

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER
I.T.A. No.200/Ahd/2014:Assessment Year: 2013-14**

Shri Nalin Manubhai Patel, 102, Amarswapna Apartment -2, Near Gokuldharm Dairy, Adarsh Society , Athwalines Surat PAN: AHWPP 5550 H	Vs.	Income Tax Officer, Ward- 3(3)Surat
Appellant		Respondent

Assessee by	Shri Mehul R. Shah, CA
Revenue by	Shri Prasoon Kabra, Sr. D.R.
Date of hearing	26.02.2019
Date of pronouncement	27.02.2019

ORDER

PER O. P. MEENA, AM

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-IV, Surat (in short “the CIT (A)”) dated 04.10.2013 pertaining to Assessment Year 2008-09, which in turn has arisen from the assessment order passed under section 143 (3) dtd. 20.12.2013 of Income Tax Act, 1961 (in short ‘the Act’) by the Income Tax Officer, Ward-3(3), Surat (in short “the AO”).
2. Ground No. 1 relates to sustaining addition of Rs. 28,01,635 in respect of entire deposits made in bank account by treating same as undisclosed income of the assessee.
3. Briefly, stated the facts of the case are that the AIR information revealed that the assessee has made cash deposits of Rs.10,64,000 in his bank account maintained with ICICI Bank. The verification revealed that total credits in bank account were at Rs.28,01,635 including cash deposits of Rs. 10,64,000. Since

the assessee was not able to explain the source and no reply was furnished the AO treated the entire credits of bank account as unaccounted income of the assessee.

4. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). During the course of assessment proceedings, it was explained that the entire addition cannot be made and at most peak addition can be made. However, the CIT (A) observed that the additional evidence submitted by the assessee were forwarded to the AO but the assessee has not appeared before the AO. As the appellant has not cooperated with the AO in providing relevant documentary evidence hence, no benefit of additional evidence can be given to the assessee. In view of this matter, the CIT (A) confirmed the addition made by the AO.

5. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the assessee has met with serious accident during the year under consideration and for which under gone a brain surgery (PB-21 to 28). Therefore, the assessee could not make compliance in remand report proceedings before the AO. Due to accident, the bank account was operated by his close friend Kalubhai Arjanbhai Zalavadia. However, the said friend also committed suicide, hence, the assessee was not aware of his affairs. Therefore, additional evidence submitted during the appellate proceedings could not be complied with. The learned counsel for the assessee therefore, requested that one more opportunity of being heard be provided to the assessee before the AO so that the additional evidence submitted during the appellate proceedings could be explained properly with necessary evidence.

6. *Au contraire*, the ld. Sr. D.R. supported the orders of lower authorities.

7. We have heard the rival submissions and perused the relevant material on record. We find that that the assessee has met with serious accident during the year under consideration and for which under gone a brain surgery (evidences are placed at PB-21 to 28). Therefore, the assessee could not make compliance during remand report proceedings before the AO. It is also claimed that due to accident of the assessee, the bank account was operated by his close friend Kalubhai Arjanbhai Zalavadia. However, the said friend also committed suicide, hence, the assessee was not aware of his affairs. Therefore, additional evidence submitted during the appellate proceedings could not be complied with. We find that that there was reasonable cause for non compliance. In view of these facts and circumstances, we are of the considered opinion the assessee deserve one more opportunity of being heard. We find that it is pre-decision hearing standard of norm of rule of *audi alteram partem*. We find that in this instant case, the assessee has not availed proper hearing. Therefore, we are of the considered view that the assessee must be given one more opportunity of hearing and to represent his case in the interest of justice. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this grounds of appeal to the file of the AO for reconsideration of this ground and additional evidence and other evidences as may be submitted by the assessee by the assessee after allowing proper opportunity of being heard in accordance with law. Nevertheless, to mention that the assessee will cooperate in the assessment proceedings and his failure will entail impugned addition made by the AO. The assessee will file

necessary evidences on which he wants to rely upon. This ground of appeal is accordingly, restored to the file of the AO for re-examination.

8. Ground No. 2 relates to confirmation of ad-hoc disallowance of Rs. 19,846 @ 1/5th of various expenses. This ground of appeal has not been pressed before us by the learned counsel for the assessee, hence, this ground is treated as dismissed as not pressed.

9. In the result, the appeal of the assessee is partly set-aside for statistical purposes.

10. The order pronounced in the open Court on 27.02.2019

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

**Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER**

Surat: Dated: 27th February, 2019/opm
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat