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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1024/Ahd/2023
Asstt.Year :2017-18

Jivarajbhai Ramabhai Chaudhary Patel Vas, Village : Hadta, Jadiya Tal. Dhanera Dist: Banaskantha Gujarat. PAN : AZZPP 6148 A	Vs	Income Tax Officer Ward-3 Palanpur.

(Applicant)		**(Responent)**

Assessee by :	Shri Jimi Patel, AR
Revenue by :	Ms.Neeju Gupta, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 27/11/2024**
घोषणा की तारीख /**Date of Pronouncement: 29/11/2024**

आदेश/O R D E R

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi under section 250 of the Income Tax Act, 1961 dated 10.08.2023 pertaining to Asst.Year 2017-18.

2. At the outset, it is noted that the appeal of the assessee has been filed late by 63 days before the Tribunal. To explain the delay, the assessee has filed application for condonation of delay in the form of affidavit sworn in by the assessee, Shri Jivarajbhai Ramabhai Chaudhary. In the application, the assessee submitted that the appellate order received from the NFAC was

forwarded to the Chartered Accountant's office for filing an appeal before the Tribunal. Upon enquiring about the status of the appeal, the assessee learnt that the Chartered Accountant had inadvertently failed to take immediate action. Upon realizing the oversight, the Chartered Accountant filed the present appeal, resulting in a delay of 63 days. The assessee contended that this delay was unintentional and beyond their control, and requested that it be condoned so the appeal could be adjudicated on its merits. The ld.DR raised no objection to the condonation of the delay.

3. Having considered the facts, I find that the assessee has provided a reasonable justification for the 63-day delay in filing the appeal, which was caused by the Chartered Accountant's oversight. As no *mala fide* intention can be attributed to the assessee, and in the interest of fairness and justice, I am inclined to condone the delay. Accordingly, the delay is condoned, and I proceed to dispose of the appeal on its merits.

4. Taking up now the appeal of the assessee for adjudication, the issue arising in the present appeal relates to addition made to the income of the assessee on account of cash found deposited in his bank account to the tune of Rs.14,98,000/- during demonetization period remaining unexplained. None appeared during assessment proceedings therefore the Assessing Officer, passed an *exparte* order under section 144 of the Act making addition on account of cash found deposited in the following bank accounts of the assessee:

i) Dhanera Mercantile Co-op Bank Ltd., Dhanera Branch of Rs.12,31,000/-;

ii) Bank of Baroda, Tharad Branch of Rs.2,67,000/-

5. Before the ld.CIT(A), the assessee contended that he was engaged in agency business in the name and style of "M/s.Babaramdev Sales", involving cash transactions in respect of sale of goods i.e. *namkeen*, biscuits and general house-hold items. The assessee submitted that during the impugned year, he made a cash sale of Rs.1,24,74,758/- and sale proceeds were deposited in his bank account, which included the cash deposits during the demonetization period. The ld.CIT(A) perused the cash book submitted by the assessee, and found that at the beginning of the demonetization period i.e. 9.11.2016, there was and opening cash balance of Rs.7,27,307/-. He accordingly accepted the source of cash deposited during the demonetization period to be attributed to this opening cash balance, as at the beginning of the demonetization period, and directed the deletion of addition to the extent of Rs.7,27,307/-. Thus he confirmed addition of the balance Rs.7,70,693/-. The ld.CIT(A) further noted that the actual cash deposits during the demonetization period was Rs.15,36,000/- while the AO had considered cash deposits of only Rs.14,98,000/-. He, accordingly, added the balance of Rs.3,05,000/- to the income of the assessee and enhanced the assessed income by this extent.

6. Aggrieved by the same, the assessee has come up in appeal before the Tribunal.

7. The assessee has challenged the addition before me by raising the following grounds:

1. *Ld. CIT(A) erred in law and on facts in confirming the action of assessing officer to treat the income tax return filed in response to notice issued u/s 142(1) as invalid in the assessment order passed u/s 144 dated.27.12.2019 after processing and accepting validity of income tax return by intimation dated.05.04.2019.*

2. *Ld. CIT(A) erred in law and on facts in confirming action of assessing officer in framing assessment by invoking provision of Section 144 of the Act, without appreciating facts and law of the case properly.*

3. *Order passed u/s 144 dated.27.12.2019 and consequential demand notice issued u/s 156 dated.27.12.2019 are bad in law for the want of issuance of notice u/s 143(2) of the Act before completion of assessment.*

4. *Ld. CIT(A) erred in law and on facts in confirming addition of Rs.7,27,307/- out of total addition of Rs.14,98,000/- made by the assessing officer u/s 69A of the Act being alleged unexplained money without appreciating facts and law of the case properly.*

5. *Ld. CIT(A) erred in law and on facts in making addition of Rs.3,36,700/- being profit as per profit and loss account submitted by the appellant without appreciating fact that assessee has already filed Income Tax return declaring above profit and paid due amount of taxes.*

6. *Ld. CIT(A) erred in law and on facts in enhancing the assessment by an amount of Rs.3,05,000/-being alleged unexplained cash deposit without appreciating fact and law of the case properly and without issuing notice of enhancement as mandated u/s 251(2) of the Income Tax Act,1961.*

7. *The appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing, if need arise."*

8. The ld.counsel for the assessee pointed out at Bar that the ground nos.1, 2 and 3 raised by the assessee, challenging validity of the assessment order passed under section 144 of the Act, did not arise from the order of the ld.CIT(A), since this ground was never raised before the ld.CIT(A). He, accordingly, was directed to file a revised grounds of appeal in this regard, and accordingly, revised grounds of appeal was filed by him, raising the following legal grounds vide letter dated 25.7.2024 as under:

"1. Ld. Assessing Officer erred in law and on facts to treat the income tax return filed on 05.10.2018 in response to notice issued u/s 142(1) dated. 08.03.2018 as invalid after processing and accepting validity of income tax return by intimation dated.05.04.2019 and further erred in holding that return filed in response to notice issued u/s 142(1) cannot be considered as valid return as the same is filed beyond the time limit prescribed in the notice issued u/s 142(1) of the Act.

2. Ld. Assessing Officer erred in law and on facts in framing assessment by invoking provision of Section 144 of the Act, without appreciating facts and law of the case properly.

The challenge to assessment order being a legal challenge is being taken up before the Hon'ble ITAT on the basis of the well laid down ratio by the Hon'ble Supreme Court in the case National Thermal Power Co Ltd. Vs. CIT - (1978) 229ITR 383 (SC)."

9. The assessee has filed additional grounds also vide letter dated 29.4.2024 as under:

"1. Assessment Order passed u/s 144 dated. 27.12.2019 is bad in law for want of Document Identification Number on the body of the assessment order as per the Circular No. 19 of 2019 and accordingly order passed by the Assessing Officer being contrary to mandate issued by CBDT is nullity.

2. The challenge to assessment order being a legal challenge is being taken up before the Hon'ble ITAT on the basis of the well laid down ratio by the Hon'ble Supreme Court in the case National Thermal Power Co Ltd. Vs. CIT - (1978) 229 ITR 383 (SC)."

10. The additional ground raised by the assessee were stated to be not pressed before me, and therefore, dismissed as not pressed.

11. Ground No.1, to 3 in the original grounds of appeals stand substituted by the revised grounds, now raised by the assessee vide letter dated 25.7.2024, therefore, in effect, in the present appeal the grounds to be dealt with by me are the revised grounds raised by the assessee vide its letter dated 25.7.2024 and grounds of appeal numbered 4 to 6 as reproduced above.

12. Taking up first the legal grounds raised by the assessee in its revised grounds, the assessee in the said ground, has challenged the validly of the order passed by the AO in the present case under section 144 of the Act.

His argument before me was to the effect that, the assessment in the present case had been framed without the AO issuing the jurisdictional notice u/s 143(2) of the Act. That therefore the assessment order passed was not a valid order. He pointed out that the AO had treated the return filed by the assessee as invalid since it was delayed and accordingly therefore had gone on to frame assessment u/s 144 of the Act, doing away with the need to issue notice u/s 143(2) of the Act. Ld.Counsel for the assessee contended that this act of the AO in treating the delayed return filed by the assessee as invalid was not in accordance with law. That there was no provision in law treating delayed return as invalid. That therefore the return filed by the assessee was a valid return and assessment could have been framed only after issuing notice u/s 143(2) of the Act. Our attention was drawn to the afore-narrated facts as under.

13. Ld.counsel for the assessee drew my attention to para 3.1 of the assessment order, wherein he pointed out that the AO noted that the assessee had not filed the return of income within the time stipulated in the notice under section 142(1) of the Act, and therefore, the return, if any filed by the assessee, is treated as invalid return. My attention was drawn to the para 7.1 of his order as under:

> **7.1 The primary onus casts upon the assessee to prove the source of cash/credit deposits in its bank accounts. In this case, the assessee failed to discharge its onus of proving the source of cash deposited in demonetization period.Considering the facts discussed above, an addition of Rs. 14,98,000/- being the amount deposited during the demonetization period is treated as unexplained money within the meaning of section 69A r.w.s. 115BBE of the Income Tax Act and accordingly added to the total income for the year under consideration. A separate penalty proceeding u/s 271AAC of the Act is hereby initiated.Since the assessee has filed Audit report on 01/11/2017 but inot filed the return of income within the time stipulated in the notice u/s. 142(1) of the I.T.Act, the return of income filed by the assessee is treated as invalid return.**

14. The ld.counsel for the assessee, thereafter drew our attention to the facts of the case, pointing out that the notice under section 142(1) of the Act was issued to the assessee, asking to file return of income on 8.3.2018. The assessee filed his return of income on 5.10.2018 i.e. after a lapse of seven months, and this return filed by the assessee was processed under section 143(1) of the Act by the CPC on 5.4.2019. All evidences to the effect were also filed before us. The ld.counsel for the assessee pointed out that the even the AO accepts the fact of the assessee having filed return of income in response to the notice under section 142(1) of the Act, though belatedly.

Having stated so, he pointed out that even as per the law a belated return is not treated as invalid return; that on the contrary, it is accepted as valid return, and this lapse is only met with the levy of interest for late filing of the return. In this regard, he drew our attention to the provisions of section 234A(i) of the Act as under:

> *234A. (1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) 43[or sub-section (8A)] of section 139, or in response to a notice under sub-section (1) of section 142, is*

furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,—

15. Referring to the above, he pointed out that the section 234A recognizes the filing of the belated returns in response to the notice under section 142(1) of the Act and mandates levy of interest thereon, thus, recognizing the belated returns filed as valid. He, therefore, stated that the order of the AO without issuing notice u/s 143(2) of the Act was not in accordance with the law, and needed to be quashed. In this regard he drew my attention to various decisions viz:

i) Janak Kansara Vs. DCIT, (2008) 116 TTJ 415 (Ahd-ITAT);

ii) PCIT Vs. Kamladevi Sharma, ITA No.197/2008 dated 10.07.2018 (Rajasthan)

16. The ld.DR, on other hand, pointed out that the AO had stated that it had issued notice to the assessee prior to treating the return as invalid. And she drew my attention to the same in the paper book filed by the assessee at page no.28 as under:

To, JIVRAJBHAI RAMABHAI CHAUDHARY INDRAPRAT SHOPPING CENTER HANUMAN TRAN RASTA,DHANERA BANASKANTHA 385310,Gujarat	

PAN: **AZZPP6148A**	Assessment Year: **2017-18**	Dated: **21/12/2019**	Letter No : **ITBA/COM/F/17/2019-20/1022825778(1)**

Sir/ Madam/ M/s,

Subject: Return of Income filed by you on 05/10/2018 for A.Y. 2017-18.

1. You may be aware that the proceeding u/s 142(1) of the Act, for the A.Y. 2017-18, was initiated and notice u/s 142(1) of the Act was issued electronically on 08.03.2018 making a request you to file return of income for A.Y. 2017-18 upto 07.04.2018.
2. On verification of the record, it is found that Return of Income for the A.Y. 2017-18 was filed on 05/10/2018 which is not within the time limit allotted u/s 142(1) of the Act. Therefore, the return of income for the A.Y. 2017-18, is hereby treated invalid return as per section 139(9) of the Act.

MURALI MOHANAN NAIR
WARD 3, PALANPUR

17. She pointed out that the AO had treated the return as invalid in terms of section 139(9) of the Act and not for the reason that it was belated return. At this juncture, the ld.DR was asked to enlighten the Bench on the provision of section 139(9), which could lead to a return being treated as invalid. Ongoing through the provisions of section 139(9) of the Act, it transpires that as per the provision of the said section, a defective return, whose defects were not cured, was to be treated as an invalid return, and the defects specified in this regard under section 139(9) did not, by any stretch, include the defect of belated filing of the return, since logically, it is an in-curable defect. Since the case of the ld.DR was that the AO had invoked the provision of section

139(9) for treating the return as invalid, the DR was asked as to what specific reason the assessee's return was treated as defective so as to invoke the provision. To this, the ld.DR had no reply forthcoming. Therefore, the arguments of the ld.DR that the AO had invoked section 139(9) of the Act for treating the return as invalid, needs to be rejected, as having no merit.

18. As for the contention of the ld.counsel for the assessee that the AO could not have treated the belated return filed by the assessee as defective return, I find merit in the same. The ld.counsel for the assessee has clearly brought out the provisions of law, which allow the return to be filed belatedly in response to notice u/s 142(1) of the Act, imposing or attracting only interest on the delay period of filing of the return. Thus, in fact, validating the return filed.

19. In the light of this provision in law of levy of interest on the belated filing of the return, I, therefore agree with the ld.counsel for the assessee that the belated return filed cannot be treated as invalid, since this would render the provisions of section 234A otiose. I draw support from the decision of the ITAT, Ahmedabad Bench in the case of Janak Kansara (supra), wherein the Bench was seized with an identical issue, whether the return filed in block assessment under section 158BC of the Act was belated and treated as invalid by the AO.The ITAT noted the provision under the block assessment scheme *pari-materia* to section 234A of the Act for levy of interest for delay in filing of the return for block assessment under section 158BFA of the Act, and noting so, therefore held that a belated return could not be treated as

an invalid return. The relevant portion of the order at para 5 read as under:

> *"5. We have heard the rival submissions and perused the orders of the lower authorities and the materials available on record. The undisputed facts are that a search and seizure operation under s. 132 of the Act was conducted in the case of the assessee. In pursuance to the same notice under s. 158BC was issued on 31st May, 2000 allowing 45 days time to the assessee to file the block return. No block return was filed within the time allowed under the notice. The return for block period was ultimately filed by the assessee on 10th Nov., 2000. Block assessment was completed by the AO on 30th Jan., 2001. The assessee contended before the CIT(A) that no notice being served on the assessee under s. 143(2) of the Act the order of the block assessment passed by the AO is invalid. The CIT(A) rejected this contention by holding that the return for the block period being filed by the assessee beyond the time-limit allowed under the notice issued under s. 15 SBC the block return was invalid and hence it is a case of non-furnishing of the return where assessment can be made only after issuance of notice under s. 142(1). The assessee on the above facts again contended before us that no notice under s. 143(2) was served upon him before finalization of the impugned order of block assessment. We find that the Revenue has not controverted this contention of the assessee and has brought no material before us to show that any notice under s. 143(2) was in fact served upon the assessee. Thus, in our considered view in the instant case the impugned order of block assessment was passed without issuance of any notice under s. 143(2) of the Act. The other aspect which requires our attention in fact was that whether the return for the block period filed beyond the time allowed under notice is valid or not. We find that the legislature vide provisions of s. 158BFA has envisaged the situation where the assessee can file valid block return beyond the time prescribed in the relevant notice. Sec. 158BFA provides for charging of interest for the period from the date of expiry of the time-limit provided in the notice till the date of furnishing of the return for block period. If it is taken that the return beyond the time prescribed in the notice is invalid or non est then the above enactment under s. 158BFA becomes redundant. It is an established rule of interpretation that one should not interpret a provision in such a manner so as to make what has been enacted in other provisions of the Act as redundant. The legislature does not enact anything in the statute without any meaning or purpose Thus, in our considered opinion a block return which is filed beyond the time-limit prescribed in the notice but before completion of the assessment is a valid return and the same cannot be ignored by the AO. Even in the instant case we find that the AO has duly taken into consideration the block return filed by the assessee. He has duly taken into consideration the income and the other facts disclosed by the assessee in the block return. From the assessment order it is not revealed that the AO has treated the return filed by the assessee as invalid or non est Thus, we find no force in the arguments of the learned Departmental Representative that in the instant case no valid return was filed by the assessee. In the above situation, the issue is squarely covered by the decision of the Hon'ble Gauhati High Court in the case of Smt Bandana Gogoi v. CIT (supra). In the said decision the Hon'ble High Court has held that a return filed for the block period cannot be interfered by the AO without issuance of notice under s. 143(2) of the Act. Hence, respectfully following the same we have no hesitation in cancelling the impugned order of block assessment. We order accordingly. This ground of appeal of the assessee is allowed."*

20. Having noted so that the belated return could not be treated as invalid return, I agree with the ld.counsel for the assessee that the AO had erred in law, therefor in passing the assessment order

in the present case without issuing the jurisdictional notice under section 143(2) of the Act. The Ld.DR does not dispute the proposition of law that where returns are filed, the AO has to issue notice u/s 143(2) of the Act to assume jurisdiction to assess thereafter the income of the assessee. The assessment framed therefore is quashed, and the revised grounds of the assessee are allowed in above terms.

21. Though I have allowed the assessee's appeal on the legal grounds raised holding the assessment order passed as invalid, even on merits of the case, I find that the assessee has a good case.

22. On going through the order of the ld.CIT(A), I find that the assessee had justified the cash deposits in his bank account by furnishing cash book showing all the cash deposits to be attributed to the business of selling sweets and *namkeen*. The cash deposits, with which, the AO was seized of and which he added to the income of the assessee, related to the demonetization period only, and not the whole year. What the ld.CIT(A) has done was that, he accepted a part of the cash book as correct and rejected other part as incorrect without giving any reasons for the same. The ld.CIT(A) has accepted the cash balance, appearing in the cash book on the first day of the demonetization period i.e. 6.11.2016, which in fact means that he has accepted the transactions noted in the cash book from the first day of the impugned financial year, i.e. 1.4.2016, upto 6.11.2016. Thereafter, the transactions relating to the

demonetization period have been rejected by him, that too, for no reason at all.

Therefore, going by the reasons given by the CIT(A) in order, I find no substance or logic, in confirming the addition . The ld.CIT(A) either ought to have accepted the entire cash book or rejected the cash book *in toto*. He could not have partly accepted and partly rejected it, that too, without assigning any reason. Having accepted part of the cash book of the assessee, I therefore, see no reason for rejecting the balance of the cash book, and accordingly, I hold that there is no merit in the order of the ld.CIT(A) confirming the addition of cash deposited in the bank account of the assessee to the extent of Rs. 7,70,693/- and Rs.3,05,000/- by which he had made an enhancement to income of the assessee.

23. Even on merits, I hold that the addition confirmed by the ld.CIT(A) is not sustainable. The grounds raised by the assessee on merits are also allowed.

24. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 29th November, 2024 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 29/11/2024

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