

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

ITA No. 348/Srt/2022 (Assessment Year 2015-16)

(Physical hearing)

M/s M.D. Infra Developers, Block No. 128, Mamta Park Society, Near Shivani Show Room, Varachha Road, Kapodara, Surat-395006. PAN No. AASFM 7357 A	Vs.	I.T.O., Ward 2(3)(3), Surat Aayakar Bhavam, Majuragate, Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Akshay Modi, CA
Department represented by	Shri Ashok B Koli, CIT-DR
Date of hearing	19/01/2023
Date of pronouncement	19/01/2023

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 National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals), (in short, the Id. CIT(A)) dated 26/08/2022 for the Assessment year (AY) 2015-16 wherein the assessee has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case as well in law, the learned CIT (Appeals) has erred both on facts and in law in deciding the appeal ex-parte in violation of the principles of natural justice and without granting to the assessee a fair, proper and meaningful opportunity of being heard and the inferences of the CIT (Appeals) that the appellant is not interested in pursuing the appeal is without jurisdiction, perverse, invalid, arbitrary, bad in law and hence, liable to be struck down.*
2. *The learned CIT(As) has erred in confirming the order passed by the ITO, Ward 3(3)(3), Surat (for the sake of brevity "the AO") making addition to*

the extent of Rs. 10,81,30,887/- for the alleged unexplained cash credits u/s 68 r.w.s. 115BBE of the Act, on misconceived, misconstrued, misleading, baseless, arbitrary and perverse observations, is contrary to law and facts of the case and hence, liable to be quashed.

3. *On the facts and in the circumstances of the case and in law, both the lower authorities have erred in making addition of Rs. 10,81,30,887/- (Rs. 8,07,43,126/- and Rs. 2,73,87,761/-) treating the trading liabilities towards the labour charges outstanding and to be paid to the labour contractors as the alleged unexplained cash credits u/s 68 of the Act, without appreciating in the right, lawful and proper perspectives the authentic and cogent evidences viz. confirmation letters/accounts with ID proof, books of accounts including P & L A/c and Balance Sheet, bank statements, acknowledgement of ITR filed, computation of total income, etc. of all the labour contractors/sundry creditors furnished through various written submissions filed (as attached herewith forming part of the statement of facts) in discharge of burden upon the assessee to prove the identity and genuineness of the claim of trading liabilities towards the labour contractors recorded in the audited books of accounts for the relevant year and therefore, the action of the CIT(As) in confirming the order passed by AO invoking the provisions of Section 68 r.w.s. 115BBE of the Act treating the genuine, real, actual and existing trading liabilities as bogus cash credits, is without jurisdiction, bad in law, illegal, invalid, arbitrary, conjectural, capricious, perverse, unwarranted of facts, void ab initio, and hence, liable to be quashed.*
4. *On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate in the right, lawful and proper perspectives that the alleged difference in the opening balance of the trading liabilities could not be termed as the cash credits for the year in question and therefore, the action of the AO making addition of Rs. 8,07,43,126/- for the alleged difference in the opening balance of the creditors as the unexplained cash credits of the year under appeal is without jurisdiction, arbitrary, perverse, uncalled for, purely on surmises and conjectural, unfair, unjust and hence, deserves to be deleted in toto.*
5. *On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate in the right, lawful and proper perspectives the entire correspondences made in the course of assessment proceedings, already been supplied with the appeal memo forming part of the statement of facts including cogent explanations and submissions made in writing by the appellant on various dates along with the various enclosures attached with the said submission and hence, not justified.*

6. *Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.”*

2. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that the Id. CIT(A) passed ex parte order in dismissing the appeal of the assessee, without giving fair and reasonable opportunity to the assessee. The Id. CIT(A) in para 5 of his order has recorded that the notice for hearing fixed on 18/01/2021 and again on 12/03/2022 was issued. On 18/01/2021, the assessee sought adjournment which is duly recorded by the Id. CIT(A). However, no such notice dated 25/02/2022 for hearing fixed on 12/03/2022 was issued by the Id. CIT(A). In fact, the Id. CIT(A) issued notice dated 25/02/2021 for fixing the hearing on 12/03/2021, copy of which is filed at page No. 20 and 21 of the appeals folder. The assessee sought adjournment vide their letter/application dated 10/03/2021 which was allowed. Thereafter, no notice for fixing hearing or seeking any information was issued from the office of Id CIT(A)/NFAC. The Id. CIT(A) treated the notice dated 25/02/2021 as notice dated 25/02/2022 and dismissed the appeal of assessee in ex parte proceedings. No fair and reasonable opportunity was given to the assessee. The Id. AR submits that the assessee has good case on merit and is likely to succeed if the assessee is given one more opportunity to contest the case before the Id. CIT(A).
3. On the other hand, the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue supported the

order of Id. CIT(A). The Id. CIT-DR submits that the assessee was given sufficient opportunity to contest the case on merit. The assessee choose not to file required submission or details. In absence of submission or details, the Id. CIT(A) has no option except to decide the appeal on the basis of material on record.

4. We have considered the submissions of both the parties and find that the Id. CIT(A) has not given fair and reasonable opportunity of hearing to the assessee. We find that the notice dated 25/02/2022 fixing for date of hearing on 12/03/2022 was in fact issued exactly years before and the assessee filed application for adjournment on 10.03.2021. The impugned order does not contain any reference of such notice or adjournment application. Thus, we find that the order of Id. CIT(A) suffers from irregularities and in our view, the assessee was deprived from reasonable opportunity, therefore, the grounds of appeal raised by assessee are restored back to the file of Id. CIT(A) to adjudicate the same afresh on merit and in accordance with law. Needless to order that before passing the order the Id. CIT(A) shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the Id.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.

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

Order pronounced in the open court on 19th January, 2023.

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 19/01/2023

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat