

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 547/SRT/2019 (AY 2009-10)
(Hearing in **Physical** Court)

Shri Basantilal Tarba 429/1023, Sunder Nagar, Ahinsa Circle, Bhilwara, Rajasthan-311001 e-mail: bltarba@gmail.com PAN : AFIPT 1037 P	Vs	Income Tax Officer Ward-3(1)(2), Room No.117, Anavil Business Centre, Adajan Surat
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Prakash Jhunjhunwala, C.A
Revenue by	Shri H.P.Meena -CIT-DR
Date of hearing	26.11.2021
Date of pronouncement	03.12.2021

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 Id. Commissioner of Income tax (Appeals)-3, Surat dated 28.09.2018 for assessment year (AY) 2009-10. The assessee has raised the following grounds of appeal:-

<i>Grounds of appeal</i>
<i>1. Learned CIT(A) has erred in confirming re-opening u/s 148 of the income Tax Act, 1961 of appellant's case for A.Y. 2009-10</i>
<i>2. Learned CIT(A) has erred in confirming addition of Rs.2,77,88,919/- being 100% of alleged bogus purchase.</i>
<i>3. Learned CIT(A) has erred in confirming addition of Rs.13,80,19,353/- as unexplained cash credit</i>
<i>4. The appellant reserves the right to add, alter, amend or withdraw any grounds of appeal.</i>

2. Brief facts of the case are that assessee is engaged in the business of diamond trading, filed his return of income for AY 2009-10 declaring

income of Rs.1,29,720/- on 24.08.2009. The case of assessee was re-opened under section 147 on the basis of information received from DCIT, Central Circle-8(3) Mumbai and Asstt. Director of Income Tax (Inv)-Unit 3(1), Mumbai that a search action was carried out in the case of Gautam Jain & Others who are involving in providing accommodation entry of bogus sale and purchase of diamond and loan and advances. The statement of Shri Gautam Jain was recorded who was a key person of the said group who identifies themselves as paper concerns engaged in providing accommodation entry. The assessee is one of the beneficiary of such accommodation entry. The assessing officer (AO) on the basis of such information has reasoned to believe that income of the assessee to the extent of accommodation entry has escaped assessment. The Assessing Officer after recording reasons issued notice under section 148 to the assessee for filing return of income for assessment year 2009-10. The assessee in response to the said notice, vide his letter dated 01.07.2016 stated that return filed originally on 24.08.2009 may be treated as return in response to notice under section 148. The assessee asked for reason recorded which was providing the assessee through speed post-dated 01.07.2016. The assessee filed objection against the re-opening which was disposed of vide order dated 12.09.2016. The Assessing Officer after serving statutory notices

proceeded for re-assessment. The AO noted that assessee is engaged in the business of trading of diamond in the name of proprietorship concern namely M/s Riddhi Gems. During the assessment the AO noted that the assessee has shown purchases of diamonds of Rs. 2.27 Crore from Simran Gems. Simran Gems is the proprietary concern of Ghyanchand Bhanwarlal Jain who was part of Gautam Jain Group involved in providing bogus bills of accommodation entry. The issued show cause notice to the assessee to prove the genuineness of the purchases shown from the Simran Gems which is proprietor Ghyanchand Bhanwarlal Jain to the extent of Rs.2.77 crores. The assessee filed his reply and stated that he is doing a business of commission agent making it purchase and sale on behalf of diamond trader principal-to-principal basis. The Assessing Officer noted that from the reply and details filed by the assessee, it is clear that assessee engaged in the trading activity. Therefore, he was asked to substantiate the transaction of said purchases vide show cause dated 17.11.2016. The Assessing Officer recorded that assessee failed to response to show cause notice and he disallowed the entire purchases shown from the Simran Gems.

3. The Assessing Officer further noticed that there was huge cash credits entries in the books of account to the tune of Rs.13.80 crores which was also reflected in the Axis Bank account of assessee. On show cause the assessee

failed to give any explanation. In absence of any explanation, the Assessing Officer made the addition of said amount under section 68 while passing assessment order dated 09.12.2016.

4. On appeal before CIT(A) the action of AO in re-opening as well as both the addition were upheld. The Ld. CIT(A) confirmed the action of Assessing Officer in *ex parte* order dated 28.09.2018. The Ld. CIT(A) before passing the *ex parte* order recorded that assessee was served three consecutive notices for hearing on 27.03.2018, 11.04.2018 & 17.07.2018 respectively. The Ld. CIT(A) recorded that despite service of notices assessee has not filed any details to substantiate his various grounds of appeal. The Ld. CIT(A) dismissed the appeal in summary manner. Further aggrieved, the assessee has filed this present appeal before this Tribunal.
5. We have heard the submission of Ld. Authorized Representative (AR) for the assessee and Ld. Commissioner of Income-tax – departmental representative (CIT-DR) for the Revenue and perused the materials available on record. The Ld. AR for the assessee submits that though the notice of hearing on one occasion was received by assessee, however, the assessee could not attend the said hearing due to mental tension with matrimonial dispute with his wife and ultimately the assessee was granted divorce by Principle Judge Family Court. The assessee engaged one Chartered Accountant (CA) to attend the hearing before Ld. CIT(A). But due to mental

tension the assessee could not peruse the progress of appeal through said CA. The Ld. AR of the assessee submits that non-appearance before CIT(A) was neither intentional nor deliberate, but due to matrimonial litigation the assessee has suddenly has to change his address at 429/1023, Sundarnagar, Ahinsa Circle, Bhilwara, Rajasthan-311001. The Ld. AR submits that he has a good case on merit and will succeeds if one more opportunity is given and the appeal is decided on merit by the Ld. CIT(A). the Ld. AR further submits that he undertakes on behalf of the assessee to co-operate and not to default and attending proceedings before the Ld. CIT(A).

6. On the other hand Ld. CIT- DR for the Revenue submits that assessee was given ample opportunities as recorded in para-6 of the *ex parte* order passed by Ld. CIT(A) and assessee has not attended the hearing despite availing a number of opportunities. Ld. CIT-DR of the Revenue submits that assessee is not entitled for further opportunity of hearing.
7. 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 passed the assessment order by making huge addition in absence of proper reply on behalf of assessee. Further, Ld. CIT(A) also dismissed the appeal of assessee due to non-appearance. We find that in para-3 of Ld. CIT(A)'s order he recorded that notice sent for hearing on 11.04.2018 was returned back by Postal Authority remarks "left". Before us the Ld. AR of the

assessee vehemently urged that assessee may be given one more opportunity to contest his case on merit and that he undertake on behalf of assessee to vigilant in future. The Ld. AR of the assessee is also placed on record the copy of Decree of Dissolution of Marriage from Ld. Principle Judge Family Court of Bhilwara dated 18.05.2017. The assessee has also field his present address at 429/1023, Sundar Nagar Ahinsa, Circle, Bhilwara, Rajasthan-311001 as disclosed in assessee's Income Tax return for assessment year 2020-21. 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 after discussing the facts of the case, on points of determination (grounds of appeals), decision therein on and reasons for such decision.

8. 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. Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

9. In the result, the appeal of the assessee is allowed for statistical purposes in above terms.

Order pronounced on 03/12/2021 by placing the result on the Notice Board as per Rule 34(5) of the income Tax (Appellate Tribunal) Rule, 1963.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 03/12/2021
Dkp. Out Sourcing P.S

Copy to:

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

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

// True Copy //

Assistant Registrar, ITAT, Surat