आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND SHRI ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Court Virtual Hearing)

आ.अ.सं./I.T.A No.46/SRT/2020

निर्धारण वर्ष/Assessment Year: 2014-15

Shri Janakbhai Bhagubhai Patel, Flat No.201, Sai Krupa Complex, Khergam Road, Gundlav, Valsad District. – 396 035. **[PAN: BNNPP 4441 F]**	V s .	The Income Tax Officer, Ward-2, Valsad.
अपीलार्थी / Appellant		**प्रत्यर्थी/Respondent**

निर्धारितीकीओरसे **/Assessee by**	Shri Rajesh M.Upadhyay - AR
राजस्वकीओरसे **/Revenue by**	Ms. Anupama Singla – Sr.DR

सुनवाईकीतारीख/ Date of hearing:	03.11.2020
उद्घोषणाकीतारीख/Pronouncement on:	03.11.2020

आदेश /O R D E R

PER PAWAN SINGH, JM:

1. This appeal by the Assessee is directed against the order of Ld.Commissioner of Income Tax(Appeals), Valsad dated 17.12.2019 for the assessment year 2014-15.

2. The assessee has raised following grounds of appeal.

"1. Ld. CIT[A], has erred in law and on facts to dismiss appellant's appeal on the ground that the appellant is not interested in perusing the appeal and thereby confirmed A.O.'s additions without going in to the merits of the case.

2. Ld. CIT[A] has erred in law and on facts to confirm additions of Rs.4,15,815/- made by the A.O. being highest negative balance ignoring the fact that there is no negative cash balance as per the cash book of the appellant.

3. Ld. CIT[A] has erred in law and on facts to confirm A.O.'s addition of Rs.71,726/- on irrelevant and non judicial ground."

3. Brief facts of the case are that the assessee is an individual, engaged in the business of construction work and partner in firm. The assessee filed his Return of Income for A.Y. 2014-15 on 28.03.2015 declaring total income at Rs.5,41,289/-. The case selected for scrutiny. The Ld.Assessing Officer(AO) passed the assessment order u/s.143(3) on 27.10.2016. The AO while passing the assessment order besides the other additions/disallowance, made addition of Rs.4,15,815/- on account of minus cash balance. On appeal before the Ld.CIT(A) the action of AO was confirmed. The Ld.CIT(A) passed the ex-parte order by taking view that the notices were served upon the assessee on the address mentioned in the Form 35 as well as on Email address mentioned therein. It was further held by Ld.CIT(A) that neither the assessee attended the hearing nor made any compliance. The Ld.CIT(A) also held that assessee has nothing to defend the addition made by the AO. Further aggrieved, the assessee has filed present appeal before this Tribunal.

4. We have heard the submission of learned Authorised Representative (AR) for the assessee and learned Departmental Representative (DR) for the Revenue and perused the material available on record. The Ld.AR of the assessee submits that assessee appointed M/s.Hitesh Patel and Associates to represent assessee before the First Appellate Authority. The person appointed by the assessee to represent him, neither attended the proceedings, nor intimated him about the notices received by him. In

absence of proper notice the assessee could not represent as he was on the impression that his representative would take care of the appeal. The assessee came to know about the non-attendance, non-compliance on behalf of the assessee when impugned order was received. The Ld.AR submits that the assessee has a good case on merit and is likely to succeed, if assessee is given opportunity to represent his case on merit. The Ld.AR further submits that he undertake on behalf of the assessee that assessee would be vigilant in future in making compliance to the notice of Ld.First Appellate Authority. The AR prayed for one more opportunity of hearing at the end of Ld.First Appellate Authority.

5. On the other hand, the Ld.DR for the Revenue supported the order of Ld.CIT(A). The Ld.DR further submits that assessee was given an ample opportunity as recorded by the Ld.CIT(A) in para 3.3 of the order. The assessee neither responded, nor representative of the assessee attended the proceedings, thus, the Ld.CIT(A) has no option except to pass the order.

6. We have considered the rival submission of parties and perused the material available on record carefully. We have noted that this appeal was filed on 26.02.2020 before this Tribunal. The assessee vide his application dated 24.02.2020 prayed for out of turn hearing of the appeal as the Ld.CIT(A) decided the appeal of assessee in ex-parte order and without deciding the case on merit. The application of assessee for out of turn hearing was taken up for hearing on 25.09.2020 and his request was accepted for allowing out of turn hearing. Thus, the appeal was fixed for

hearing on 03.11.2020. The perusal of order of Ld.CIT(A) reveals that notice for hearing of appeal was allegedly issued on 20.03.2018, 13.04.2018 and 20.08.2018 on the address mentioned on Form 35 and on the Email address mentioned therein. The Ld.CIT(A) recorded that in response to the said notices, neither the assessee attended nor furnished any reply. The Ld.CIT(A) concluded that the assessee has nothing to defend against the addition. The Ld.CIT(A) affirmed the action of the AO by holding that he had no reason to differ with the finding of AO.

7. Before us, the AR of the assessee vehemently submitted that the representative appointed by him, neither attended hearing nor intimated. The perusal of Form 35 reveals that it contained the Email address of hiteshpatel.associates@gmail.com, which appears to be Email address of Counsel of assessee. Considering the fact that the assessee appointed Counsel who did not attended the hearing before the Ld.CIT(A) and Ld.CIT(A) instead of considering the case on merit, affirmed the action of AO in four words order "**No reason to differ**". In our view, the order of Ld.CIT(A) is not as per the mandate of section 250(6) of the Income Tax Act. Section 250(6) mandate that order of Ld.CIT(A) must contain point of determination, decision thereon and the reasons for the decision.

8. Further considering the fact that assessee appointed Counsel who did not represent the case before the Ld.CIT(A) instead of going into deep controversy. We are of the view that order is passed by the Ld.CIT(A) without affording opportunity to the assessee. Therefore, we deem it appropriate to restore case to the file of the Ld.CIT(A) to decide the issue

afresh on merit by way of speaking order. Needless to order that before passing the order, the Ld.CIT(A) shall grant opportunity of hearing to the assessee. The assessee is also directed to be more vigilant in making compliance to the direction of Ld.CIT(A) and to provide all necessary details, evidences and information to substantiate his contentions, accordingly, appeal of the assessee is allowed for statistical purpose.

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

10. Order pronounced in the open court on 03-11-2020.

Sd/-	**Sd/-**
(ARJUN LAL SAINI)	**(PAWAN SINGH)**
(लेखा सदस्य/ACCOUNTANT MEMBER)	**(न्यायिक सदस्य /JUDICIAL MEMBER)**

सुरत/ **Surat,** दिनांक **Dated:** 3rd Nov, 2020/*S.Gangadhara Rao, Sr.PS*
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat