

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.563/SRT/2018 (AY 2014-15)
(Hearing in Virtual Court)

Om Sai Stone Ltd., 6/2060/2061-A, Off No. 107, Vedant Building, Bhojabhai Ni Sheri, Mahidharpura, Surat-395003 PAN : AAFCS 2403 R	Vs.	The Income Tax Officer, Ward-2(1)(4), Aayakar Bhavan, Majura Gate, Surat.
Applicant		Respondent

Assessee by	Mr.P.M. Jagasheth, CA
Revenue by	Mr. Ritesh Mishra, CIT-DR
Date of hearing	02/07/2021
Date of pronouncement	02/07/2021

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)-2, Surat dated 28.05.2018 for the assessment year (AY) 2014-15. The grounds of appeal raised by the assessee are summarized as under:

- 1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.39,91,167/- on account of estimation of N.P.*
- 2. On the facts and in the circumstances of the case as well as law on the subject, the assessing officer has erred in making addition of Rs.4,85,90,521/- on account of alleged difference in trade receivables shown of Rs.24,54,78,269/- and Sales shown at Rs. 19,68,87,7487- treated as alleged unexplained income.*
- 3. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has not provided the ample opportunities to hear the case, hence the case may please be allowed and restore back to the CIT(A), Surat.*

4. *It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.*
 5. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."*
2. Brief facts of the case are that the assessment for the year under consideration was completed on 26/02/2016 under section 143(3). The assessing officer while passing the assessment order made estimated addition of Rs. 39,91,167/- being 1% of estimated income of total entries of sales and purchases of Rs. 39,91,16,713-. The assessing officer also made addition of Rs. 4,85,90,521/- on account of unaccounted sales. On appeal before Id.CIT(A) the action of the assessing officer was affirmed. The Id CIT(A) confirmed the order of assessing officer in ex-party order by holding that despite granting three opportunity of hearing, the assessee failed to comply the notices. Further aggrieved, the assessee has filed present appeal before this Tribunal.
3. We have heard the learned authorised representative (AR) for the assessee and the learned Commissioner of Income tax- departmental representative (CIT- DR) for the revenue. The Id AR for the assessee submits that the notices issued from the office of Id CIT(A) was not received by the assessee. The assessee has good case on merit and is likely to succeed if the assessee is heard on merit. The learned AR for the assessee undertake on behalf of the assessee to be more vigilant in future and the assessee will furnish his email address as well as telephone number for communication of the hearing

before ld. CIT(A). In alternative submission the ld. AR for the assessee submits that the order passed by ld CIT(A) is not on merit of the case.

4. The ld. Sr. DR for the Revenue submits that the assessee was given three opportunity as recorded in page 5.1.1 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. The assessee has not shown any sufficient cause for not appearing before the first appellate authorities. Even the assessment order was passed under section 144 of the Act. The assessee is habitual in not attending the hearing before the tax authorities. The assessee is not entitled for any leniency for seeking discretionary relief at this stage. In alternative submission, the ld. CIT-DR for the Revenue submits that in case the Hon'ble Tribunal is deem appropriate to grant any further opportunity to the assessee, the assessee be directed to be vigilant in future and not to make default in attending the proceedings and to waste the time of public authorities/ld.CIT(A).
5. We have considered the rival submission of ld. Representatives of the parties and have gone through the orders of Lower Authorities. We find that the ld. CIT(A) fixed the hearing on various occasions as mentioned in para 5.1.1 of the impugned order. It is recorded by ld. CIT(A) that no compliance was made by the assessee. However, find that the ldCIT(A) has not recorded his satisfaction that the notice sent through speed post was duly served on the

assessee or not. We are conscious of the fact that even before assessing officer, the assessee remained absent and the assessing officer has passed the assessment order under section 144 of the Act. We instead of going into controversy, whether the assessee defaulted in attending the proceedings despite service of notice or not, before the ld.CIT(A). We find that the order of the ld.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 ld.CIT(A) to decide all the grounds of appeal on merit in accordance with law. Needless to order that before passing the order the ld. CIT(A) shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the ld.CIT(A) as and when the date of hearing and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. The assessee is further directed to provide his e-mail address and telephone number to make communication and services of notices to them or their representative. The assessee is also shall file his latest address and e-mail address and his telephone number or of his representative, within fifteen days of receipt of this notice in the office

of assessing officer as well as before jurisdictional CIT(A). 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. No order as to cost.

Order announced on 2nd July 2021 at the time of hearing in virtual court hearing.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 02/07/2021 *Self*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

Assistant Registrar, ITAT, Surat