

(IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No's.741 & 742/SRT/2018
(A.Ys': 2011-12 & 2012-13)
(Hearing in Virtual Court)

Jiah Trendz Pvt. Ltd., B/34, Govind Niwas, Shakti Nagar, Society, Opp. Experimental School, Parle Point, Surat – 395 010. anejamit@hotmail.co.uk PAN: AACCCJ 4479 M	Vs.	The Income Tax Officer, Ward-1(1)(3), Surat.
Applicant		Respondent
Assessee by	Shri Dileep Patel – CA	
Revenue by	Ms. Anupama Singla – Sr.DR	
Date of hearing	08.09.2021	
Date of pronouncement	13.09.2021	

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate orders of Id.Commissioner of Income tax (Appeals)-1, Surat dated 27.09.2018 for the Assessment Year (AY) 2011-12 and 2012-13. In both the appeals, the assessee has raised certain common grounds of appeal, facts in both the years are almost similar, except variation of figures of addition. Therefore, both the appeals were clubbed, heard and are decided together. For appreciation of facts, appeal for the A.Y. 2011-12 is treated as lead case. The assessee has raised the following grounds of appeal:

“1) *On the facts and circumstances of the case as well as law on the subject, the case of the appellant is to be restore back to the CIT(a) as no proper opportunity*

of hearing was given to the appellant and order passed by CIT(A) ex parte without considering the submission made online.

- 2) *On the facts and circumstances of the case as well as law on the subject, Learned CIT(A) has erred in confirming the addition of Rs.1,31,43,840.*
- 3) *On the facts and circumstances of the case as well as law on the subject, Learned CIT(A) has erred in confirming the entire addition on contract income of various parties of Rs.4390543 as reflected in 26AS even though the profit on said receipt is to be taxed.*
- 4) *On the facts and circumstances of the case as well as law on the subject, Learned A.O has erred in making entire addition of Rs.1,31,43,840 without considering the profit as reflecting the audited financial statement already file Ministry of Company Affair.”*

2. Brief facts of the case are that no return of income was filed by the assessee for the A.Y. 2011-12. The Assessing Officer(ld.AO) was having information that in the bank account maintained by the assessee with Dena Bank, Zampa Bazar, there was an entry of Rs.87.53 lakhs which includes cash deposit. Further, as per the statement in Form-26AS the assessee received contract receipt and interest income of Rs.43.90 lakhs from various parties. On the basis of such information, the AO formed an opinion that income of assessee escaped assessment within the meaning of section 147 of the Income Tax Act. Notice under section 148 dated 30.03.2017 was issued and served upon the assessee. No return of income in response to notice under section 148 was filed. The AO after serving notice under section 142(1) of the Act requiring certain details proceeded for assessment. The assessee was asked to explain the cash deposit of Rs.87.53 lakhs with supporting evidences and further to explain the tax treatment on the contract receipt of Rs.43.90 lakhs. The AO recorded that

no compliance was made by the assessee. Therefore, the Id.AO issued show cause notice for levying penalty under section 271(1)(b) of the Act. The AO recorded that despite levying penalty, the assessee has not made any compliance, accordingly, final show cause notice for 30.10.2017 was served. The AO further recorded that no compliance was made by the assessee, accordingly, the credit entry in bank account and contract receipt reflected in FORM-26AS was treated as unaccounted income of the assessee and accordingly assessment was completed under section 144 r.w.s 147 of the Act on 16.11.2017.

3. On appeal before the Id.CIT(A), the action of the Id.AO was upheld. The Id.CIT(A) confirmed the addition in ex-parte order dated 27.03.2018 by taking view that assessee has not appeared despite granting two opportunities. Therefore, the Id.CIT(A) presumed that assessee is not interested in prosecuting the appeal and appeal was dismissed as unadmitted. Further aggrieved, the assessee filed present appeal before this Tribunal.
4. We have heard the submissions of the Id.Authorised Representative(AR) of the assessee and Id.Senior Departmental Representative (Sr.DR) for the Revenue. The Id.AR of the assessee submits that during the first appellate stage, the assessee was served with the notice for hearing fixed on 25.09.2018. In response to show cause notice, assessee furnished its reply

on ITBA Portal, the copy of screenshot is filed on page no.1 the paper book(PB). The ld.AR for the assessee submits that the details of submissions is also filed on record as per page no.2 & 3 of the paper book. The ld.AR for the assessee submits that despite filing reply in compliance of notice, the ld.CIT(A) not considered the submission of assessee and dismissed the appeal of assessee as unadmitted. The ld.AR for the assessee submits that assessee has good case on merit and is likely to succeed if one more opportunity is granted to the assessee. The ld.AR further submits that as Assessing Officer(AO) has also passed the assessment under section 144 of the Act. Therefore, in the interest of justice, matter may be restored to the file of the AO, with the liberty to allow the assessee to furnish necessary evidence and information before the ld.AO. The assessee undertake to be vigilant in making timely compliances of the notices of the lower authorities and would not make default in attending the hearing before the lower authorities.

5. On the other hand, the ld.Sr.DR for the Revenue supported the order of ld.CIT(A). The ld.Sr.DR submits that as per the document furnished by the assessee, the reply was allegedly uploaded on ITBA Portal only on 03.10.2018, however, the ld.CIT(A) has already passed order on 27.09.2018. Therefore, the ld.CIT(A) has no occasion to consider such reply. The assessee is most negligent in attending the hearing and default.

The assessee is wasting the precious time of judicial and quasi-judicial authorities.

6. In alternative submissions the Id.Sr.DR for the Revenue submits that in case, the Hon'ble Tribunal deem it appropriate to restore the appeal before the Id.CIT(A) for adjudication afresh, the assessee be directed to be vigilant and to make necessary compliance of the notices. The assessee should not waste the precious time of judicial and quasi-judicial authorities.
7. We have considered the contention of both the parties. We find that before Id CIT(A), the appeals were fixed on 11.09.2018, but no compliance was made and final show cause was issued on 25.09.2018, no compliance was made by assessee. The Id.CIT(A) dismissed the appeal due to non-compliance by assessee. So far as submission of Ld.Authorised Representative for the assessee that the assessee filed his submissions on ITBA Portal on 03.10.2018, is concerned, the same is not helpful to the assessee as the Ld.CIT(A) has already passed order on 27.09.2018.
8. However, we find that the Id.CIT(A) has not passed the order as per mandate of section 250(6) of the 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. We also find that the AO also passed assessment

order under section 144 of the Act. Therefore, considering the facts and circumstances of the case, the appeal of the assessee is restored back to the file of the Assessing Officer to decide all the issues/claims on merit in accordance with law. The assessee is also directed to appear before the Assessing Officer 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 ground no.1 of appeal by assessee is allowed. Considering the fact that we have allowed ground no.1 raised by the assessee, and restore the matter back to the Assessing Officer, hence, the adjudication of other grounds of appeal has become academic.

9. In the result, both appeals of the assessee are allowed for statistical purposes.

ITA No.742/SRT/2018 for the A.Y. 2012-13:

10. Considering our finding in ITA No.741/SRT/2018, the appeal for the A.Y. 2012-13 is also allowed with similar direction.

11. In the result, both the appeal are allowed for statistical purpose.

Order pronounced on 13 September, 2021 by placing result in the notice board.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 13/09/2021 / SGR*

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Copy to:

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

By order

/ / TRUE COPY / /

Sr.Pvt. Secretary, ITAT, Surat