained credit found in its books of accounts to the tune of Rs.2,44,60,366/-.

6. The contention of the ld.DR before us was that, the ld.CIT(A) had appreciated the contentions of the assessee before him that the credits were related to his business activity of cutting and polishing of diamonds and had appreciated the evidences filed by the assessee by way of Form No.26AS, audited balance sheet, tax audit report etc., but at the same time, had failed to consider the information in the possession of the AO regarding these arising from transactions being suspicious in nature, which was received from Investigation Wing of the Department. Her contention was that the ld.CIT(A) had merely accepted the contentions of the assessee without dealing with the findings of the AO while framing the assessment under section 147 of the Act. She also pointed out that the ld.CIT(A) had shifted the onus on the AO while deleting the addition, mentioning that, the AO had not given any details of the inquiry conducted and the modus operandi adopted by various entities, when onus rested on the assessee in the light of the adverse materials with the AO regarding suspicious nature of these transactions.

7. The ld.counsel for the assessee, on the other hand, heavily supported the order of the ld.CIT(A) contending that he had taken note of all necessary evidences filed by the assessee, which sufficiently demonstrated that the credits in the bank accounts were on account of business transaction of the assessee duly evidenced with necessary documents.

8. We have heard contentions of both the parties, and carefully gone through the orders of the Revenue authorities.

The arguments of the ld.DR before us primarily is that the ld.CIT(A)'s order is not justified for the reason that it has been passed by totally ignoring the finding of the AO based on the information in its possession of the suspicious nature of the transaction undertaken by the assessee in its books of accounts amounting to Rs.2.44 crores. The information in the possession of the AO emanates from the reasons, which were recorded by the AO which reproduced at page no.1 & 2 of the order as under:

"The assessee had filed the return for the A.Y. 2016-17 on 09.09.2016 declaring total income of Rs.4,93,900/-. The reason for reopening is as under-

"The above named assessee is having PAN: ACLPH3966M. As per information available on records the assessee has carried out significant financial transactions during the concerned financial year. On verification of ITD and tTBA module, it is seen that the assessee has filed his/her/its RoI on 06-Aug-13 declaring total income of Rs. 4,93,900/- for the A.Y. 2016-17 relevant to F.Y. 2015-16. The return of income was processed u/s. 143(1)(a) of the I. T. Act, 1961.

2. In this case, a STR in the case of V. Nitin was received by the Investigation wing, Surat. Thereafter, the STR report was prepared by the o/o. the DDIT(lw), Unit -2, Surat and disseminated the information in the case of its beneficiaries in category of High Risk Transaction CRIUA/RU Information through Insight Portal of the department to the Jurisdictional Assessing Officer.

3. On perusal and analysis of information received, it is noticed that a current account was opened on 09.04.2012 in the name of V Nitin operated for a partnership firm Kiran Gems Pvt. Ltd. Within a span of 30 months, the turnover of this current account was Rs.22&74 lacs. This account exhibited a transaction pattern of huge credit transactions from the other accounts of Kiran Gems Pvt. Ltd and V. Nitin. Thereafter, that amount was immediately transferred to the various entities and the funds transferred were immediately withdrawn in cash keeping the minimum balance in account.

4. On further verification of the information received, it is found that the above named assessee is also a beneficiary of these suspicious transactions and the assessee has entered into financial transactions exceeding the taxable limits. The assessee has undertaken unexplained credits in his bank accounts of Rs.2,44,60,366/-; however despite making these financial transactions the assessee has not truly and correctly disclosed the quantum of transactions done during the year under consideration.

5. Thus, on perusal of the details available on record, it is noticed that during the previous year relevant to the assessment year under consideration, the assessee has undertaken financial transactions much beyond the taxable limit. However, as per

the income profile of the assessee, verified from the ITR of concerned A.Y., the huge credits in the bank account of the assessee is not conclusively proved. Hence, it is concluded that the assessee has not offered the amount of Rs.2,44,60,366/- for taxation.

The Id.CIT(A)'s finding and the decisions in this regard are at para-6 of its order as under:

6.0 Findings and decision :-

I have carefully considered the facts of the case as well as submissions filed by the appellant. I find force in the arguments taken by the appellant. The AO has made the addition primarily because the appellant was mentioned in an inquiry by the Investigation Wing on the STR (Suspicious Transaction Report) in case of M/S V. Nitin in so far as the transactions of this concern relating to the appellant were investigated. The name of the appellant was mentioned as one of the beneficiary in this report. However, the AO has not given any details of the inquiry conducted and the modus operandi adopted by various entities. Further, the AO has noted that the money received by cheque from M/S V. Nitin is immediately withdrawn in cash from the appellant's bank account. The appellant has described the nature of business being labour oriented requiring payments to be made in cash to the laborers. He has also furnished a copy of the cash book for examination, and the AO has not pointed any faults/errors or non-genuine entries in the cash book.

The only possible scenario for this addition made could be that the Assessee is a totally sham concern and the taxable income of M/s V Nitin is being siphoned off by means of this entity. No job work is being done by the appellant at all. To dispel this notion, the appellant has furnished the following evidence:

- A copy of the assessment order in case of M/S V. Nitin has been furnished whereby no addition on account of disallowance of the job work charges pertaining to appellant has been made.
- The appellant is duly registered as an SSI unit and copy of the registration certificate has been provided.
- The appellant has submitted full details of expenses like electricity bills, rent, wages etc. with copies of supporting vouchers, which the AO has not been able to discredit.
- The AO has accepted the genuineness of appellant's business in the assessment year 2014-15 by an order u/s 143(3) of the Act passed in a non-faceless environment. A copy of this order has been furnished.

In view of the above discussion, it is held that the AO is not justified to make the addition of Rs. 2,44,60,366/- u/s 69A of the Act. The addition so made is hereby deleted and the ground of appeal no. 1.01 to 1.10 are hereby allowed.

9. On perusal of both the above findings, we are in complete agreement with the Id.DR that the order passed by the Id.CIT(A) granting relief to the assessee is not justified and cannot be sustained in law. Clearly, the Id.CIT(A) has considered only the submissions made by the assessee explaining the nature of the transaction with necessary evidences. He has accepted the assessee's explanation that the transactions pertained to its business of cutting and polishing of diamonds and the credits all related to the same. He found them authenticated by virtue of the fact that the assessee was registered as SSI unit for the said purpose and had submitted all details of expenses like electricity bills, rent, wages etc; that genuineness of payment of the business accepted in the immediately preceding year by the AO in an order under section 143(3) of the Act, and the entity who supposedly had initiated the suspicious transactions i.e. M/s.V. Nitin has been assessed and no addition on account of disallowance of job work charges pertained to the assessee being made. It is evident from the above that the Id.CIT(A) has considered the aspect only from the point of view that the assessee was indulging in the business of cutting & polishing of diamonds and the impugned transactions related to the same; that job work charges received by it and credited to its bank account were in relation to the same, and had been treated as expenses by M/s.V.Nitin, and therefore, finding that no disallowance of the same had been made in the hands of the M/s.Nitin, he observed, no reason to make any addition in the hands of the assessee.

10. Having noted so, we find that the case of the AO was completely different that these were suspicious transaction initiated by M/s.V. Nitin and routed to the assessee as beneficiary, who had withdrawn the amounts subsequently in cash; that these were mere

accommodation entries, of which, the assessee was the beneficiary. The AO mentions all facts relating to the above received from the investigation wing of the department that within a short span of 30 months from opening of a current account in the name of V. Nitin, operated for Kiran Gems partnership firm, huge turnover to the tune of Rs. 22874 lacs was made. That the entries in the account exhibited a pattern of huge credit transactions from the other accounts of Kiran Gems Pvt. Ltd and V. Nitin and these amounts immediately transferred to other entities who ultimately withdrew them in cash. The Id.CIT(A) has not dealt with this aspect of the AO's order. Surprisingly, he has dismissed this basis of the AO for holding the transaction as *ingenuine*, stating that the AO has not given any details of the inquiry conducted and the *modus operandi* adopted by various entities. The Id.CIT(A) has co-terminus power with that the AO. The appeal proceedings with the Id.CIT(A) is also a continuity of assessment proceedings, and therefore, the Id.CIT(A) gravely erred in deleting the disallowance on the basis that adverse information in the possession of the AO was not revealed during the assessment proceedings, nor *modus operandi* adopted by various entities. The Id.CIT(A) in such circumstances was required to have called for these information from the AO, and after applying his mind, the issue should have been adjudicated in the backdrop of the explanation and the evidence filed by the assessee. The Id.CIT(A), we find, has completely failed in this aspect, and therefore, we agree with the Id.DR that the Id.CIT(A) has deleted the disallowance merely by accepting the contentions of the assessee before it without dealing with the finding of the AO in this regard.

Therefore, in all fairness, the issue requires reconsideration at the end of the Id.CIT(A), who is directed to consider the arguments of

both the sides before him, i.e. the AO and the assessee, and thereafter adjudicate the issue in accordance with law.

The grounds of appeal raised by the Department is therefore allowed for statistical purpose.

11. The appeal of the Revenue is allowed for statistical purpose.

12. Assessee's CO

13. Now coming to the CO filed by the assessee, the assessee has raised legal ground challenging validity of the assessment framed under section 147 of the Act. He has fairly admitted that this ground was not adjudicated by the Id.CIT(A), though, submissions in this regard were made before him, pointing out that the reasons recorded for escapement of income of the assessee were based on borrowed belief of the Investigation Wing, and no independent inquiry had been conducted by the AO to arrive at own satisfaction for escapement of income, which is a necessary pre-requisite for assuming jurisdiction to frame assessment under section 147 of the Act.

14. The Id.DR prayed that since the issue on merits requires reconsideration by the Id.CIT(A) and the legal ground has not been dealt with by the Id.CIT(A), therefore, these legal grounds be also adjudicated by the Id.CIT(A) along with merits of the case.

15. The Id.counsel for the assessee fairly agreed with the same.

16. In view of the same, the Id.CIT(A) is directed to adjudicate the challenge to the validity of the re-assessment in the present case raised by the assessee along with merit of the case of the assessee, afresh. Thus, CO of the assessee is allowed for statistical purpose.

17. In the result, the appeal of the Revenue and that of the assessee's CO are allowed for statistical purpose.

Order pronounced in the Court on 21^s March, 2023 at Ahmedabad.

Sd/-

**(MADHUMITA ROY)
JUDICIAL MEMBER**

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 21/03/2024