

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.05-06/SRT/2023 (AYs 2009-10 & 2010-11)

(Hearing in Physical Court)

Deendayal Kanaiyalal Bajaj, F-2/B, The Palm Avenue, VIP Road, Vesu, Surat-395007 PAN : ABIPB 6371 Q	Vs	Asst. Commissioner of Income Tax, Circle-1(2), Surat, Room No.213, 2 nd Floor, Aayakar Bhavan, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri P.M. Jagasheth, C.A
राजस्व की ओर से /Revenue by	Shri Ashok B Koli, CIT-DR & Shri Vinod Kuamr, Sr-DR
Appeal instituted on	02.01.2023
सुनवाई की तारीख/Date of hearing	10.05.2023
उद्घोषणा की तारीख/Date of pronouncement	10.05.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate order of National Faceless Appeal Centre (NFAC), Delhi/Ld. CIT(A) all dated 30.11.2022 for assessment years (AYs) 2009-10 and 2010-11, which in turn arose out separate assessment orders passed by Assessing Officer under section 144 r.w.s 147 r.w.s. 143(3) dated 28.01.2016 and 26.12.2017 respectively. In appeal for AY 2009-10, the assessee has raised following grounds of appeal;

1. *On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in reopening the assessment u/s 147 of the Act and issuing notice u/s 148 of the Act.*

2. *On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.9,03,54,100/- on account of cash deposited in bank account with ICICI Bank and others as per AIR Information.*

3. *On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has not offered ample opportunities to hear the case and passed ex-parte order, hence the case may please be set aside and restored back to the CIT(A) or A.O.*

4. *It is therefore prayed that the above addition may please be deleted as learned members of the Tribunal may deem it proper.*

5. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”*

2. At the outset of hearing, Ld. Authorized Representative (Ld-AR) for the assessee submits that NFAC/Ld. CIT(A) passed *ex parte* order without discussing merit of the case though the assessee filed various submissions on the ITBA portal on different dates i.e., 22.02.2021, 12.01.2021, 01.11.2022 and 10.11.2022 respectively. The assessee also filed an application under Rule-46A of Income Tax Rules, 1962 for furnishing additional evidence along with his medical

certificate. The NFAC/Ld. CIT(A) failed to consider all such submissions and application filed for filing additional evidence under Rule-46A of Income Tax Rules, 1962. The ld. AR for the assessee submits that order passed by NFAC/Ld. CIT(A) is not a speaking order in accordance with law mandate of Section 250(6) of the Act. The Ld. AR for the assessee further submits that even Assessing Officer passed assessment order under section 144 by holding that assessee failed to attend in assessment proceedings and the net transactions, source of deposit and made huge addition on account of cash credits in the account of assessee. The ld. AR for the assessee submits that matter may be restored either to the file of NFAC/Ld. CIT(A) or Assessing Officer with a direction to consider assessee's application under Rule-46A of the Income Tax Rules, 1962 by calling for remand report from Assessing Officer or may be restored to the file of Assessing Officer as the Bench may think appropriate.

3. On the other hand, Ld. Commissioner of Income-Tax-Departmental Representative (Ld. CIT-DR)/Ld. Sr. Departmental Representative (Sr. DR) for the Revenue after

going through the screen shot of uploading/ filing various submissions including an application under Rule 46A of the Income Tax Rules, 1962 along with medical papers of assessee submits that it would be appropriate to restore the matter back to the file of Assessing Officer. The Ld. CIT-DR for the Revenue submits that assessee be directed to be more vigilant and to make complete compliance of various notice issued by the revenue officers without any further delay.

4. We have considered the submissions of the parties and perused the materials available on record. We find that Assessing Officer as well as NFAC/Ld. CIT(A) passed the order in *ex parte* proceedings. We further find that before NFAC/Ld. CIT(A) the assessee filed various submissions as has been shown in the screen shot of ITBA portal. Considering the facts and circumstances of the case, NFAC/Ld. CIT(A) has not considered such submissions and dismissed appeal of assessee by holding that assessee has not made any compliance and consequently upheld the addition made by the Assessing Officer. We further find that order of NFAC/Ld. CIT(A) is not as per the mandate of

Section 250(6) of the Act. Therefore, all the grounds of appeal raised by the assessee are restored to the file of Assessing Officer to be decided the same on merit. Needless to say that before passing the order, the Assessing Officer shall grant reasonable and fair opportunity of hearing to the assessee. The assessee is also directed to be vigilant in making compliance of notice before Assessing Officer as and when called for and not to seek adjournment without any valid reasons. The Assessing Officer is further directed to pass the order expeditiously as early as possible as the case relates to AY 2009-10.

5. In the result, all the grounds raised by the assessee are allowed for statistical purposes.

ITA No. 06/SRT/2023 for AY 2010-11.

6. Appeal for AY 2010-11 was also dismissed by ld CIT(A) in *ex party* order. The Assessing Officer also made additions of unexplained cash credit and Long Term Capital Gain by taking view that no evidence or explanation was filed by the assessee. The ld CIT(A) upheld both the addition in *ex-parte* order without discussing the merit of the case. Considering the facts that we have restored the appeal of AY 2009-10 to

the file of Assessing Officer, therefore following principle of consistency, this appeal of assessee is also allowed for same footing.

7. In the result, all the grounds raised by the assessee are allowed for statistical purposes.
8. In combined result, both the appeal of the assessee are allowed for statistical purposes. A copy of the instant common order be placed in the respective case file(s).

Order pronounced in the open Court on 10/05/2023
at the time of hearing.

Sd/-
(Dr ARJUN LAL SAINI)
[लेखा सदस्य/ACCOUNTANT MEMBER]

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

Surat, Dated: 10/05/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

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

// True Copy //

By order

Sr. P.S./Assistant Registrar, ITAT, Surat