

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.243/SRT/2022 (AY 2017-18)

(Hearing in virtual Court)

Abdul Wahab Iqbal 7/1262, Sabuwala Compound, Variyavi Bhagal, Surat-395003 PAN No: ABVPR 4763 R	Vs	Assistant Commissioner of Income-tax, Central Circle- 1, Room No.532, 5thFloor, Aayakar Bhawan, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Suresh K Kabra, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	26.12.2022
उद्घोषणा की तारीख/Date of pronouncement	26.12.2022

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 learned Commissioner of Income Tax(Appeals)-4, Surat [for short to as “Ld.CIT(A)”] dated 26.07.2022 for assessment year 2017-18, which in turn arises out assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 28.12.2019.

The assessee has raised the following grounds of appeal:-

“1. The Ld. CIT(A) was not just and proper on the facts of the case and in law in not admitting the appeal and dismissing the appeal for want

of proper prosecuting, and not passing a speaking order as required by section 250(6).

2. Prayer.

2.1 The Ld CIT(A) may be directed to hear the appeal on merits.

2.2 Personal hearing may be granted.

2.3 Any other relief that your honours may deem fit maybe granted.

3. The assessee craves leave to add, amend, modify alter or delete any of the grounds at the time of hearing.”

2. At the outset of hearing, Ld. Authorized Representative (Ld.AR)

for the assessee submits that Ld. CIT(A) passed the impugned *ex parte* order without giving fair and reasonable opportunities of hearing to the assessee. The Ld. CIT(A) in **para-3.3** of impugned order has recorded that despite giving final opportunity no compliance was made on the part of assessee. The Ld. CIT(A) finally dismissed the appeal of assessee without adjudicating the various grounds of appeal as per mandate of Section 250(6) of the Act. The ld AR for the assessee submits that in response to the notice of ld CIT(A), the assessee attended the hearing before ld CIT(A) on 22.12.2021, however on certain issues which were raised by ld CIT(A), the submissions of assessee was not ready, so the assessee did not file his submissions. Again notice for hearing was issued for 25/07/2022, the AR for the assessee attended the hearing before ld CIT(A), however, the ld CIT(A) already passed ex-

party order. The Ld. AR for the assessee further submits that even the Assessing Officer passed assessment order without giving fair and reasonable opportunities of hearing the assessee and subsequently made addition by taking view that assessee failed to submit any explanation and evidence about the transaction in foreign exchange and made addition of Rs.23.19 lakh. The Ld. AR for the assessee further submits that matter may be restored back to the file of Ld. CIT(A) for adjudicating the issue afresh in accordance with law.

3. On the other hand, Ld. Senior Departmental Representative (ld. Sr-DR) for the Revenue submits that assessee was given ample opportunities as reflected by Ld. CIT(A) recorded in para-3 of his order. The ld. Sr-DR for the Revenue submits that Ld. CIT(A) has left no option but to decide the issue raised by assessee on the basis of materials available on record since no corroborative materials placed on record by assessee the Ld. CIT(A) upheld the order of Assessing Officer. In alternative submission, the ld. Sr.DR for the Revenue submits that in case the Hon'ble Tribunal is deem appropriate, the assessee be directed to be vigilant and not to default in attending the

proceedings and to waste the time of public authorities/ld.
CIT(A).

4. I have heard the rival submissions of both the parties and perused the materials available on record and the orders of lower authorities carefully. I find that during assessment stage, the Assessing Officer recorded that a survey action was conducted at the business premises of assessee. During the survey proceedings, various documents were impounded and seized. The assessee was asked to explain the entries recorded on various documents recovered during survey action. The summons of notice under section 131 of the Act was issued upon the assessee to explain the impounded materials. The Assessing Officer recorded that assessee failed to appreciate any explanation and Assessing Officer on the basis of images of such impounded documents recovered from the business premises of assessee took a view that on the face of images they look like transaction in foreign exchange as USD and TB are written on it which clearly shows the unaccounted receipts of assessee. The Assessing Officer thereby added such unaccounted receipt as income of assessee and taxed it under

section 115BBE of the Act. Aggrieved the addition made by Assessing Officer the assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) upheld the action of Assessing Officer passed *ex parte* impugned order.

5. Before me the Ld. AR for the assessee vehemently argued that assessee was not given fair and reasonable opportunity either by Assessing Officer in assessment proceedings or by Ld. CIT(A) in appellate proceedings. Considering the fact that both the lower authorities passed their *ex parte* order. Therefore, I bring it appropriate to restore the issue back to the file of Assessing Officer with the direction to adjudicate the issue afresh on merit. I also find additional reasons for restoring appeal back to the file of ld CIT(A), as his order is not in accordance with the mandate of section 250(6) of Income-tax Act. 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.

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

Order pronounced in the open court on 26/12/2022.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य **JUDICIAL MEMBER**]

सूत/Surat, Dated: 26 /12/2022
Dkp. Out Sourcing Sr.P.S

Copy to:

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

// True Copy //

By order

Sr.P.S./Assistant Registrar, ITAT, Surat