

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

ITA No.243/SRT/2021 (AY 2015-16)

(Hearing in Virtual Court)

Mittal Mrudulkumar Patel 39, Bajrang Nagar Society, Nr.Sarthana Jakat Naka,Nana Varachha, Surat-395006 mehsana_pipe_syndicate@yahoo.com PAN : AQTPP 7689 M	Vs.	The Income Tax Officer, Ward-3(1)(5), 1 st Floor, Anavil Business Center, Adajan,Surat-35009
Appellant		Respondent

Assessee by	Shri Manoj Kumar N Makhania, CA
Revenue by	Ms.Anupma Singla – Sr.DR
Date of hearing	03.03.2022
Date of pronouncement	03.03.2022

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 ld. National Faceless Appeal Centre, Delhi (for short to as 'NFAC')/CIT(A) dated 27.10.2021 for the assessment year (AY) 2015-16, which in turn the assessment order under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.11.2017. The assessee raised the following grounds of appeal:

Sl.No	Grounds of Appeal	Tax effect
1	<i>The Commissioner Income Tax (Appeal), National Faceless Appeal Centre was not justified in passing ex-parte order defying natural justice to the appellant</i>	NIL
2	<i>On facts and under the circumstances of case as well as law, the Learned Commissioner of Income Tax (Appeals), NFAC was not justified in passing ex-parte order dismissing the appeal of the appellant on the ground that the appellant has been given three opportunities and is not aggrieved</i>	NIL

	<i>with the assessment order impugned herein and is not interested in prosecuting the same.</i>	
3	<i>On the facts and circumstances of the case as well as law, the Learned Commissioner of income Tax (Appeal), NFAC was not justified in confirming addition of Rs.13,50,000/- on account of unsecured loans taken from various parties treating such unsecured loans as unexplained cash credits u/s 68 of the Act.</i>	Rs.4,06,620/-
4	<i>Without prejudice to the above, the CIT(A), NFAC dismissed the appeal in para 5.11 of the order without dealing with even basic facts of the matter</i>	NIL
5	<i>It is therefore, prayed that the CIT(A), NFAC not having dealt with any of the grounds of appeal in the right earnest the matter maybe restored to the file of the CIT(A), NFAC</i>	NIL
6	<i>Your appellant reserves her right to add, amend, alter, and/or withdraw any ground of appeal at the time of hearing of the appeal.</i>	NIL

2. Brief facts of the case are that assessee is individual and engaged in the business of sewing job-work, filed her return of income for the year under consideration that is AY 2015-16 declaring income of Rs.3,28,080/- on 20.08.2016. The case of assessee was selected for scrutiny. The Assessing Officer finalized the assessment under section 143(3) on 29.11.2017 in determining total income of Rs.16,78,080/- by making addition of Rs.13,50,000/- on account of unexplained cash credit under section 68 of the Act. The Assessing Officer made addition by taking view that the unsecured loan of Rs. 13.50 lakhs, shown by assessee is her own money, which has been received through entries.
3. Aggrieved by the addition, the assessee filed appeal before Ld. CIT(A). The Ld. CIT(A) passed *ex parte* order vide order dated 27.10.2021 by taking view that assessee is not

interested in prosecuting her appeal. Further aggrieved, the assessee has filed present appeal before this Tribunal.

4. We have heard the submissions of the learned authorised representative (AR) for the assessee and the learned Senior departmental representative (DR) for the revenue. The Ld. AR of the assessee submits that the notice issued on 11.10.2021 for the hearing fixed on 25.10.2021 could not be responded and the mail sent by ITB Portal moved into spam folder of her e-mail Id patel.mrudul@yahoo.com, due to some technical glitches. The assessee came to know about such notice dated 11.10.2021 only when *ex parte* dated 27.11.2021 was received by assessee. The ld AR for the assessee submits that the non-compliance of notice dated 11.10.2021 was not intentional or deliberate, but due to the bona fide reason that the notice sent through e-mail went the spam folder. The ld AR for the assessee submits that he has filed affidavit of assessee that she has not read/received the notice of hearing of appeal before ld CIT(A).
5. The Ld. AR of the assessee submits that no fair and proper opportunity was given to assessee. The assessee has good case on merit and is likely to succeed if her case is

considered on merit. The ld AR for the assessee that he undertake on behalf of the assessee to be more vigilant in future and the assessee will not make any default in making timely compliance of the notice issued from the office of ld NFAC/CIT(A).

6. On the other hand the ld. Sr. DR for the Revenue submits that the assessee was given three opportunities as recorded in page 2 of the order passed by the ld.NFAC/CIT(A). The assessee failed to comply with the notice issued by the ld.NFAC/CIT(A). The ld.NFAC/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 Assessing Officer. In alternative submission, the ld.Sr.DR for the Revenue submits that in case the Hon'ble Tribunal is of the view that the assessee deserve any more opportunity, the matter may be restore to ld CIT(A) with the directions that the assessee be vigilant and not to default in attending the proceedings and to waste the time of public authorities/ld.CIT(A).

7. We have considered the rival submission of both the parties and have gone through the orders of Lower Authorities. We find that the ld. CIT(A) fixed the hearing on 25.10.2021. It is recorded by ld.NFAC/CIT(A) that no compliance was made

by the assessee. The ld. NFAC/CIT(A) took their view that the assessee is not interested in perusing his appeal and dismissed the same without discussing the merit of the case. Before us, the ld AR for the assessee explained that the notice of hearing issued on 11.10.2021 was moved into spam folder and the same could not be received/ read by assessee. The ld AR for the assessee has also filed affidavit of assessee narrating all those circumstances. On considering the submissions and after going through the contents of the affidavit we find that there is sufficient Cause for non-compliance of notice date 11.10.201. We find one more reason that the order of the ld. NFAC/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 NFAC / 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. NFAC/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 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 grounds of appeal by assessee are allowed for statistical purpose.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 03/03/2022 at the time of hearing in virtual court.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated:03/03/2022

D.K.P. Outsourcing Sr.P.S

Copy to:

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By order

// True Copy //

Assistant Registrar, ITAT, Surat