

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.277/SRT/2022 (AY 2011-12)

(Hearing in Physical Court)

Mohd Ayubabdul Moid Farooque, Plot No.26, Ekta Nagar, Nr. Gousiya Masjid, Dungri Falia, Degam Road, Dungra,Vapi-396195 PAN No: AAMPF 6714 E	Vs	Income Tax Officer, Ward-7, Fortune Square, 7 th to 9 th Floor, Chala Road, Vapi- 396191
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	11.01.2023
उद्घोषणा की तारीख/Date of pronouncement	11.01.2023

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 [for short to as “NFAC”], Delhi/Ld.CIT(A) dated 29.07.2022 for assessment year 2011-12, which in turn arises out assessment order passed by Assessing Officer under section 144 r.w.s.147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 18.12.2018. The assessee has raised the following grounds of appeal:-

“1. The Ld. CIT(A) has erred and was not just and proper on the facts of the case and in law by not passing a speaking order and dismissing the appeal for not prosecuting.

2. The Ld. CIT(A) has erred and was not jut and proper on the facts of the case and in law in confirming the addition of Rs.17,81,580/-.

2. Prayer.

2.1 The addition confirmed by the Ld. CIT(A) may be kindly deleted.

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 both the lower authorities have passed the impugned *ex parte* order, without giving fair, reasonable and sufficient opportunities of hearing to the assessee. The Assessing Officer made addition of Rs.17,81,580/- on account of deposits in bank account by treating it as unexplained investment. The Assessing Officer passed the order under section 144 r.w.s. 147 of the Act. Aggrieved by the addition in the assessment, the assessee filed appeal before ld CIT(A). The appeal of assessee was migrated to NFAC, Delhi/Ld. CIT(A). Before NFAC/Ld. CIT(A) the assessee could not appear as he has not received any information of hearing, the e-mail address as provided in Form-35 [Appeal Form before Ld. CIT(A)] was of Chartered Accountant who was based in Mumbai who has not informed the assessee timely. The Ld. AR for the assessee submits that assessee has a good case on merit and is likely succeed if one more opportunity is allowed he explained the fact of his case about cash deposited in bank. The ld AR for the assessee prayed to restore the case to the file of assessing officer. The ld AR for the assessee submits that he undertakes on behalf of the assessee to be more vigilant in future.

3. On the other hand, the Id Senior Departmental representative (Sr DR) for the revenue submits that the assessee was given ample opportunities by Id CIT(A) as recorded in **para-2** of impugned order. Despite giving final opportunity no compliance was made on the part of assessee. The Ld. CIT(A) finally dismissed the appeal of assessee after considering the material available on merit.
4. I have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. I find that case of assessee was reopened under section 147 on the basis of information of ITD data that assessee made cash deposits aggregating of Rs.17,81,580/-.The assessee has filed return of income by declaring meagre amount of Rs.2,03,210/-. The Assessing Officer after issuing various notices for verification of fact recorded reasons of re-opening and served notice under section 148 dated 28.03.2018. The Assessing Officer noted that despite granting reasonable opportunities the assessee failed to compliance various notices. The Assessing Officer proceeded under section 144 of the Act and made addition of aggregate of cash deposit of Rs.17,81,580/-. The said addition was confirmed by NFAC/Ld. CIT(A) by taking view that assessee was provided reasonable opportunities but assessee failed to avail such opportunities. The NFAC/Ld. CIT(A) concluded that assessee is

not interested to pursue his appeal and has not filed any materials available on record against the addition made by Assessing Officer. The NFAC/Ld. CIT(A) dismissed the appeal of assessee in *ex parte* proceedings.

5. Before me the Ld. AR for the assessee vehemently argued that in Form-35 [Appeal Form (before Ld. CIT(A))] the assessee has given e-mail address of his C.A who was based in Mumbai and had not informed the assessee timely. The Ld. AR for the assessee during his submission submitted that he undertakes on behalf of assessee to be more vigilant in future in attending the hearing before the lower authorities and to make compliance as and when called for by lower authorities and notice of hearing may be given with e-mail address in Form-36 [Appeal Form (before Tribunal)]. Considering the fact that assessee remained unrepresented before the lower authorities and substantial addition was made in the ex-party assessment, which was again confirmed in ex-party order by Ld CIT(A), therefore keeping in view the principle of natural justice, I am inclined to give one more opportunity to the assessee to contest his case on merit. Thus, the appeal is restored back to the file of assessing officer to decide the issue afresh. I find one more reason to restore the case to the file of assessing officer that entire cash was added in the income of assessee and the NFAC/Ld. CIT(A) has

not decided the case as per the mandate to Section 250(6) of the Act, which mandates that the while deciding the appeal, the ld CIT(A) is required to pass order on points of determination (grounds of appeals), decision therein on and reasons for such decision.

6. Considering the aforesaid facts and circumstances of the case, the grounds of appeal raised by assessee is restored back to the file of Assessing Officer to adjudicate the issue of addition afresh in accordance with law. Needless to direct before passing the order, the Assessing Officer to provide reasonable opportunity to assessee. The assessee is also directed to be more vigilant in future and provide complete details and source of cash deposits in bank account as early as possible and not to seek the adjournment without any valid reasons. Accordingly, the grounds of appeal by assessee are allowed for statistical purpose.

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

Order dictated in the open court on 11/01/2023 at the time of hearing.

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

सूरत /Surat, Dated: 11/01/2023
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