

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

(Hearing in Virtual Court)

Sureshbhai Sukhabhai Mistry 130, Kumbhar Faliya, Via Satem, Tal: Navsari, Dist. Navsari-396466 PAN No: AMMPM 4411 H	Vs	Income Tax Officer, Ward-5, Navsari
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Sujesh C Suratwala, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	30.01.2023
उद्घोषणा की तारीख/Date of pronouncement	31.03.2023

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, Delhi [for short to as “NFAC/Ld.CIT(A)”] dated 05.05.2022 for assessment year 2011-12, which in turn arises from the addition made by the Income Tax Officer, Ward-5, Navsari / Assessing Officer in assessment order passed under section 144 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 13.09.2017. The assessee has raised the following grounds of appeal:-

“1. The learned AO as well as Learned NFAC/CIT(A) has erred in making addition to the total income of the assessee which is primarily agriculture inn nature and in fact exempted to tax

*2. The Learned NFAC/ CIT(A) has erred in making addition of Rs.7,60,000/- on the vary ground that **“appellant has not submitted any confirmations of his fellow agriculturist friends in respect of his claim that he had made aggregate borrowings of Rs.7,60,000/- from them”** contrary to that during the course of appeal proceedings the appellant has submitted all substantial evidence pertaining to the agriculture income as well as borrowers’ details including KYC and credit worthiness before the NFAC/CIT(A).*

3. The learned AO has while passing order u/s 144 of the Act not justified his legal position in manner that he has not granted any relief to the ae and making addition of the entire amount whether cash or credit.

4. The appellant craved leaves to add, alter, delete amend or modify grounds of appeal.”

Vide application dated 03.01.2023, the assessee raised following additional ground:

“1. The learned AO as well as NFAC has erred in disallowing the other credit entries for amount Rs.4,15,321/- which was arose out of agriculture loan received from Bank of Baroda to the extent of Rs.3,70,000/- which is capital receipt in nature and exempted from Tax and other Misc. credit of Rs.45,000/- toward MICR returned and Rs.321/- towards Bank saving interest.”

2. Brief facts of the case are that assessee is an agriculturist and no return of income was filed by assessee for the year under consideration, i.e., assessment year 2011-12. The Assessing Officer was having information that assessee made cash deposit of Rs.15,90,670/- on various dates in his

savings bank account with Bank of Baroda, Viraval Branch, Navsari. The Assessing Officer after recording reasons, reopened the case of assessee under section 147, subsequently notice under section 148 issued upon assessee on 28.03.2017. The Assessing Officer recorded that despite service of notice assessee has not filed his return of income. Thereafter, Assessing Officer served various notices for seeking details, however, no response done by assessee in order to verify, the information about cash deposit, the Assessing Officer issued notice under section 133(6) on 28.07.2017 to the bankers of the assessee. It was informed by the banker of assessee that there is cash deposited of Rs.15,90,670/- on various dates. As no response was made on the part of assessee against various notices, the Assessing Officer finally issued show cause notice dated 18.08.2017. The contents of such show cause notice is reproduced in para-5 of assessment order. The Assessing Officer recorded that again no response was made by assessee. The Assessing Officer in absence of any response or explanation on the part of assessee about nature and

source of such deposit treated the deposits of Rs. 15,90670/- as unexplained income of assessee.

3. The Assessing Officer further noted that there are certain credit entries in the bank account of assessee aggregating to Rs.4,15,321/- which also remained unexplained. The Assessing Officer also made addition of Rs.4,15,321/- in the total income of assessee, vide assessment order dated 13.09.2017 passed under section 144 of the Act.
4. Aggrieved of the additions in the assessment order, the assessee filed appeal before Ld. CIT(A). The case of assessee migrated before NFAC/Ld. CIT(A). Before NFAC/Ld. CIT(A) assessee filed detailed written submission and said submission of assessee recorded in para-5 of the order of NFAC/Ld. CIT(A). In the submission, the assessee stated that during the year under consideration, the assessee made cash deposit in his bank account of Rs.5,90,670/- but Assessing Officer made addition on account of cash deposit of Rs.15,90670/- and credit entries of Rs.4,15,321/-. The assessee is an agriculturist having agricultural land situated at village Sanvalla, Taluka Mahuva, District Surat. The land is being cultivated by assessee and sold

agricultural produce of sugarcane, which was sold to Sahakari Khand Udyog Mandli, Gandevi. Apart from agricultural income, assessee is owner of truck, having registration No. GJ-21-T-2862 and said truck was exclusively used for carting sugarcane from the farmers' land to Sahakari Khand Udyog Mandli, Gandevi factory. The assessee also furnished copy of Forms 7/12, 8A certificate issued by Sabhashad Sherdi Kapni Vahatuk Vyavastha Samiti Khergam Gandevi. The assessee further stated that he intended to send his son / Bhadreshkumar Sureshbhai Mistry for higher study of PGD in Business Management in London, United Kingdom. For the purpose of arranging fees, for his son, the assessee borrowed money from his relatives and friend. Apart from his own past savings from agricultural income and deposited in his bank account with Bank of Baroda. The assessee furnished the names and addresses and the amount borrowed along with copy of ownership of agricultural holdings of Bhagubhai Rambhai Mistry, Dahyabhai Khandubhai Mistry, Pravinbhai Lalbhai Mistry, Thakorbbhai Sukhabhai Mistry and Thakorbbhai Vallabhbhai Mistry. The assessee submitted that he has

borrowed of Rs.7.60 lakh from the above five persons. The Assessing Officer made addition on account of cash or cash credit. Further, assessee explained that Rs.10.00 lakh was wrongly credited by his banker mistakenly and said credit was immediately reversed on 03.09.2010. The Assessing Officer without appreciating the fact made addition as income of the assessee and remaining entry in his bank account were either on account of borrowing money from his friends or relatives, which were added back by Assessing Officer. The assessee furnished evidence credit entry received from sugarcane factory and the details of bank account with copy of pass-book.

5. The NFAC/Ld. CIT(A) after considering the submission of assessee held that during the assessment, there was no compliance on the part of assessee with various show cause notices issued by Assessing Officer to explain the source of such cash deposits. During the course of appellate stage, the assessee explained that he deposited Rs.5,90,670/- in his bank account whereas there is addition of unexplained cash deposit of Rs.5,90,670/- out of which assessee claimed to have borrowed aggregating to Rs.7.60 lakhs. The NFAC/

Ld. CIT(A) on perusal of assessee's bank account, noted that there was cash deposit of Rs.5,90,670/- in the bank account of assessee, which was not explained by assessee with necessary evidence. The assessee has not filed any confirmation from his fellow agriculturists in respect of borrowing of Rs.7.60 lakh. The claim made first time before the appellate stage, which was never before Assessing Officer. Thus, NFAC/Ld. CIT(A) directed the Assessing Officer to verify the claim that cash deposit are only Rs.5,90,760/- and to restrict the addition to that extent only. Further, aggrieved the assessee filed present appeal before the Tribunal.

6. On perusal of record shows that impugned order passed by NFAC/Ld. CIT(A) on 05.05.2022, however, the present appeal filed on 05.09.2022. Thus, the appeal is barred by limitation of 63 days in filing appeal before Tribunal. The assessee filed an application supported affidavit for condonation of delay. The Ld. Authorized Representative (Ld.AR) for the assessee submits that there is delay of 63 days in filing appeal before Tribunal. The Ld. AR for the assessee submits that assessee is a senior citizen aged

above 65 years and was not having good health. The order of dismissal of NFAC/Ld. CIT(A) was not communicated to assessee immediately by his tax consultant. The assessee on realizing that appeal had been dismissed by NFAC/Ld. CIT(A), filed present appeal before Tribunal. The Ld. AR for the assessee submits that there was no intentional or *mala fide* delay in filing before Tribunal rather assessee could not take decision owing to his ill-health as assessee was not appointed further tax consultant. The Ld. AR for the assessee submits that assessee has a good case on merit and would suffer prejudice if the delay in filing of assessee's appeal is not condoned. The Ld. AR for the assessee submits that there is no deliberate delay in filing the appeal before the Tribunal and same may be condoned and appeal of assessee was heard on merit.

7. On the other hand, Ld. Senior Departmental-Representative (Ld.Sr-DR) for the Revenue submits that assessee is a casual in pursuing his appeal and in condonation of delay, no reasonable and plausible explanation corroborated by assessee so the cause of delay may not be granted.

8. I have heard the rival submission of Ld.AR for the assessee and Ld. Sr DR for the Revenue. The assessee has filed appeal before Tribunal on 05.09.2022. Thus, from the date of knowledge of dismissal of appeal of assessee by NFAC/Ld. CIT(A) after 63 days. Considering the fact that assessee has filed his affidavit and stated on oath that he was not served with the impugned order passed by NFAC/Ld. CIT(A) and came to know about dismissal of appeal only on receipt of tax demand notice and thereafter, filed present appeal. Considering the fact that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice must be preferred. Thus, considering the facts of delay in filing of assessee's appeal is condoned. Now advertent to the merit of the case.
9. Now advertent to application for additional ground of appeal. Ld. AR for the assessee submits that Assessing Officer made two additions, (i) addition on account of cash deposit in bank account of Rs.15,90,670/- and other credit entry of Rs.4,15,321/-. The assessee could not raise the ground of appeal at the time of filing present appeal due to inadvertence. The fact relating to raise additional ground of

appeal is available on record and no new fact is required to bring on record. The ld. AR for the assessee prayed for admitting the additional ground of appeal.

10. On the other hand, Ld. Sr-DR for the Revenue submits that assessee has not challenged such addition before NFAC/Ld. CIT(A). Once the issue raised in additional ground of appeal was not the subject-matter of appeal before NFAC/Ld. CIT(A), therefore the assessee is not estoppel from raising such plea.
11. I have considered the rival submission of both the parties and gone through the order of lower authorities carefully. It is a matter of fact that Assessing Officer while passing assessment order made additions on account of unexplained cash deposit of Rs.15,90,670/- as well as Rs.4,15,321/-. Admittedly, the addition of Rs.4,15,321/- was not raised by assessee before NFAC/Ld. CIT(A). Though, the assessing officer completed by Assessing Officer under section 144 of the Act, yet before passing the assessment no specific show cause notice was issued for making addition of Rs.4,15,321/-. Thus, considering the facts and circumstances of the case, the additional ground of appeal

raised by assessee for the first time before Tribunal. Therefore, this additional ground of appeal is admitted for adjudication and restored back to the file of Assessing Officer to consider it afresh, in accordance with law after providing reasonable opportunity of hearing to assessee. The assessee is directed to produce evidence before Assessing Officer as and when called for. This additional ground of appeal is allowed for statistical purposes in above terms.

12. Now adverting to ground No.1, which is general in nature and does not require any adjudication. Hence, this ground of assessee's appeal is dismissed as infructuous.
13. Ground No.2 relates to addition of Rs.7.60 lakh. The Ld. AR for the assessee submits that assessee is an agriculturist holding agricultural land, which is situated at Village Sanvalla, Taluka: Mahuva, Dist. Surat. During the relevant period assessee borrowed money from his relatives / friends for making arrangement for sending his son to United Kingdom for higher study. The assessee filed details of such borrowers. The NFAC/Ld. CIT(A) instead of considering such evidence confirmed the addition to the extent of

Rs.5,90,670/- taking a view that assessee has not filed confirmation of borrowers. I find that NFAC/Ld. CIT(A) neither verified / investigated nor called for remand report from the Assessing Officer. The assessee furnished complete details of agricultural land of such borrowers, though the NFAC/Ld. CIT(A) upheld the addition to the extent of Rs.5,90,670/- for the want of confirmation. In my view, the assessee has primarily discharged his onus by furnishing names and address of such borrowers to prove of identity and creditworthy of lender in the form of agricultural holding. Therefore, this ground of assessee is also restored back to the file of Assessing Officer for considering the evidence furnished by assessee and to pass a speaking order in accordance with law. 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. This ground of appeal raised by assessee are allowed for statistical purpose.

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

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

सूरत/Surat, Dated:31/03/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT,
Surat