

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 169/Rjt/2021
Assessment Year 2012-13**

Shri Dharmesh Bhailal Vaghela, Rajkot PAN: AJOPVSS55F (Appellant)	Vs	The ITO, Ward-3(1)(2), Rajkot (Respondent)
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**Assessee by: Shri Kalpesh Doshi, A.R.
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 30-01-2023
Date of pronouncement : 17-02-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This assessee's appeal for A.Y. 2012-13, arises from order of National Faceless Appeal Centre (NFAC), Delhi dated 28-07-2021, in proceedings under section 250 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:-

<i>Grounds of appeal</i>		<i>Tax effect relating to each Ground of appeal</i>
1	<i>That, the ld. CIT(A) has passed the order without affording proper opportunity of being heard.</i>	---
2	<i>That, the Ld. CIT(A) has wrongly confirmed reopened assessment u/s. 148 of the IT Act, 1961. The Ld. CIT(A) has passed the appeal order without considering the merit of the case.</i>	---
3	<i>That, the Ld. CIT(A) has wrongly confirmed addition of Rs. 17,06,665/-on account of unexplained cash deposits.</i>	---
4	<i>That, the Ld. CIT(A) has wrongly confirmed initiation of penalty proceedings u/s 274 r.w.s. 271(l)(c) of the IT. Act, 1961.</i>	---
5	<i>That, the Ld. CIT(A) has wrongly confirmed levy of interest u/s 234A, 234B, 234C and 234D of the Income Tax Act, 1961.</i>	---
6	<i>That, the findings of the Ld. AO and Ld. CIT(A) are not justified and are bad- in-law.</i>	---
7	<i>The appellant craves to add, amend, alter or delete any of the above grounds of appeals.</i>	---
<i>Total tax effect (see note below)</i>		<i>10,31,320/-</i>

3. At the outset, we observe that there is delay of 96 days in filing of the present appeal by the assessee. The counsel for the assessee submitted that appeal was filed during the Covid period and accordingly the delay may kindly be condoned.

3.1 In view of the explanation of the assessee, in the interest of justice, we are hereby condoning the delay in filing the appeal by the assessee.

4. The facts of the case are that the assessee is engaged in the business of purchase and sale of shares through recognized stock exchange. During the year under consideration, the assessee had made cash deposits of Rs. 17,06,605/- in various bank accounts. During the assessment proceedings, the assessee submitted that the cash deposits were made out of sale of goods. However, the Assessing Officer rejected the contention of the assessee on the ground that he has not furnished any material in respect of the cash sales. The Id. Assessing Officer, accordingly made an addition of the aforesaid amount of Rs. 17,06,665/- as unexplained income of the assessee.

5. The assessee filed appeal before the Id. CIT(A). In appeal, the Id. CIT(A) dismissed the assessee's appeal on the ground that the assessee even during appellate proceedings has not submitted any material in support of the said cash deposits in the bank accounts. The assessee has not filed any evidence to prove that the said cash deposits were made out of cash sales. Accordingly, the appeal of the assessee was dismissed.

6. Before us, the counsel for the assessee submitted that the order passed by Id. CIT(A) was ex-parte and the assessee did not get adequate opportunity to present his case on merit. The counsel for the assessee submitted that all these deposits have been made out of cash sales and if given an opportunity, he shall suitably demonstrate the source of such cash deposits in the bank account. Accordingly, looking into the facts of the

instant case, in the interest of justice, we are hereby restoring the file to Id. CIT(A) for hearing afresh on merit after giving due opportunity to the assessee to produce the requisite supporting evidences on record to substantiate the source of such cash deposits. In the result, the matter is being set aside to the Id. CIT(A) with the above directions.

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

Order pronounced in the open court on 17-02-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 17/02/2023

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot