

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.87/SRT/2018 (AY 2013-14)
(Hearing in Virtual Court)

Shri Sanjit Jitendranath Biswas, 49-76, Behind Bhagyoday Hotel, Balda-Pardi, Valsad – 396 125. PAN : AFRPB 3882 K	Vs.	The Income Tax Officer, Ward-8, Vapi.
Applicant		Respondent

Assessee by	Shri Rajesh M.Upadhyay – AR
Revenue by	Ms. Anupama Singla – Sr.DR
Date of hearing	25.05.2021
Date of pronouncement	25.05.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the orders of Id. Commissioner of Income tax (Appeals), Valsad dated 05.12.2017 for the assessment year (AY) 2013-14. The assessee raised the following grounds of appeal:

“[1] *Lr. CIT[A], Valsad has erred in law and on facts to dismiss appellant’s appeal without going into the merits of his case and without deciding any of the grounds raised by the appellant in his appeal by presuming that the appellant is not interested in perusing his appeal.*

[2] *Lr. CIT[A], Valsad has erred in law and on facts to confirm A.O.’s addition of Rs.21,57,808/- for estimated business profit by rejecting books of accounts, Rs.6,11,231/- on account of alleged undisclosed contract receipts and Rs.51,410/- being interest expenses u/s 40[a][ia] without discussing merits of each issue and there by dismissed the respective ground raised by the appellant in his appeal.”*

2. Brief facts of the case are that assessee is engaged in the business of Labour Contractor. The assessee filed his Return of Income for the assessment year (AY) 2013-14 on 29.09.2013 declaring total income at Rs.12,51,840/-

. The case was selected for scrutiny. The assessment was completed under section 143(3) on 15.03.2016. The assessing officer during the course of assessment proceedings, the assessee was asked to produce books of accounts along with Bills/vouchers, registers for verification on a number of times. The assessing officer recorded that the assessee failed to produce the copies of the bills/vouchers, registers for verification. The assessing officer rejected the books of the by invoking section 145(3) of the Act and estimated profit @ of 8% of total gross receipts contract receipt /sale of Rs.2,69,72,596/-. The assessing officer worked out profit @ 8% of the total receipt that is Rs.21,57,808/-. The Assessing Officer(AO) also made addition of Rs. 6,11,231/- on account of difference in contract receipt from Rohan Builders by taking view that the assessee has shown receipt of Rs. 754,031/- ,however, on verification of transaction details total receipt was of Rs. 14,59,660/- thus, the assessing officer added the difference of Rs. 611,231/-. The assessing officer also disallowed interest expenses of Rs.51,410/-.On appeal before the ld.CIT(A), the action of AO was upheld. Further aggrieved, the assessee has filed present appeal before this Tribunal.

3. We have heard the submission of Ld. Authorised Representative (AR) of the assessee and ld. Senior Departmental Representative (Sr. DR) for the Revenue. The ld AR for the assessee submits that the ld .CIT(A) passed the order *ex-parte*, without providing fair and proper opportunity to the assessee. The ld. AR for the assessee submits that he has good case on merit and is likely to submit and as his case is covered by various decisions

referred in the statement of facts filed before the ld.CIT(A). The ld. CIT(A) passed the order ex-party and without serving notice on the assessee. At the time of hearing, we find that ld. CIT(A) in his order recorded that the assessee did not make any compliance to show cause notice issued to the assessee as recorded in page 4 of para 3 of the impugned order. The ld.AR for the assessee prayed that the assessee may be given one more opportunity to represent his case before the ld.CIT(A). The ld.AR further submits that the ld.CIT(A) passed the *ex-parte* order without discussing the merits of the case. The ld.AR for the assessee again retreated that no opportunity of hearing was given to the assessee. The assessee has good case on merit and is likely to succeed if he is given opportunity. The ld AR for the assessee undertook to be vigilant in attending the hearing before first appellate authority.

4. On the other hand, the Sr.DR for the Revenue submits that the assessee was given ample opportunity as recorded in page 4 of para 3 of the order passed by the ld.CIT(A). The assessee failed to comply with the notice issued by the ld.CIT(A). The ld.CIT(A) left with no option, except to proceed to decide the issue and in absence of any evidence or explanation affirm the action of AO. In alternative submission, the ld.Sr.DR for the Revenue submits that in case the Hon'ble Tribunal is deem appropriate, the assessee be directed to be vigilant and not to default in attending the proceedings and to waste the time of public authorities/ld.CIT(A).
5. We have considered the rival submission of both the parties and have gone through the orders of Lower Authorities. We find that the assessing officer

while passing the assessment order made various addition. The Id.CIT(A) confirmed the action of AO by taking view that there is non-compliance on the part of the assessee. Before, us the Id. AR for the assessee undertook to be vigilant and to appeal before the Id. CIT(A). We, instead of going into controversy, whether the assessee defaulted in attending the proceedings before the Id.CIT(A). We find that the order of the Id.CIT(A) is not in accordance with mandate of section 250(6) of the Income Tax Act. Section 250(6) of the Act mandates that the Ld. CIT(A) while deciding the appeal is required to pass order on points of determination (grounds of appeals), decision therein on and reasons for such decision. Therefore, considering the facts and circumstances of the case, the appeal of the assessee is restored back to the file of the Id.CIT(A) to decide all the grounds of appeal on merit in accordance with law. The assessee is directed to appear before the Id.CIT(A) as and when the date of hearing is fixed and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

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

Order announced on 25th May 2021 at the time of hearing in virtual court hearing.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 25/05/2021 / SGR

Copy to:

1. Appellant
2. Respondent

3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

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Assistant Registrar, ITAT, Surat