

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

ITA No. 46/Srt/2023 (Assessment Year: 2016-17)

Sh. Chandubhai B Khatrani, I-402, Kaveari Habitat, Near Sarthana, Jakatnaka, Varachha Road, Surat. Email:vrmandassociates@gmail.com 9016091548/ 9879056986 <b>PAN No. ASRPK 3514 C</b>	Vs.	ITO, Ward, 3(3)(1),Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Sh. Suresh Kabra, CA
Respondent represented by	Shri Vinod Kumar , (Sr -DR)
Date of filing appeal	25/01/2023
Date of hearing	06/03/2023
Date of pronouncement	06/03/2023

**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 (NFAC) New Delhi dated 20/05/2022 {hereinafter called /referred Id. CIT(A)} for the Assessment year (AY) 2016-17, which in turn arise from the assessment order passed by Income Tax Officer Ward 3(3)(5) Surat, dated 2011.2018.
2. At the outset of hearing, learned Authorized Representative (Ld.AR) for the assessee submits that Ld. CIT(A) dismissed the appeal of assessee in an *ex parte* order without considering the merit of the case. The Id. AR of the assessee submits that the assessee has a good case on merit and likely to succeed if the assessee is to be heard and

the appeal is to be decided on merit. The Id AR for the assessee submits that in the statement of facts the assessee has explained all the facts.

3. The Id. AR of the assessee submits that assessment order passed by assessing officer under section 144. The assessee could not represent his case before assessing officer due to change of address and no notice could be served on the assessee due to such fact. The assessee while filing appeal before Id CIT(A) given email address, but said email was not correctly typed, therefore, no notice was served through such email. The non-appearance before lower authorities was neither intentional nor deliberate, but to the facts explained above. The Id AR for the assessee prayed that matter may be restored back to the file of assessing officer for adjudicating all the issues afresh in accordance with law and he undertake on behalf of the assessee to be more vigilant in attending the hearing before Id CIT(A).
4. On the other hand, the learned Senior Departmental Representative (Id. Sr DR) for the revenue supported the order of Id. CIT(A) and submitted 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 notice was not served for no fault of his, in fact sufficient opportunity was not given to him. The assessee has no regards to the public authorities in attending the

hearing before them and now claiming that no fair or reasonable opportunity was not given to the assessee.

5. I have heard the submissions of both the parties and have gone through the orders of lower authorities carefully. I find that the Assessing Officer while passing the assessment order under section 144 of the Act on 20.11.2018 made addition under section 69 of Rs. 9,54,120/- on account of unexplained investment for purchasing property and addition under section 56(2)(vii)(b)(ii) of Rs. 2,58,188/- . The Id. CIT(A) dismissed the appeal of assessee by holding that in spite of several opportunities, no one attended the hearing proceedings. I find that the both the authorities below passed the ex-party order. In my view, the valuable rights of the assessee are involved and the orders by lower authorities have been passed in absence of the assessee. The Id AR for the assessee has reasonably explained the cause of non-appearance of assessee before lower authorities. Considering the fact that assessing officer as well as Id. CIT(A) passed the ex parte order, in my view, the assessee deserve reasonable opportunity of hearing, therefore, the order of assessing officer and Id. CIT(A) is set aside and all the grounds of appeal raised by the assessee are restored back to the file of assessing officer to decide all the issues afresh and in accordance with law. Needless to direct that before passing the order, the assessing officer shall grant

reasonable opportunity of hearing to the assessee. The assessee as well as his representative is also directed to be more vigilant in future and not to cause further delay and seek adjournment without any valid reason and to furnish all information, details and evidences to substantiate his claims, as soon as possible, if so desired without any further delay, before the assessing officer. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced on 06<sup>th</sup> March, 2023 at the time of hearing in the open court.

**Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER**

Surat, Dated: 06/03/2023  
*Self by author // True Copy //*

- Copy to:
1. Assessee
  2. Revenue
  3. CIT
  4. DR
  5. Guard File

By order

Sr. Private Secretary, ITAT, Surat