

**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.122/SRT/2023** (AY 2016-17)

(Hearing in Physical Court)

Income Tax Officer, Ward-3, Navsari, Room No.206, 2 <sup>nd</sup> Floor, Aaykar Bhawan, Charpool, Navsari-396445	Vs	Shri Lallubhai Morabhai Patel, Laxmi Trading Co. Naher Chokdi, AT & P.O Rumla, Navsari-396060 <b>PAN No.AAZPP 9895 R</b>
<b>अपीलार्थी /Appellant</b>		<b>प्रत्यर्थी /Respondent</b>

निर्धारिती की ओर से /Assessee by	Shri Rajeshbhai B Bangawala, Advocate
राजस्व की ओर से /Revenue by	Shri Vinod Kumar Sr-DR
अपील पंजीकरण/Appeal instituted on	17.02.2023
सुनवाई की तारीख/Date of hearing	15.06.2023
उद्घोषणा की तारीख/Date of pronouncement	5.06.2023

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by Revenue is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld. CIT(A)”] dated 20.12.2022 for the assessment year 2016-17, which in turn arises out of assessment order passed by / Income Tax Officer, Ward-3, Navsari /Assessing Officer under section 143(3) of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’ for the sake of brevity) on 10.12.2018.
2. At the outset of hearing, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue submits that

NFAC/Ld. CIT(A) “set aside” (restored) the issue to the file of by Assessing Officer, which is against the statutory provisions in the Income tax Act. As per section 251(1)(a) the Ld. CIT(A) in appeal against the order of assessment may confirm, reduce, enhance or annual the assessment, however, NFAC/ Ld. CIT(A) has no power to set aside the issue to the file of Assessing Officer. The ld Sr DR for the revenue submits that such power has been withdrawn by Finance Act 2001 with effect from 01.06.2001. The Ld. Sr-DR for the Revenue submits that either the addition made in the assessment order may be sustained or the order of NFAC/Ld. CIT(A) be quashed / modified to that extent.

3. On the other hand, Ld. Authorized Representative (Ld. AR) for the assessee vehemently defended the order passed by NFAC/Ld. CIT(A) and submits that clause (c) of section 251(1)(a) prescribed that NFAC/Ld. CIT(A) may pass such order in appeal as he deem fit. Therefore, the order passed by NFAC/Ld. CIT(A) is lawful.
4. In short rejoinder, Ld. Sr-DR for the Revenue submits that clause (a) of Sub-Section (1) of Section 250 specifically deals with the appeal against the assessment and clause (c) relates

to any other case like stay or penalty appeal or some other incidental matter and certainly not against the order of assessment.

5. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that at the time passing assessment order, the Assessing Officer made addition of Rs.84,35,000/- on account of unexplained cash deposit in current bank account No.10806804071 with the State Bank of India, Rumla. The Assessing Officer made the addition by taking view that despite giving ample opportunities, the assessee has not furnished any substantial evidence to support the cash deposit in his bank account. On appeal before Ld. CIT(A), the assessee stated that assessee is a partner in a partnership firm namely Shri Laxmi Traders having PAN No. AAJFS 4048 K, the cash deposit during the period under consideration in Shri Laxmi Traders' account of Rs.84,35,000/- was treated as income of assessee. All the transactions were recorded in the books of account of Shri Laxmi Trader and said firm is covered under Tax Audit under section 44AB, which does not belong to assessee, though said transactions belonged to Shri

Laxmi Trader. The assessee further submits that during assessment he has made compliance on 28.11.2018 and again on 10.12.2018 and provided acknowledgments Nos thereof, which was not taking into consideration by Assessing Officer while passing assessment order. The Assessing Officer added the transaction of Shri Laxmi Trader without taking into consideration and explanation furnished by assessee. Thus, the addition made by Assessing Officer is illegal, invalid, baseless and arbitrary and not justified. The assessee also furnished Tax Audit Report and Income Tax Return of the firm / Shri Laxmi Trader.

6. The NFAC/Ld. CIT(A) after considering the submission of assessee was of the view that sole issue in the present appeal relates to unexplained cash deposit of Rs.84,35,000/-. The assessee during appellate stage brought on record that cash deposit belonged to his partnership firm / Shri Laxmi Trader, *wherein* assessee is one of the partner. The NFAC/Ld. CIT(A) considering the submission of assessee thereafter directed the Assessing Officer to verify the claim and if claim is found to be correct / modify the order. Aggrieved by the said

direction of NFAC/Ld. CIT(A) the Revenue has filed present appeal before the Tribunal.

7. Before Tribunal, both the parties have made their respective submissions, as recorded above. The main grievance of Revenue is that after 2001, the Ld. CIT(A) has no power remit the matter back (set aside) to Assessing Officer rather Ld. CIT(A) could either annual the assessment / modify or may confirm, reduce or enhance the matter. We find that merit in the submission of Ld. Sr-DR for the Revenue. Therefore, the order of NFAC/Ld. CIT(A) is set aside and issue is restored back to the file of NFAC/Ld. CIT(A) with a direction that on receipt of this order, the NFAC/Ld. CIT(A) will admit the additional evidence furnished by the assessee and shall call remand report, if so desired. We may mention that the ld CIT(A) while hearing of the appeal has co-terminus power as of assessing officer and may investigate the matter himself or grant appropriate relief to the assessee, if the evidence on the face of it is self-explanatory and does not require any further verification. With these direction, the matter is restored back to the file of NFAC/Ld. CIT(A) to pass order in accordance with law. Needless to direct that NFAC/Ld. CIT(A) before

passing the order shall grant opportunity of being heard to assessee and assessee is also directed to provide complete details about cash deposits in bank account including details of Shri Laxmi Traders / partnership firm of assessee, where assessee is also a partner. The assessee is also directed to provide complete details to the Assessing Officer in the event of remand report is called for Ld. CIT(A). The NFAC/Ld. CIT(A) is further directed to take matter on priority basis.

8. In the result, appeal of the Revenue is allowed for statistical purposes.

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

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
**[लेखा सदस्य/ACCOUNTANT MEMBER]**  
Surat, Dated: 15/06/2023  
*Dkp. Out Sourcing Sr.P.S*

**Sd/-**  
**(PAWAN SINGH)**  
**[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