

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No.642/SRT/2018 (AY 2014-15)  
(Hearing in Virtual Court)

Shri Hareshbhai L. Rukadia, B-203, Sagar Sartia Apt. Rang Darshan Krupa Society, Katargam, Surat. PAN: AGSPR 2529 K	Vs.	Income Tax Officer Ward- 3(2)(3), Aayakar Bhavan, Majura Gate, Surat.
Applicant		Respondent

Assessee by	Ms. Chetali Shah, AR
Revenue by	Ms. Anupama Singla, Sr-DR
Date of hearing	08/07/2021
Date of pronouncement	08/07/2021

**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)-3, Surat dated 12.07.2018, which in turn arises from the assessment order dated 23.12.2016 passed under section 143(3) of the Income Tax Act, 1961 for the assessment year (AY) 2014-15.
2. Brief facts of the case are that the assessment for the year under consideration was completed on 23.12.2016 under section 143(3) r.w.s. 147. The assessing officer while passing the assessment order made addition under section 68 of Rs.95,00,000/-. By treating the gift as unexplained cash credit. 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-parte* order by taking view that despite granting several opportunity the assessee failed to comply the notices. Further aggrieved, the assessee has filed present appeal before this Tribunal.

3. We have heard the submissions of learned authorised representative (AR) for the assessee and the learned senior departmental representative (Sr DR) for the revenue. The ld AR for the assessee submits that during the relevant period when the hearing was taken up before Ld. CIT(A), the assessee was having serious health issues. The assessee was facing depression and on one occasion tried to commit suicide. Due to serious health problems, the assessee could not attend the hearing nor intimated to his authorized representative to attend the hearing before Ld. CIT(A). The Ld. A.R. for the assessee submits that the assessee has good case on merit and will certainly succeed, provided the assessee is given opportunity of hearing on merit. The ld AR for the assessee prayed to restore the appeal to the files of learned CIT(A), with the direction to provide one more opportunity to the assessee and she undertake on behalf of the assessee to be more vigilant in future. 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 and non-speaking order. The order passed by ld CIT(A) is liable to be set aside on this ground alone.

4. On the other hand the ld. Sr. DR for the Revenue submits that the assessee was given ample opportunity as recorded in 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 assessee has never informed about his ill health. 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 learned Sr DR for the revenue prayed for dismissal of the appeal. On the alternative submission In alternative submission, the ld. Sr. DR for the Revenue submits that in case the Hon'ble bench deems it appropriate to restore the grounds of appeal to the file of ld. CIT(A), the assessee be directed to be vigilant and not to default in future in attending the proceedings and to waste the time of public authorities/ld. CIT(A). The assessee should not take the proceeding before the first appellate authority in casual manner.
5. We have considered the rival submission of ld. AR for the assessee and the DR for the revenue and have gone through the orders of lower authorities. We find that the ld. CIT(A) fixed the hearing on three occasions as mentioned in para 3 of the impugned order. Before us the learned AR for the assessee submitted that the assessee was facing depression and was unable to attend the hearing and even could not inform his representative.

Considering the peculiar facts of the case, we are of the view that the assessee deserve one more hearing at the stage of first appellate stage. We further find one more reason to restore the case to the file of Id CIT(A), as the Ld. CIT(A) instead of considering the merit of the case dismissed the appeal in non-speaking order. Accordingly the grounds of appeal raised by the assessee are restored to the file of learned CIT(A) to decide all the grounds of appeal afresh. We have further noted order passed by 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 that is grounds of appeals, decision therein on and reasons for such decision. 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 to make communication with him or his representative. The assessee shall file his latest address and e-mail address or e-mail address of his representative, on receipt of this order 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. Order announced on 08<sup>th</sup> July 2021 at the time of hearing in virtual court hearing.

Sd/-

**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 08/07/2021  
Rahul Sharma Sr. P.S. (on tour)

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