

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No. 673/AHD/2017**

**निर्धारणवर्ष/Assessment Year: (2011-12)**

**(Virtual Court Hearing)**

S. R. Infra Concept Pvt. Ltd., 306, Siddh Chambers, Taratiya, Hanuman Sheri, Mahidharpura, Surat-395003.	<b>Vs.</b>	The ITO, Ward-4(3), Surat. <b><u>New designed</u></b> ITO, Ward-2(1)(2), Surat.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAOCS6992A</b>		

<b>Assessee by</b>	Shri Tushar P. Hemani, Sr. Advocate with Shri P. B. Parmar, AR
<b>Respondent by</b>	Shri H. P. Meena, CIT(DR)
<b>Date of Hearing</b>	03/08/2022
<b>Date of Pronouncement</b>	29/08/2022

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-2 [in short “the ld. CIT(A)”], Surat, in Appeal No. CAS/2/28/2014-15, dated 12.01.2017, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 31.03.2014.

2. The grounds of appeal raised by the assessee are as follows:

*“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax(Appeals) has erred in confirming the action of assessing Officer in making addition of Rs.16,32,50,000/- on account of share capital and share premium treated alleged unexplained cash credit u/s 68 of the Income Tax Act, 1961.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax(Appeals) has erred in confirming the action of assessing Officer in making addition of Rs.10,20,275/- on account of alleged unaccounted brokerage charges u/s.194H of the Income Tax Act, 1961, received from S.V. Estate.*

3. It is therefore prayed that addition may please be deleted as learned members of the tribunal may deem it proper.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. At the outset, Shri Tushar P. Hemani, Sr. Advocate, Learned Counsel for assessee, begins by pointing out that during the assessment stage, the assessee has not been provided sufficient opportunity to plead his case. The Ld. Counsel pointed out that assessee is engaged in the business of works contract services and developing of properties on contract basis, real estate agency services and developing and trading in real estate properties. The assessee received share capital and share premium aggregating to Rs.16,32,50,000/- from 39 different parties during the year under consideration. The detailed break-up of Rs.16,32,50,000/- is given on Page nos. 2 to 5 of the assessment order. The Ld. Counsel pointed out that Assessing Officer has not afforded “reasonable opportunity” to the assessee to set out its case which has resulted into gross violation of “principles of natural justice”. To prove this stand, the Ld. Counsel invited our attention towards important dates and events during the assessment proceedings, which are reproduced below:

**Vital dates and events vis-à-vis “Assessment proceedings”**

Date	Event	Ref. from Asst. Order
03.08.2012	Case of the assessee was selected for scrutiny by issuance of statutory notice u/s 143(2)	Page 1
11.03.2014	AO issued summons u/s 131 to all the share applicants fixing the hearing on 18.03.2014. For serving summons, Inspector was deputed.	Page 5
18.03.2014	Inspector furnished ‘Report dated 18.03.2014’ as well as ‘videography’ as per which, summons could be served upon 13 parties and could not be served upon 26 parties.	Page 5

19.03.2014	<p><b>Show cause notice</b> dated 19.03.2014 was issued by AO whereby assessee herein was called upon to do the followings on or before 26.03.2014 (<b>Pg.22 of AO</b>):</p> <ul style="list-style-type: none"> <li>➤ Produce all the 39 parties concerned before AO (<b>Pg.17 of AO</b>); &amp;</li> <li>➤ Furnish large number of details before AO (<b>Pg.21 of AO</b>);</li> </ul>	<b>Pages 6-22</b>
<b>31.03.2014</b>	<p>Owing to paucity of time, show cause notice could not be complied with and hence, <b>assessment</b> came to be framed vide <b>order dated 31.03.2014</b> passed <b>u/s 143(3)</b> whereby Rs.16,32,50,000/- came to be added u/s 68 of the Act after <u>heavily relying upon the followings:</u></p> <ul style="list-style-type: none"> <li>✦ <i>Inspector's report (which also contains reference to "videography") in relation to summons u/s 131 (Pg.27 of AO);</i></li> <li>✦ <i>Information collected from bank of 39 parties u/s 133(6) (Pg.28 of AO);</i></li> </ul>	<b>Pages 22 &amp; 30-31</b>

4. With help of the above chart, Id Counsel pointed out that Assessing Officer issued summons to thirty nine (39) parties on 11.03.2014 whereas assessment was framed on 31.03.2014, that is, effectively assessment proceedings were completed in twenty (20) days whereas law provides for two years times from the end of the assessment year. Such a short span of time is not reasonable by any stretch of imagination. Since assessee's case was selected for scrutiny on 03.08.2012, the Assessing Officer could have issued summons under section 131 of the Act, well in advance rather than issuing the same on 11.03.2014 (i.e. fag end of limitation for framing the assessment). Under such circumstances, even show cause notice could have been issued in time which, in turn, would have enabled the assessee to file reply. This would have ensured that principles of natural justice have been observed while framing assessment. Thus, it is evident that Assessing Officer has not afforded "reasonable opportunity" to the assessee to set out its case while framing the assessment. The Id Counsel also pointed out that material used against assessee has not been confronted to the assessee; hence, the same would not constitute "admissible evidence" in the eye of law. Under such facts and circumstances, matter must be remanded to Assessing Officer for

framing assessment after affording reasonable opportunity to the assessee. Reliance was placed by Id Counsel on decision in the case of “**Tin Box & Co. vs CIT – (2001) 249 ITR 216 (SC)**”.

5. In respect of ground no.2 raised by the assessee, which relates to addition of Rs.10,20,275/- on account of alleged unaccounted brokerage charges u/s 194H of the Income Tax Act, 1961, received from S.V. Estate. The Assessing Officer found that as per AIS details in ITD system, assessee had received brokerage charges of Rs.10,20,275/- from S. V. Estates on 31.03.2011 and TDS of Rs.1,02,028/- was effected thereon. However, the said amount was not credited in the books of the assessee. The assessee submitted before Assessing Officer that such sum was received in AY.2012-13 (subsequent year) and hence, the same was not included in the books of accounts for AY.2011-12 (year under consideration). The Assessing Officer was of the view that assessee follows “mercantile system of accounting” and hence, irrespective of the fact whether such sum was received during the year or not, assessee was bound to account for the same in AY. 2011-12. Hence, Assessing Officer made the impugned addition which was confirmed by CIT(A) as well. The Id Counsel submits that such sum was received in AY.2012-13 (Subsequent year) and accordingly, the same has been offered for tax in AY.2012-13, thus, the underlying amount has already been offered for tax. If the impugned addition is sustained, it shall tantamount to double taxation of the same sum which has never been the intention of the Legislature. Without prejudice to the above, the Id Counsel also argued that if the impugned addition is confirmed, then direction may be given to Assessing Officer to reduce such sum from income of AY.2012-13 so as to avoid double taxation.

6. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of

the Id CIT(A) and other materials brought on record. So far ground No.1 is concerned, which relates to addition of Rs.16,32,50,000/- on account of share capital and share premium, we find merit in the submission of Id Counsel, as he pointed out that assessee could not represent his case before Assessing officer. The Assessing Officer issued summons under section 131 of the Act, on 11.03.2014 (i.e. fag end of limitation for framing the assessment) therefore assessee could not produce the relevant details and evidences before the assessing officer. The Id Counsel pointed out that order of the assessing officer stood vitiated on account of violation of principle of natural justice. Further the material used against assessee has not been confronted to the assessee, by the assessing officer during the assessment stage.

8. We note that the Hon'ble Supreme Court in M.S.Gill vs The Chief Election Commission 1978 AIR SC 851 held "The dichotomy between administrative and quasi-judicial function vis-à-vis the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of *nemo judex in parte sua* (no person shall be a judge in his own case) and *audi alterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice.

9. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the assessing officer. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of assessing officer for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith.

10. In the result, ground No.1 raised by the assessee is allowed for statistical purposes.

11. In respect of ground no.2, we note that the income has been offered in subsequent assessment year 2012-13, thus, the underlying amount has been suffered for tax, therefore, we direct the assessing officer to verify the fact that whether income has been offered in subsequent assessment year 2012-13 for taxation, if the assessee has offered such income in subsequent assessment year 2012-13, then in that circumstances, the assessing officer should delete the addition. Alternatively, if the impugned addition is confirmed by assessing officer, then we direct the Assessing Officer to reduce such sum from income of AY.2012-13 so as to avoid double taxation.

12. In the result, ground No.2 raised by the assessee is allowed for statistical purposes to the extend indicated above.

13. In the combined result, appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 29/08/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सूरत /Surat

दिनांक/ Date: 29/08/2022

SAMANTA

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat