

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.225/SRT/2023

Assessment Year: (2017-18)

(Physical Hearing)

Shri Umang Ashokbhai Sundhiya, 33, 1 st Floor, Sneh Smruti Society, Opp. Dhanmora Complex, Adajan Patia, Surat – 395009.	Vs.	The ITO, Ward-1(3)(9), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BYPPS8397J		
(Assessee)		(Respondent)

Assessee by	Shri Akshay M. Modi, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	15/06/2023
Date of Pronouncement	26/06/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeals filed by the assessee, pertaining to the Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), which in turn arises out of an assessment order passed by the Assessing Officer under section 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 18.12.2019.

2. At the outset, Ld. Counsel for the assessee submitted that order passed by the Assessing Officer is under section 144 of the Act, “Best judgement assessment” despite the fact that a few details were submitted during the assessment stage by the assessee. On appeal, by the assessee, before the Ld. CIT(A), the assessee did not make the compliance of the notices issued by Ld. CIT(A). The Ld. CIT(A),

during the appellate proceedings issued seven notices for hearings, however assessee could not appear before Ld. CIT(A), therefore the Ld. CIT(A) has passed the *ex parte* order. The Ld. Counsel also stated that Ld. CIT(A) did not discuss the material available on record and did not consider the findings of the Assessing Officer in right perspective. In addition to this, Ld. Counsel also submitted that assessee does not maintain books of accounts and he filed the return of income under section 44AD of the Act, therefore the Tribunal can make an estimated addition at the rate of 12.5% on the total addition sustained by the Assessing Officer. Thus, Ld. Counsel stated that there is no need to remit this matter back to the file of the Assessing Officer to adjudicate the issue afresh.

3. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that impugned order before us, is the order of the Ld. CIT(A). Before the Ld. CIT(A), assessee did not appear, in spite of the issuance of several notices of hearing (seven notices of hearings). Therefore, lower authorities, that is, neither Ld. CIT(A) nor Assessing Officer has examined the bank statements of the assessee and the other documents which is the assessee wants to submit now. The assessee's income cannot be estimated by the Tribunal, without being provided an opportunity to the Assessing Officer, to examine bank statement and other documents which assessee relied. The assessee could not file return of income on time during the assessment stage and late return of income filed by the assessee is non-est in the eye of law. Further, whether assessee falls within the provisions of section 44AD of the Act, is to be examined by the lower authorities by way of verification of bank statements and turnover etc, hence Tribunal should not adopt short-cut method to assess the taxable

income of the assessee, particularly when there is non-compliance of notices by the assessee, before AO and Id CIT(A). Therefore, since the material evidences have not been examined by the Ld. CIT(A) and assessing officer therefore the entire lis may be remitted back to the file of the Assessing Officer, to adjudicate the issue afresh.

4. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. We note that Ld. CIT(A) has provided seven opportunities of hearings, however the assessee did not file any documents and evidences before the Ld. CIT(A), therefore, Ld. CIT(A) passed an *ex parte* order. We note that assessee did not file his Return of Income (ROI) for the AY.2017-18 within the time envisaged u/s 139(1) of the Act. The AO was in possession of information that during the demonetization period, the assessee had made cash deposits of Rs.8,56,000/- in his bank account maintained with the Surat District Co-op Bank. The AO issued notice u/s 142(1) of the Act, on 09.03.2018 to the assessee, for filing of return of income on or before 31.03.2018, but the assessee did not file return of income nor responded to the said notices. The assessee was issued show cause notice on 17.06.2019 to furnish details with regard to bank transactions, source and nature of cash deposited, source and nature of credit and debit entries during entire year. In response to the said show cause notice, assessee has furnished return of income declaring income of Rs.8,48,550/- on 02.07.2019. Since, the assessee had filed return of income beyond the time stipulated in notice u/s 142(1) dated 09.03.2018 issued by the AO, accordingly, the AO treated the said return of income as non-est and “invalid”. The AO completed the proceedings under ‘best judgment assessment’. In absence of any tenable explanation with regard to source and nature of cash deposits of

Rs.8,56,000/- made during the demonetization period and other credit entries of Rs.1,21,19,841/-, the AO treated the same as unexplained income u/s 69A and unexplained investment u/s 69 of the Act respectively. Accordingly, total addition of Rs.1,29,75,840/- (Rs.8,56,000/- u/s 69 and Rs.1,21,19,841/- u/s 69A) was made by the AO u/s 144 dated 18.12.2019. On appeal by assessee, the CIT(A) has provided seven opportunities of hearings, however the assessee did not file any documents and evidences, therefore we note that lower authorities have not examined the essential documents and evidences to judge the tax liability of the assessee.

5. Therefore, considering these facts, we are of the view that since the material facts like bank statements and source from which money was deposited by the assessee etc. have not examined by the lower authorities, therefore it would be appropriate to remit the issue back to the file of the Assessing Officer for *de novo* adjudication.

6. Considering the above facts, we note that assessee could not plead his case successfully neither before the Id. CIT(A) nor before Assessing Officer. Hence, we are of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Assessing Officer for *de novo* adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to

set aside the order of the ld. CIT(A) and remit the matter back to the file of the Assessing Officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced on 26/06/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 26/06/2022

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat