

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 413/SRT/2018 (AY 2007-08)  
(Hearing in Virtual Court)

Shri Natwarbhai D Patel C/o Pranav Hemendra Patel, 401, Dharma Bhakti Enclave, Plot No.7, Chanakya Park Society, b/h Sub-Registrar Office, Akota, Badodara-390020 PAN : AGOPP 3016 H	Vs	Income Tax Officer Ward-5, Baruch,
Assessee / appellant		Revenue /respondent

Assessee by	ShriHemant Suthar, C.A
Revenue by	Ms. Anupama Singla – Sr-DR
Date of hearing	26.07.2021
Date of pronouncement	26.07.2021

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of ld. Commissioner of Income tax (Appeals)-2, Vadodara dated 21.11.2017, which in turn arises from penalty levied u/s 271(1)(c) of the Act vide order dated 22.06.2010 for assessment year (AY) 2007-08. The assessee has raised the following grounds of appeal:-

*“1. The Ld. CIT(A)-2, has erred in law in not providing sufficient opportunity of being heard to the appellant even after considering the fact that the case of the appellant on quantum proceedings has been pending before Hon'ble income Tax Appellate Tribunal of Ahmedabad.*

2. *The Ld. Ciota-2, Baroda has erred in law and in facts in confirming the levy of penalty u/s 271(1)(c) of Rs.8,15,200/- disregarding the facts of the case and provisions of law. The penalty of Rs.8,15,200/- deserves to be cancelled.*”

2. At the outset of hearing the Ld. Authorized Representative (AR) of the assessee submits that against the additions in the quantum assessment, the assessee filed appeal before Tribunal vide ITA No.643/SRT/2016. The Tribunal vide order dated 13.03.2018 has restored all the additions to the file of Ld. CIT(A) for adjudicating all the Grounds of appeal afresh. The Ld. AR for the assessee submits that this appeal may also be restored to the file of Ld. CIT(A) for adjudication after decision in quantum assessment. It was submitted that the Ld. CIT(A) passed the order in ex-parte proceedings without considering the merits of the various grounds of appeal.
3. On the other hand, Ld. Sr. Departmental Representative (DR) for the Revenue submits that Ld. Commissioner of income-tax (Appeals) (CIT(A) for short) was passed the *ex parte* order. The assessee was given as many as seventeen opportunities by Ld. CIT(A) as recorded in para-3 of impugned order. The assessee failed to attend the proceedings, therefore, the Ld. CIT(A) has no option accept to proceed with the matter.
4. In rejoinder submission, the Ld. AR of the assessee submits that he undertake on behalf of assessee to be more vigilant while attending the hearing before

Ld. CIT and he assure the Bench that the assessee will make proper compliance notice issued by Ld. CIT.

5. We have considered the submission of both the parties. We find that in the present matter the assessment, was completed under section 144 vide assessment order dated 22.12.2009. The Assessing Officer while passing the assessment order made various additions including addition under section 68 of the Act of Rs.24,45,606/-. The assessing officer levied penalty under section 271(1)(c), at the rate of 100% on tax sought to be avoid (*on the addition u/s 68 of Rs.24,45,606/-*). On appeal, Ld. Commissioner of Income-tax (Appeals) the penalty was confirmed in *ex parte* order. We have noted that in quantum assessment, the additions were upheld by Ld. CIT(A) in *ex parte* order. The assessee filed appeal before Tribunal in quantum assessment, vide ITA No.643/SRT/2016, wherein the present appeal was restored back to the file of Ld. CIT(A) for *de novo* consideration after affording opportunity of hearing. Considering the facts and circumstances, we deem it appropriate to restore the appeal to the file of Ld. CIT(A) for adjudication afresh.
6. We find one more reason to restore the appeal to the file of Ld. CIT(A), as the order of Ld. CIT(A) is not in accordance with law mandate of section 250(6) of the Act. Section 250(6) mandates that order of Ld. CIT(A) must

contain the point of determination, decision thereon and reasoning of such decision. The Ld. CIT(A) dismissed the appeal of assessee without following the mandate of section 250(6) of the Act. Needless to direct that Ld. CIT(A) before passing the order afresh, shall grant fair and reasonable opportunity of hearing to the assessee. The assessee is also directed to be vigilant in future and not to make default in attending the hearing before Ld.CIT(A). The Ld. AR of the assessee was also directed to furnish e-mail address, either of assessee or the person authorized by him in the office of Ld. CIT(A), to communicate the notice by way of electronic mode, to avoid further delay.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order announced at the time of hearing of appeal on 26<sup>th</sup> July 2021  
in the Virtual Court hearing.

Sd/-

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

Surat, Dated: 26/07/2021

*Dkp. Sr.P.S. O.S*

Copy to:

1. Appellant-Shri Natwarbhai D Patel, C/o Pranav Hemendra Patel, 401, Dharma Bhakti Enclave, Plot No.7, Chanakya Park Society, b/h Sub-Registrar Office, Akota, Vadodara-390 020
2. Respondent- ITO, Wd-5, Bharuch
3. CIT(A)-Vadodara
4. CIT
5. DR
6. Guard File

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

By order

Assistant Registrar, ITAT, Surat