

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

ITA No. 338/Srt/2022 (Assessment Year: 2017-18)
(Virtual hearing)

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Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Suchek Anchalia, CA
Respondent represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	05/01/2023
Date of pronouncement	05/01/2023

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 National Faceless Appeal Centre, Delhi (in short, the NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) dated 29/09/2022 for the Assessment years (AY) 2017-18.
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 by

taking view that he do not see any reason to differ with the assessing officer. 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 of Rs. 20.65 lakhs and brought the entire addition under the taxability of section 115BBE. The Id AR for the assessee submits that he has filed additional evidence to substantiate various bank deposits. Such evidences have direct bearing on the additions made by the assessing officer and same may be admitted. 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 either may be adjudicate on the basis of evidences furnished by the assessee or in alternative may be restored back to the file of Ld. Assessing officer for adjudicating all the issue afresh in accordance with law.

3. On the other hand, the Id. Sr. DR for the revenue supported the order of Id. CIT(A) and would submits that the assessing officer as well as Id CIT(A) granted sufficient opportunity to the assessee. The assessee failed to availed such opportunity and now taking plea that sufficient opportunity was not given to him. The assessee has no regards to the public authorities. In absence of written submission of any evidence the

Id 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 (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. 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 144 on 26.09.2019 and made various addition of aggregating of Rs. 20.65 lakhs by taking view that the assessee failed to provide complete details. The Id CIT(A)/ NFAC dismissed the appeal of assessee by holding that the notice to the assessee was served on the assessee but no response was received. No satisfaction if such notice was served or the manner of service of such notice was recorded by Id CIT(A), The Id CIT(A) dismissed the appeal of the assessee without making any independent findings. I find that substantial right of the assessee is involved in the present appeal. Therefore, considering the facts of the present case and keeping in view the principle of natural justice that the assessee could not represent his case before lower authorities, 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.

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

Order pronounced in the open court on 5th January, 2023 at the time of hearing of appeal.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 05 /01/2023

Self

Copy to:

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

// True Copy //

By order

Sr.Private Secretary, ITAT, Surat