

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.240/SRT/2023 (AY 2013-14)

(Hearing in Physical Court)

Bharatbhai Manubhai Baldha, 11-12, Ishwerkrupa Society, L.H. Road, Trikamnagar-2, Varachha, Surat-395006 PAN No. AHTPB 5940 Q	Vs	Income Tax Officer, Ward- 3(3)(1), Surat, Aayakar Bhavan, Nr. Majura Gate, Opp. New Civil Hospital, Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Akshay M Modi, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar Sr-DR
अपील पंजीकरण/Appeal instituted on	13.04.2023
सुनवाई की तारीख/Date of hearing	15.06.2023
उद्घोषणा की तारीख/Date of pronouncement	15.06.2023

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 Ld. Commissioner of Income Tax(Appeals)-4, Surat [for short to as "Ld. CIT(A)"] dated 16.09.2022 for the assessment year 2013-14, which in turn arises out of assessment order passed by Assessing Officer under section 143(3) of Income Tax Act, 1961 (hereinafter referred to as 'the Act' for the sake of brevity) on 31.12.2018. The assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case as well in law, the learned CIT(Appeals) has erred both on facts and in law in deciding the appeal ex parte in violation of the principles of natural justice and without granting to the assessee a fair, proper and meaningful opportunity of being heard and the inferences of the CIT(Appeals) that the appellant is not interested in pursuing the appeal is without jurisdiction, perverse, invalid, arbitrary, bad in law and hence, liable to be struck down.

2. The learned CIT(Appeals)-4, Surat has erred in law as well as on the facts while confirming the order u/s 271(1)(c) of the Act passed by the ITO, Ward-3(3)(1), Surat levying penalty to the extent of Rs.4,94,365/- for the alleged furnishing inaccurate of income.

3. Both the lower authorities have grievously erred in not properly appreciating the entire correspondences made in the course of assessment proceedings/appellate proceedings, already been supplied with the appeal memo forming part of the statement of facts including cogent explanations and submissions made in writing by the appellant on various dates along with the various enclosures attached with the said submission.

4. Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.”

2. At the outset of hearing, Ld. Authorized Representative (Ld. AR) for the assessee submits that Ld. CIT(A) passed *ex parte* order without discussing merit of the case and the impugned order is not as per the mandate of Section 250(6) of the Act. The Ld. AR for the ae submits that the observation of Ld. CIT(A) in **para-3** of the order on the part of non-compliance of assessee is not correct. The Ld. AR for the assessee submits

that assessee requested for adjournment on various dates of hearing; for date fixed on 04.02.2022, the assessee filed an application for seeking for adjournment on the ground that Ld. AR for the assessee was busy in the marriage ceremony in his family even on earlier occasion, the assessee filed application for adjournment which was accepted on 10.03.2022. The assessee again sought adjournment upto 16.03.2022. The Ld. AR for the assessee submits that it is not case that assessee has not responded to various notices issued by Ld. CIT(A) rather the Ld. CIT(A) always recorded that non-compliance was made by assessee.

3. The ld AR for the assessee in the penalty proceeding, the Assessing Officer levied penalty on two additions; one addition under section 68 of the Act of Rs.9,35,200/-, which was deleted by the Tribunal and other addition on account of unexplained investment of Rs.38,64,800/- was restored back to the file of Assessing Officer vide order dated 30.12.2022 in IT(SS)A No.69/AHD/2017. The Ld. AR for the assessee submits that on the basis of such fact, that even on merit the assessee has a good case that once the additions on the basis of which penalty was levied is deleted or restored back to the

file of assessing officer, therefore, the penalty would not survive. The Ld. AR for the assessee filed copy of decision in IT(SS) No. 69/Ahd/2017.

4. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue submits that assessee has not made proper compliance on various notices issued by Ld. CIT(A) and all such facts that appeal in quantum assessment was pending before Tribunal was not brought before Ld. CIT(A) in appellate proceeding. The Ld. CIT(A) has no option when the assessee was not making compliance on various notices. The Ld. Sr-DR for the Revenue submits that though the assessee does not deserve any lenience, however, keeping in view to avoid conflicting decision on the common issues the matter may be restored back to the file of Ld. CIT(A) for afresh adjudication in accordance with law.
5. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that assessment order passed under section 144 r.w.s 153A was completed on 13.03.2015 determining total income of Rs.47.00 lakhs. The the Assessing Officer at the time of passing assessment order

initiated penalty under section 271(1)(c) of the Act on two additions (i) addition under section 68 of Rs.9,35,200 and (ii) unexplained investment u/s 69A of Rs.38,64,800/-. On appeal both the additions were upheld by Ld. CIT(A). However, on further appeal before Tribunal the addition of Rs.9,35,200/- was deleted and other addition under section 69A of the Act of Rs.38,64,800/- was restored back to the file of Assessing Officer in terms of IT(SS)A 69/AHD/2017 dated 30.12.2022. In such circumstances, at this stage, penalty imposed under section 271(1)(c) will not survive, however, keeping in view the fact that Ld. CIT(A) in impugned order recorded that assessee has not made proper compliance. The Ld. AR for the assessee submits that they were sought adjournment on valid grounds and we instead of going into such controversy, we find that once the addition under section 69A is restored back to the file of assessee, therefore the issue raised in the present appeal with regard to the penalty qua the addition which is restored back, this appeal is also restored back to the file of Assessing Officer to decide the issue afresh after passing the order in quantum assessment, in accordance with law. However, it is made

clear that assessee would make timely compliance and will provide all necessary evidence and information or documents before Ld. CIT(A) without any further delay. This appeal of assessee is allowed for statistical purposes in above terms.

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

Order pronounced in the open court on 15/06/2023.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat, Dated: 15 /06/2023

Dkp. Out Sourcing Sr.P.S

Sd/-

(PAWAN SINGH)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Copy to:

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

// True Copy //

By order

Sr. Private Secretary /Private
Secretary /Assistant Registrar,
ITAT, Surat