

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

ITA No. 182/Srt/2023 (Assessment Year 2011-12)
(Virtual hearing)

Mahendra Dalpatbhai Patel, 183, Patel Faliyu Limodra Village, Mangrol, Surat-394110. PAN No. AXLPP 1949 B	Vs.	I.T.O., Ward-1, Bardoli.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Krunal Jariwala, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of appeal	14/03/2023
Date of hearing	17/04/2023
Date of pronouncement	17/04/2023

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 learned National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 18/01/2023 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:

“1. In view of the facts and circumstances of the case, the Id. CIT(A) erred in law in making addition of Rs. 15,00,000/- on account of unexplained credit in bank u/s 68 of the Act.”

2. Rival contentions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that the assessee could not file various documents either before the Assessing Officer or before the Id. CIT(A). The Assessing Officer

passed the assessment order under Section 144 r.w.s. 147 of the Income Tax Act, 1961 (In short, the Act) dated 29/11/2018 and made addition of Rs. 15.00 lacs under Section 68 on account of unexplained cash credit. The case of assessee was reopened on the basis of information at ITS data about depositing/cash credit in his bank account. Even before Id. CIT(A), the assessee could not furnish such details. The Id. CIT(A) passed the ex-parte order without discussing the merit of the case. The Id. AR of the assessee submits that he has filed application under Rule 29 of Income Tax (Appellate) Rules, 1963 for seeking permission to file additional evidence. The additional evidence consist of evidence related with joint account of assessee with Ramanbhai Narottambhai Patel who is relative of assessee and record of agriculture holding. The evidences are related with source of credit in the bank account and goes to the root of the matter. The assessee has good case on merit and would suffer irreparable injury if the evidences filed by the assessee is not admitted and the case is not adjudicated on the basis of evidence furnished by the assessee. The Id AR for the assessee submits that keeping in view the principal of natural justice, the assessee may be give one more opportunity of haring on merit.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that the assessee has not made any compliance either in response to notice under Section 148 of the Act nor

responded to various other notices issued by the Assessing Officer on more than nine occasions. Again before the Id. CIT(A), no compliance was made despite repeated notices to the assessee nor any written submission was furnished. The Id. Sr. DR for the revenue submits that the assessee deserve no leniency. The assessee cannot seek permission to file additional evidence as a matter of right without showing sufficient cause and reason under which circumstances, the assessee could not furnish such evidence before the lower authorities. No such cause is disclosed by the assessee in his application filed before Tribunal.

4. In without prejudice submission, the Id. Sr. DR for the revenue submits that though his primary submission is that his additional evidence may not be admitted, even if such additional evidence is admitted, the matter may be restored to the file of Assessing Officer to consider it afresh and the assessee be also directed to be more vigilant in making compliances of notices of lower authorities and not to disregard the notices of the lower authorities.
5. I have considered the submissions of both the parties and perused the record. It is a matter of fact that the case of assessee was reopened on the basis of information of ITS data about the deposit of Rs. 33.00 lacs in the bank account of the assessee. On verification of such data, the Assessing Officer found that the assessee is not filing return of income for A.Y. 2011-12. The Assessing Officer in order to examine the source

of deposit, recorded reasons of reopening and after obtaining necessary approval, served notice under Section 148 of the Act. No response was made by assessee. The Assessing Officer on the basis of information available with him noted that the cash deposit of Rs. 6.00 lacs was made in Surat Cooperative Bank and Rs. 9.00 lacs with two bank accounts with Bank of India were made by assessee. The Assessing Officer recorded that out of Rs. 33.00 lacs, Rs. 15.00 lacs were deposited by assessee in cash and rest of the amount of Rs. 18.00 lacs (Rs. 33.00 lacs – Rs. 15.00 lacs) is termed deposit. The Assessing Officer accordingly made addition of Rs. 15.00 lacs only. Before the Id. CIT(A), no grounds of appeal against reopening was made by assessee. Thus, the issue of reopening attained finality. The assessee challenged the addition on merit only.

6. The Id. CIT(A) upheld the addition by taking a view that during the appellate stage, the assessee submitted only statement of fact in Form 35 and after that neither replied the notice of hearing nor submitted any evidence to substantiate the grounds of appeal. The Id. CIT(A) without discussing the merit of the case or fact, confirmed the addition. In my view, the order of Id. CIT(A) is not in consonance with the mandate of Section 250(6) of the Act. Section 250(6) of the Act. Section 250(6) mandates that order of Id. CIT(A) must contain facts of the case, points of determination and decision thereon and reasons of such decision. Now before me, the assessee has filed application for permission for

filing additional evidence. Additional evidence consists of details of bank accounts, which is joint account of assessee with Ramanbhai Narotambhai Patel as certified by Manager of Bank of India. Other evidences consist of statement of bank account, PAN card of joint account holder alongwith his Aadhar card and details of land holding. The Id. AR of the assessee during his submission, vehemently submitted that the evidence furnished by the assessee goes to the root of additions and if the evidence is considered, the addition would not survive. Considering the relevancy of evidence furnished by the assessee, and keeping in view of the facts that the both the lower authorities confirmed addition in absence of any representation and evidences, I deem it appropriate to admit such evidences. Considering the fact that such evidences are filed for the first time before the Tribunal, therefore, the grounds of appeal is restored back to the file of Assessing Officer to adjudicate the issue afresh after considering the evidences of assessee, in accordance with law. Needless to direct that before adjudicating the issue afresh, the Assessing Officer shall grant fair and reasonable opportunity of hearing to the assessee. The assessee is also directed to be more vigilant in future in making proper compliance of notices issued by the Assessing Officer and not to seek any adjournment without valid reasons. With this observation, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order announced in open court on 17th April 2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 17/04/2023

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat