

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ,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

आ.अ.सं./I.T.A No.891/AHD/2016

निर्धारणवर्ष/Assessment Year: 2006-07

Shree Swaminarayan Seva Trust, C/o Swaminarayan Gurukual, Chala, Vapi [PAN: AAETS 7913 C]		The Income Tax Officer, Ward-2, Aayakar Bhawan, Tithal Road, Valsad – 396001.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Sh. Rasesh Shah AR
राजस्वकीओरसे /Revenue by	Sh. S.T. Bidari CIT-DR

सुनवाई की तारीख/ Date of hearing:	04.11.2020
उद्घोषणा की तारीख/Pronouncement on:	25.11.2020

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of learned Commissioner (Appeals) Valsad, dated 21st January 2016, which in turn arises from assessment order passed under section 143(3) read with section 147 dated 5th March 2014 for assessment year 2006- 07.
2. Brief facts of the case are that assessee to trust, registered with the charity commissioner, Valsad. The assessee filed its return of income for assessment year 2006-07 on 8th September 2006 declaring income of ₹

92,140 /-. In the computation of income the assessee claimed exemption under section 11 of ₹ 10,394/-. The return was processed under section 143 (1) accepting the return income. Subsequently, the case was reopened under section 147 after recording the reasons and seeking necessary approval from the competent authority. Notice under section 148 was served on the assessee on 23rd March 2013. The case was reopened on the basis of information that one of the trustee of the assessee had deposited cash amount of Rs. 14,98,170/- in the saving bank account No. 29041010007852 with Bank of India, Vapi branch. The assessing officer after serving a statutory notice under section 142(1) and 143(2) proceeded for reassessment. During the course of re-assessment proceeding, the assessee was asked to explain the activities carried by the assessee from its inception and the details of various bank accounts maintained by the assessee. The assessee furnished required details. The assessing officer was also on receipt of information that assessee has another account with Bank of India, Vapi, wherein the assessee had deposited Rs. 1.16 Crore during the year, and this account has also not disclosed in the income tax return. The assessing officer after going through the bank statement of Bank of India, Vapi, raised the query as to why the bank account number 7852 has not been shown in the list of accounts. The assessing officer after considering

the explanation of the assessee made addition under section 68 of ₹ 1.16 Crore and of ₹ 58,093/- in the assessment order passed under section 143(3) read with section 147. On appeal before learned Commissioner (Appeals) the action of assessing officer was upheld. The learned Commissioner (Appeals) while upholding the additions held that no verbal or written submissions were furnished by the assessee. Further aggrieved by the order of learned Commissioner (Appeals), the assessee has filed present appeal before this Tribunal. The assessee has raised following grounds of appeal;

- (1) On the facts and in the circumstances of the case as well as law on the subject they learned Commissioner (Appeals) erred in passing ex-parte, nonspeaking order.*
- (2) On the facts and in the circumstances of the case as well as law on the subject the learned Commissioner (Appeals) erred in not adjudicating additional ground challenging the notice under section 148 of the Act.*
- (3) On the facts and in the circumstances of the case as well as on the subject learned Commissioner (Appeals) erred in confirming disallowance of claim of exemption made by appellant under section 11 of the income tax Act, addition of such deposit of ₹ 1,16,02,088/- and Rs. 58093/- as concealed income.*
- (4) It is prayed that the above additions made by assessing officer and confirmed by Commissioner (Appeals) may please be deleted.*

3. We have heard the submission of learned authorized representative (AR) of the assessee and the learned department representative (DR) for revenue and have gone through the orders of lower authorities carefully. At the outset of hearing the learned AR of the assessee submits that the learned

Commissioner (Appeals) passed ex-parte order against the assessee. The order was passed without giving reasonable and fair opportunity to the assessee. The learned Commissioner (Appeals) upheld the action of assessing officer by taking view that no verbal or written submission were made by the assessee on various grounds of appeal. The learned AR for assessee further submitted that during first appellate stage, the assessee filed additional ground of appeal, challenging the validity of reopening vide application dated 7th May 2014, copy of which is placed on record. The learned Commissioner (Appeals) neither considered the additional ground of appeal nor referred the same while passing the impugned order. The learned AR for assessee submits that assessee has good case on merit and reopening under section 147/148 is not valid. On merit, the learned AR for the assessee submits that the bank account wherein amount of ₹ 1.16 Crore is stated to be deposited does not belong to the assessee. Similarly the other addition of ₹ 58,093/- is also not sustainable. The learned AR for the assessee finally submits that since the learned (Appeals) passed the order ex-parte without affording reasonable opportunity and without adjudicating the additional ground of appeal, therefore, appeal may be restored to the file of learned (Appeals) for adjudication of additional ground of appeal as well as the primary grounds of appeal afresh.

4. On the other hand the learned senior DR for the revenue supported the order of learned (Appeals). The learned DR for the revenue further submitted that despite availing opportunity, the assessee neither made verbal nor furnished any written submission to substantiate various ground of appeal. Therefore, the learned Commissioner (Appeals) passed the order on the basis of material available on record. On the issue of non-adjudication of additional ground of appeal the learned senior DR for the revenue submits that this Bench may take appropriate call in accordance with law.
5. We have considered the rival contention of the parties and have gone through the orders of lower authorities. We have noted that before learned Commissioner (Appeals), the assessee filed appeal on 12th May 2014. The learned Commissioner (Appeals) passed the impugned order on 21st January 2016. In the impugned order, in Para 1 & 2 the learned Commissioner (Appeals) has referred the status of assessing officer, institution of appeal and the grounds of appeal raised by assessee. In Para 3 attendance of the learned AR of the assessee is recorded. In Para 4 the entire assessment order is extracted in verbatim. In Para 5 the learned Commissioner appeal (Appeals) recorded “No verbal or written submission were made/filed”. In Para 6 of the impugned order the learned Commissioner (Appeals) upheld the addition made by assessing officer by taking view that he has no

alternative except to accept the findings given by assessing officer on both the additions. Before us, the learned AR of the assessee vehemently submitted that the learned Commissioner (Appeals) passed the impugned order in *ex parte* proceeding. It was also vehemently submitted that the assessee raised additional ground of appeal before learned Commissioner (Appeals), the learned Commissioner (Appeals), while passing the impugned order neither considered the additional ground of appeal nor made any reference in the impugned order about raising such additional ground of appeal. We have noted that in the application for additional ground of appeal was duly acknowledged by the officer of learned Commissioner (Appeals), the assessee referred the reasons recorded by assessing officer. The assessee specifically pleaded that bank account, wherein the deposit of ₹ 1.16 Crore stated to be deposited does not belong to assessee. The learned Commissioner (Appeals) neither considered those facts not give any finding while passing the impugned order. Considering the submission of learned AR of the assessee and the contents of the impugned order passed by learned Commissioner (Appeals), we are of the view that the order is passed without affording fair and reasonable possibility to the assessee. Therefore, we deem it appropriate to restore all the grounds of appeal to the file of learned Commissioner (Appeals) to

decide all the issue *de novo* including the additional ground of appeal raised by assessee. The assessee is also directed to provide all necessary evidence and information to the office of learned Commissioner (Appeals) without any further delay. The assessee is also directed to file a written submission to avoid the objection that no verbal or written submissions were made. Needless to order that before passing the order the learned Commissioner (Appeals) shall grant reasonable and fair proportionately to the assessee before passing the order in accordance with law. In the result all the grounds of appeal raised by assessee are allowed for statistical purpose.

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

Order pronounced on 25-11-2020 as per Rule 34 of Income Tax (Appellate Tribunal) Rules.

Sd/-
(ARJUN LAL SAINI)
(लेखा सदस्य/ACCOUNTANT MEMBER)

Sd/-
(PAWAN SINGH)
(न्यायिक सदस्य/JUDICIAL MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 25th 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** / /

sAssistant Registrar, Surat