

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

ITA No. 23/Srt/2022 (Assessment Year: 2012-13)  
(Virtual hearing)

Kalpeshkumar Babubhai Patel, B/97, Vasant Vihar SOC, Kabilpore, Navsari, Valsad. M. No: 9712351990 e.mail: kalpeshpatel3004@gmail.com <b>PAN No. AKGPP 2031 E</b>	Vs.	I.T.O. Ward-3, Navsari.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Mayank Ogriwala, CA
Department represented by	Shri Vinod Kumar, Sr.DR
Date of hearing	06/09/2022
Date of pronouncement	06/09/2022

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

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of the learned National Faceless Appeal Centre (NFAC)/ Commissioner of Income Tax (Appeals), Valsad (in short, the Id. CIT(A) dated 02/12/2021 for the Assessment year (AY) 2012-13. The assessee has raised following grounds of appeal:

*"1. On the facts and in the circumstances of the case, as well as law on the subject, That the learned Commissioner of Income Tax (Appeals) has erred in disposing off the appeal ex-parte without granting any fair opportunity of being heard to the appellant and the learned CIT(A) have not passed the order based on merits of the case which is against the*

*cardinal principal of natural justice and accordingly order deserves to be quashed.*

2. *On the facts and in the circumstances of the case, as well as law on the subject, That the learned Commissioner of Income (Appeals) has erred in upholding the addition made by the learned AO of Rs. 17,34,530/- which is without mentioning precise provision of law i.e. section under which addition to be made, hence it is bad in law.*
3. *On the facts and in the circumstances of the case, as well as law on the subject, That the learned Commissioner of Income (Appeals) has erred in upholding the addition made by the learned AO as there was no specific relevant, reliable and tangible material on record to form a "reason to believe" that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal u/s 147 of the Act, untenable and therefore unsustainable.*
4. *On the facts and in the circumstances of the case, as well as law on the subject, That the learned Commissioner of Income (Appeals) has erred in upholding the addition made by the learned AO as reasons were recorded mechanically without application of mind and therefore do not constitute valid "reason to believe" for assumption of jurisdiction u/s 147 of the Act.*
5. *On the facts and circumstances of the case, as well as law on subject, That the learned Commissioner of Income (Appeals) as well as the learned AO has erred in making addition of Rs. 17,34,530/- representing alleged unexplained cash deposits (Rs. 14,52,400) & Other credit entries (2,82,133/-) in the bank account of the appellant as Assessment done u/s. 144 r.w.s. 147 is done without use of Best judgment and without application of mind on Information already available with the Learned AO and therefore it is liable to be quashed.*
6. *On the facts and in the circumstances of the case, as well as law on the subject, the assessee must be provided proper opportunity of being heard to provide additional evidences in support of his contention that the cash deposit amounting Rs. 14,52,400/- deposited in the bank account and Rs.2,82,133/- being credit entries is from genuine source.*

*Your appellant further reserves his right to add, alter or to amend any of the aforesaid grounds at the time of hearing of an appeal and all the above grounds are without prejudice to each other.”*

2. Brief facts of the case are that the assessee is an individual and no return of income was filed for the A.Y. 2012-13. The case of assessee was reopened under Section 147 of the Income Tax Act, 1961 (in short, the Act) and the notice under Section 148 of the Act was issued to the assessee. The case of assessee was reopened on the basis of AIR information wherein it was reflected that during the relevant period, the assessee has made cash deposit of Rs.14,52,400/- in his savings bank account. The Assessing Officer after serving statutory notices under Section 143(2) and 142(1) of the Act proceeded for assessment. The Assessing Officer noted that despite service of various notices at the address of assessee, no compliance was made nor anybody attended the hearing. The Assessing Officer issued notice under Section 133(6) of the Act to the banker of assessee for seeking bank statement of financial year relevant for assessment year under consideration. In compliance of notice under Section 133(6), the banker of assessee furnished details of deposits made by assessee. On perusal of such details, the Assessing Officer noted that the assessee has failed to furnish any explanation about the deposit in the bank, accordingly, the cash deposit of Rs. 14,52,400/- was treated as unexplained money and added to the total income of assessee. Besides

the cash deposit, there was other credit entries of Rs. 2,82,133/-. As no explanation about such credit entries were also explained by assessee, accordingly, the Assessing Officer also made another addition of Rs. 2,82,133/- thereby made a total addition of Rs. 17,34,530/- in the assessment order dated 07/12/2019 passed under Section 144 r.w.s. 47 of the Act.

3. Aggrieved by the additions and the reopening, the assessee filed appeal before the Id. CIT(A). The appeal of assessee was transferred/migrated to NFAC in term of notification No. 76/2020 dated 25/09/2020. The appeal of assessee was adjudicated by the NFAC in an ex parte proceeding. The Id. NFAC/CIT(A) noted that the assessee was given opportunity to furnish submission online on or before 27/1/2021 and again on 09/09/2021. The Id. NFAC/CIT(A) recorded that no response was received from the assessee thereafter another opportunity was given to the assessee vide notice dated 27/10/2021 to furnish submission on or before 03/11/2021. On which the assessee requested further time up to 23/11/2021. The assessee was again served notice to furnish submission on or before 23/11/2021, but no response was made by assessee. The Id. NFAC dismissed the appeal by confirming the addition made by Assessing officer for want of submission. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

4. We have heard the submissions of the Id. Authorised Representative Id. AR) of the assessee and the Id. Senior Departmental Representative (Sr. DR) for the revenue. The Id. AR of the assessee submits that the assessee is salaried person and also having agriculture income. During the assessment, no notice was received by the assessee as the assessee has temporarily shifted his residence near his agriculture holding to look after agricultural activities. Since no notice was received by assessee, therefore, the assessee could not represent his case before the Assessing Officer. The Assessee filed appeal before the Id. CIT(A) and engaged a Chartered Accountant (CA) namely Shri Saurabh Bhai Pratik to represent his case. The said CA has not informed the assessee in time, the assessee was constantly in touch with his C.A, however, he was not cooperating, resultantly, the appeal of assessee was also dismissed for want of proper submission. The Id. AR submits that he has placed on record the screenshot of Whatsapp chat with his C.A. for knowing the status of his appeal. The Id. AR submits that non-compliance of assessee during the first appellate stage was not intentional but due to the reason that the authorised representative/CA engaged by assessee was not cooperating with the assessee. The assessee has a good case on merit and is likely to succeed if his case is heard and adjudicated on merit. The Id. AR submits that the assessee is a salaried person and having agricultural income. The

assessee has placed on record the copy of ownership of agriculture holding and return of income for A.Y. 2010-11 and 2011-12. The Id. AR for the assessee submits that either the assessee be allowed to place on record the relevant evidence to substantiate the cash deposit or the matter may be restored to the file of Id CIT(A) or assessing officer to pass the order afresh by affording reasonable and proper opportunity of hearing to the assessee. The Id AR for the assessee undertake on behalf of assessee to I be careful in future in attending the hearing before the judicial/quasi-judicial authority.

5. On the other hand, the Id. Sr. DR for the Revenue submits that the assessee was given ample opportunity to represent his case by Assessing Officer as well as before the Id. CIT(A)/NFAC. The assessee not made any compliance either before the Assessing Officer or before the Id. CIT(A). The assessee is most negligent in attending the hearing. The Id. Sr. DR for the revenue submits that in Form 36, the assessee has given the same address on which the Assessing officer has served the notice under Section 148 as well as other statutory notices. The Id. Sr. DR submits that the assessee has no case on merit and he deserves no leniency. The Id. Sr. DR for the revenue submits that the assessee has not given any cogent reason for non-filing the evidence before the lower authorities, thus the evidence filed before the Tribunal is not liable to be admitted.

6. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that the Assessing Officer passed the assessment under Section 144 r.w.s 147 dated 07/12/2019. The Assessing officer made addition of entire aggregate of cash deposit in the bank account thereby making addition of Rs. 17,34,530/-. The Id. CIT(A)/NFAC also dismissed the appeal of assessee for want of submission. Before us, the Id. AR of the assessee tried to make emphasis that the assessee's engaged CA who was not informed the assessee about the status of hearing before the Id. CIT(A). We instead of going into the controversy whether the assessee was informed by his representative or not, find that the Id. NFAC/CIT(A) has dismissed the appeal by passing a non-speaking order. We further find that the order of Id. NFAC/CIT(A) is not in accordance with 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. Therefore, considering the facts and circumstances of the case that the assessee remained unrepresented before the Assessing Officer as well as before the Id. CIT(A)/NFAC, therefore, in our considered view, the assessee deserves one more opportunity to explain his case at the end of Id. NFAC/CIT(A), therefore, all the grounds raised by the assessee in the

present appeal are restored back to the file of assessing officer to pass the order afresh. The assessee is also given liberty to file all the relevant evidence, information or evidence before the assessing officer without any further delay. Needless to direct that the assessing officer before passing the order afresh shall grant reasonable and fair opportunity to the assessee. The assessee is also directed to be more vigilant and not to seek adjournment without any valid reason and to make compliance in time. The email address and phone number provided by the assessee, which we have mentioned in the array of parties, may be used for communication of dates of hearing by assessing officer. In the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 06<sup>th</sup> September, 2022 in open court at the time of hearing the appeal in virtual court hearing.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 06/09/2022

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT

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

5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat