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

ITA No. 116/Srt/2023 (AY: 2010-11 Quantum appeal)

ITA No. 117/Srt/2023 [AY: 2008-09 Penalty u/s 271(1)(c)]
(Virtual hearing)

Arshadhussain Gulamabbas Shaikh, 303, Mefuz Park Apartment A, Muglisara, Surat, Gujarat-395003. **PAN No. BWOPS 8313 P**	Vs.	I.T.O., Ward-2(2)(1), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Hemant Suthar, AR
Department represented by	Shri Vinod Kumar, Sr. DR
Date of institution of appeal	15/02/2023
Date of hearing	16/05/2023
Date of pronouncement	16/05/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by the assessee are directed against the separate orders of National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals), (in short, the ld. CIT(A)) both dated 20/12/2022 for the Assessment Year (AY) 2010-11. In ITA No. 116/Srt/2023 the assessee has challenged the validity of addition in quantum assessment and in ITA No. 117/Srt/2023, the assessee has challenged the validity of penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short, the Act). Both the appeals are interconnected, thus, both the appeals were clubbed, heard together and

are decided by consolidated order. In quantum assessment appeal the assessee has raised following grounds of appeal:

> *"1. The Ld. CIT (Appeals), National Faceless Appeal Centre (NFAC) has grossly erred in law and in facts in dismissing the appeal ex-parte without affording reasonable opportunity of being heard and for want of prosecution. The appeal of the appellant may kindly be restored to the file of the Ld. CIT (Appeals), NFAC, and may please be directed to afford reasonable opportunity of being heard.*
>
> *2. The Ld. CIT (Appeals), NFAC even in deciding the appeal and dismissing it ex-parte ought to have dealt with the merits of the issues involved and decided the appeal on merits by a speaking order observing the principles of natural justice. The order has been passed hurriedly and hence, the order of the Ld. CIT (Appeals), NFAC may please be set aside.*
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> *3. Without prejudice to the above, the Ld. A.O. has erred in making the addition of Rs. 35,13,786/- for the amount received against the sale of immovable property without considering the facts and therefore the same is bad in law and the order passed is prayed to be quashed.*
>
> *4. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground(s) of appeal hereinabove contended."*

2. At the outset of hearing, learned Authorized Representative (Ld.AR) for the assessee submits that Ld. CIT(A)/NFAC dismissed the appeal of assessee in an *ex parte* order without considering the merit of the case. The Ld. CIT(A) dismissed the appeal of assessee without adjudicating the various grounds of appeal as per mandate of Section 250(6) of the Act. The ld. 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 ld AR for the assessee submits that even the assessment order was passed under section 144 of Act. During the assessment no notice was received by the assessee as the assessee has

shifted his address. The copy of assessment was handed over to his son by some neighbour. On receipt of assessment order the assessee engaged Sanjeev Tamakhuwala CA to file appeal before CIT(A). After filing appeal his CA suffered a major road accident and his leg was fractured, so he could not file written submission and ultimately the ex-parte order was passed against the assessee. The ld AR for the assessee submits that he has already filed the copy of medical certificate of Sanjeev Tamakhuwala CA. The ld AR for the assessee retreated that the assessee has good case on merit and is liable to succeed if his case is adjudicated on merit. The ld AR for the assessee prayed that matter may be restored back to the file of Ld. CIT(A) for adjudicating the issue afresh in accordance with law and he undertakes on behalf of the assessee to be more vigilant in attending the hearing before ld CIT(A). further, the assessee may be allowed to filed relevant evidences and the submissions to substantiate the grounds of appeal.

3. On the other hand, the learned Senior Departmental Representative (ld. Sr DR) for the revenue supported the order of ld. CIT(A) and submitted that the Assessing Officer as well as ld CIT(A) granted sufficient opportunity to the assessee. The assessee failed to availed such opportunity and now taking plea that 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. The assesse does not deserve any leniency, the ld CIT(A) passed the order after considering all the facts available before him.

4. 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 r.w.s. 147 of the Act on 07/11/2017 by taking a view that there has been consistent failure by the assessee to comply with the terms of statutory notices. In absence of required details/evidences not furnished by the assessee, the Assessing Officer has passed the assessment order by making addition of Rs. 35,13,786/-, on account of receipt of sale consideration on sale of immovable property. On further appeal before, ld. the ld. CIT(A) dismissed the appeal of assessee by holding that the assessee had sold a property and had received consideration of Rs. 35,13,786/- but not filed the return of income. Various notices were issued to the assessee but no compliance was made as well as none had attended to prosecute the case on behalf of assessee. Considering the peculiar facts of the present case that neither the assessee could appear before assessing officer nor could file any response before ld CIT(A)/ NFAC, due to the accident of his CA. In my view the assessee has not got fair, reasonable and proper opportunity before ld CIT(A)/NFAC to represent his case. Therefore, all the grounds of the appeal raised by the assessee are restored to the file

of ld CIT(A) officer to examine the issue afresh and pass the order in accordance of law. The ld CIT(A) will be ate liberty to seek the remand report of the assessing officer, in the event, if any evidence is filed which require verification from the end of assessing officer. Needless to direct that before passing the order afresh the assessing officer shall grant opportunity to the assessee. The assessee 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 the details and his submissions on various grounds of appeal raised by him, as soon as possible, if so desired without any further delay. The assessee is also directed to appear before assessing officer if any remand proceedings are initiated as per the order of ld CIT(A), if any. In the result, the original grounds of appeal raised by the assessee are allowed for statistical purpose.

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

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6. Since I have restored the quantum appeal of the assessee to the file of ld CIT(A), for deciding the issue afresh, therefore, the order pf penalty under section 271(1)(c) confirmed by ld CIT(A), which is also passed in ex-parte proceedings is also set-aside, with the direction to ld CIT(A)/NFAC to decide afresh after adjudication of grounds of appeal in quantum assessment. Needless to direct that before passing the order afresh, the ld CIT()A/NFAC shall grant opportunity of hearing to the

assesse. In the result, the grounds of appeal in the present appeal is also allowed for statistical purpose.

7. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 16th May, 2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 16/05/2023
**Ranjan*
Copy to:
1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat