

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.385/Ahd/2022
Assessment Year : 2017-18

Jayshree Kamleshkumar Patel 1, Nirmal Shanti Petroleum, Near Govt. Hospital, Koyali Nandesari Road, Koyali, Gujarat-391330	Vs	Income Tax Officer, Ward-1(1)(4) Race Course Circle, Vadodara, Gujarat-390007
[PAN No. :AUEPP0421C]		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Appellant by :	Shri M. K. Patel, Advocate
Respondent by :	Shri Rakesh Jha, Sr. DR

मुनवाई की तारीख/Date of Hearing:	02.05.2023
घोषणा की तारीख /Date of Pronouncement:	19.05.2023

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This appeal is filed by the assessee as against the ex-parte order dated 05.08.2022 passed by National Faceless Appeal Center (in short "NFAC"), Delhi arising out of the ex-parte assessment order passed under Section 144 of the Income Tax Act, 1961 (hereinafter referred to as the "the Act") relating to the Assessment Year 2017-18.

2. The Registry has noted that the appeal is time barred by four days. The assessee explained that the delay of four days was that she was travelling out of India and there was some miscommunication with her Authorized Representative. Therefore, the delay of four days in filing the appeal be condoned. The Ld. D.R.

appearing for the Revenue has no serious objection, hence the delay of four days in filing the above appeal is hereby condoned and the main case is taken for adjudication.

3. The brief facts of the case is the assessee is an individual and running petrol pump. For the Assessment Year 2017-18 the assessee filed her Return of Income on 24.10.2017 declaring total income of Rs. 6,34,180/-. The Return was selected for scrutiny assessment as there were huge cash deposits during the demonetization period. The assessee was served with notices under Section 143(2) by registered Email Id on various dated on four occasions. However, the assessee failed to reply to the email notices. Therefore, the assessment was completed ex-parte making addition of cash deposits in the bank account of Rs. 1,01,92,495/- as unexplained cash under Section 68 of the Act.

4. Aggrieved against the ex-parte order the assessee filed an appeal before the National Faceless Appeal Center. The assessee in the prescribed Form No. 35 categorically mentioned that whether notices / communication may be sent on email? The assessee marked clearly "NO". However, National Faceless Appeal Center sent hearing notices through email of the assessee for almost 12 times between 31.01.2019 to 07.07.2022 and there was no response from the assessee and National Faceless Appeal Center dismissed the appeal filed by the assessee for non-prosecution.

5. Aggrieved against the same assessee is in appeal before us arising following Grounds of Appeal:

"Appellant is running a business of Petrol Pump. Appellant being disagreed with the order passed by the Hon'ble CIT (A) dt: 05/08/2022. The Hon'ble CIT (A) did not communicate and validly serve the notice of hearing to the appellant despite of the fact that the Appellant has written his valid email id

i.e. kamlpeshpatel192@gmail.com and contact details i.e. 98251 30192 in Form 35. Moreover, against the question “Whether notice/communication may be sent on email?”, appellant has clearly written “NO” on the Income Tax Portal. But no notice or any communication received by the appellant regarding hearing. Therefore, no submission along with supporting documents could be furnished in time.

Also, at the time of regular assessment proceedings u/s 143 (3), no notices served to the appellant by the Ld. AO. This fact was also proved from reading of the Assessment Order itself. This is the core reason for non-compliance at the various stages of assessment proceedings as well as appeal proceedings. Screen shot for the same is attached for your ready reference. No notices were received on the above Email Id or contact number.

Thus, in absence of submission of any of the documents due to non serving of notices in proper hands, appellant could not comply any of the notices and hence Hon’ble CIT (A) has confirmed addition of Rs. 1,01,92,495 being the total cash deposited during the demonetization period.

Both The Ld. AO and Hon’ble CIT (A) has erred in facts in law and against the principal of natural justice. To the extent of above, the order of the Hon’ble CIT (A) in bad in law and prayed to be quashed. Appellant craves leave to add, to alter, to amend and / or to modify any or all the grounds of appeal or to take back the appeal at any stage of appeal.”

6. The Ld. Counsel Mr. M. K. Patel appearing for the assessee submitted before us that all the hearing notices were been sent by email to the assessee, however, in From No. 35 very specifically the assessee stated the notices not to be sent through email. Thus, the assessee was not served with any physical notice of hearing, the assessee could attend the appellate proceedings before National Faceless Appeal Center. In the interest of Principal of Natural Justice the assessee be given one opportunity by setting-aside the ex-parte order passed by the National Faceless Appeal Center.

7. Per contra, Ld. Senior D.R. Shri Rakesh Jha appearing for the Revenue submitted that even the assessment order is an ex-parte order and the assessee has not co-operated with the Department and also not appeared before the appellate authority in spite of various opportunities was given. Therefore, the appeal is liable to be

dismissed and the concurrent findings of the lower authorities does not require any interference.

8. We have given our thoughtful consideration and perused materials available on record. As argued by the assessee counsel the statutory Form No. 35, the assessee has clearly mentioned "not to send" notices and communications by email. However, perusal of the appellate orders clearly shows that the notices were been sent by email and not by physically. As there was no compliance to the email hearing notices the National Faceless Appeal Center dismissed the appeal filed by the assessee. The Ld. D.R. appearing for the Revenue could not establish that physical notices were served to the assessee by National Faceless Appeal Center. Therefore, to meet the ends of justice, we find it fit to set-aside the matter back to the file of the National Faceless Appeal Center and decide the case on merits. Needless to state the assessee should make use of this final opportunity and represent all the necessary documents and details before National Faceless Appeal Center and get adjudicated its appeal. With this observation the appeal filed by the assessee is hereby allowed.

9. In result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the Court on 19.05.2023 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad, dated 19/05/2023
Tanmay, Sr. P.S.

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

TRUE COPY

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)-
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

