

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 260/Srt/2022 (Assessment Year: 2015-16)
(Virtual hearing)

Kaushikbhai Jitendrabhai Patel, Amin Falia, Zadeshwar, Bharuch-392011. PAN No. AXLPP 0562 G	Vs.	I.T.O.,Ward 1(4), Bharuch.
Appellant/ assessee		Respondent/ revenue

ITA No. 310/Srt/2022 (Assessment Year: 2016-17)

D.K. Mehta (HUF), 11, At Post Solsumba, Gangadevi Road, Umbergaon Road, Umbergaon-396165, Gujarat. PAN No. AAGDH 4494 R	Vs.	I.T.O.,Ward-2, Vapi.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Sakar Sharma, CA
Respondent represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	03/01/2023
Date of pronouncement	03/01/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by two different assessees are directed against the separate orders of National Faceless Appeal Centre, Delhi (in short, the NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) dated 29/06/2022 and 12/09/2022 for the Assessment years (AY) 2015-16 and 2016-17 respectively. In both these appeals, the assessee(s) has raised one common grounds of appeal which relates to passing ex-pty order by Id CIT(A)/NFAC, therefore, both these appeals were clubbed,

heard together and are being decided by this consolidated order. For appreciation of facts, the appeal in ITA No. 310/Srt/2022 for the A.Y. 2016-17 is treated as a "lead case". In this appeal, the assessee has raised following grounds of appeal:

- "1. The Id. CIT(A)-NFAC erred on facts and in law in deciding appeal ex parte without adjudicating the appeal on the grounds raised in For, No. 35 in terms of Section 250(6) of the Income Tax Act, 1961.*
- 2. The Id. CIT(A)-NFAC erred on facts and in law in confirming addition of Rs. 28,00,000/- by treating the unsecured loans received during the year by invoking provisions of Section 68 from whom loans had also been obtained in earlier years genuineness of which has not been disputed and ignoring the statement of facts wherein appellant stated that all necessary evidences in support of receipt of loans had been furnished in the course of assessment proceedings.*
- 3. The Id. CIT(A)-NFAC erred on facts and in law in confirming the addition of Rs. 21,70,000/- by treating cash deposits in Axis Bank accounts to be unexplained income of the appellant without appreciating the explanation of appellant that cash deposits were made out of the cash withdrawals made from the bank accounts held by the appellant as stated in statement of facts."*

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-4** 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 Id AR for the assessee submits that no notice was served on the assessee through email provided in Form-35 (Appeal form before Id CIT-A). The Ld. AR for the assessee further submits that even the Assessing Officer made addition under section 68 of Rs. 28.00 lakhs

and unexplained investment of Rs. 21.70 lakhs by taking view that the assessee failed to provide complete details. Both the lower authorities have not given fair and reasonable opportunities of hearing to the assessee. 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, the Id. Sr. DR for the revenue supported the order of Ld. CIT(A) and would submit that the assessing officer as well as Ld. CIT(A) granted sufficient opportunity to the assessee. The assessee failed to avail such opportunity and now taking plea that sufficient opportunity was not given to him. The assessee has no regard to the public authorities. In absence of written submission of any evidence the Ld. CIT(A) has no option except to decide the appeal on the basis of material available on record.
4. I have heard the submissions of learned Authorised Representative (Ld. AR) of the assessee and the learned Senior Departmental Representative (Ld. Sr. DR) for the revenue and have gone through the orders of lower authorities carefully. I find that the Assessing Officer while passing the assessment order under section 143(3) on 17.12.2018 made addition under section 68 of Rs. 28.00 lakhs and unexplained investment of Rs. 21.70 lakhs by taking view that the assessee failed to provide complete details. The Ld. CIT(A)/ NFAC dismissed the appeal of assessee by holding

that the notice to the assessee was served through email provided by the assessee but no response was received. The Id CIT(A) dismissed the appeal of the assessee without adjudicating the issues on merit and as per the mandate of section 250(6) of Income-tax Act. I find that substantial right of the assessee is involved in the present appeal. The assessee in statement of fact narrated in Form-35. In such statement of fact the assessee clearly stated that he was given only one effective day for making compliance of notice issued by assessing officer. Even such facts are not considered by Id CIT(A) while dismissing the appeal.

5. Therefore, considering the facts of the present case and the submissions of parties, the grounds of appeal raised by the assessee are restored back to the file of assessing officer to adjudicate all the issues afresh, after giving fair and reasonable opportunity of being heard. The assessee is also directed to file all the required documents as desired by the assessing officer. The assessee is also directed to not to take adjournment without any valid reason. In the result, the grounds of appeal raised by assessee are allowed for statistical purpose.
6. In the result, the appeal of assessee is allowed for statistical purposes only.

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7. As recorded earlier the assessee has raised one ground of appeal as raised in appeal in ITA No. 310/Srt/2022 for A.Y. 2016-17, except nature of

addition. Considering the fact that I have restored the appeal back to the file of assessing officer for fresh adjudication of all the issues on merit, therefore, considering the principle of consistency, the appeal of ITA No. 260/Srt/2022 for the A.Y. 2015-16 is also restored back to the assessing officer with similar direction. In the result, this appeal is also allowed for statistical purposes.

8. In the final result, both these appeals of the assessee(s) are allowed for statistical purposes only.

Order pronounced in the open court on 3rd January, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 03 /01/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat