

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

ITA No. 396/Srt/2023 (Assessment Year 2011-12)
(Virtual hearing)

Varunkumar Tejmal Jain, 1205, Tower No. 2, Vrajbhumi Complex, Parvat Patiya, Surat-395010. E-mail-gandhihimanshu92@yahoo.in PAN No. AGHPJ 1016 A	Vs.	I.T.O., Ward-2(3)(4), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Paras F Jain, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	02/06/2023
Date of hearing	10/07/2023
Date of pronouncement	10/07/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 10/05/2023 for the Assessment Year (AY) 2011-12 wherein the assessee has raised following grounds of appeal.

- "1. On the facts and circumstances of the case and in law, the Id. CIT(A) erred in confirming proceeding under section 148 of Income Tax Act, 1961.*
- 2. On the facts and circumstances of the case and in law, the Id. CIT(A) failed to consider that no addition can be made when no addition made on basis of reason recorded for reopening.*
- 3. On the facts and circumstances of the case and in law, the Id. CIT(A) erred in estimating profit of Rs. 18,46,210/- being 8% of gross receipts of Rs. 2,30,77,634/- as business income.*

4. *On the facts and circumstances of the case and in law, the Id. CIT(A) erred in confirming an addition on estimation basis without rejecting the books of accounts under section 145(3) of the Income Tax Act, 1961.*
 5. *On the facts and circumstances of the case and in law, the Id. CIT(A) erred in confirming charging of interest under section 234A and 234B of Income Tax Act, 1961.*
 6. *On the facts and circumstances of the case and in law, the Id. CIT(A) erred in confirming initiation of penalty proceedings under section 271(1)(c) of Income Tax Act, 1961.*
 7. *On the facts and circumstances of the case and in law, the Id. CIT(A) erred in confirming initiation of penalty proceedings under section 271B of the Income Tax Act, 1961.*
 8. *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*
2. Rival submissions of both the parties have been heard and record perused. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that at the time of filing appeal before the Id. CIT(A), details of e-mail ID i.e. patelfaruk5869@gmail.com of one of staff from the office of Shri Vipin Vora, Chartered Accountant was provided, who left the job, so the assessee/his representative could not make due compliance of various notices issued by the Id. CIT(A)/NFAC. The Id AR for assessee has now uploaded his e-mail for the purpose of serving notice of appeal or any other notices. The Id. AR of the assessee submits that he undertakes on behalf of assessee to be more vigilant in future for making timely compliance and not to waste precious time of income tax authorities. The Id. AR of the assessee submits that the assessee has good case on merit and likely to succeed if one more opportunity of hearing is given to the assessee to submits the details against the additions made by

assessing officer and confirmed by Id CIT(A). The Assessing Officer has rejected books of account and estimated income @ 8% of credit shown in the bank account of assessee, which is excessive. The Id. AR of the assessee submits that he may be allowed one more opportunity to contest the case on merit before the Id. CIT(A).

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that the assessee is habitual of non-compliance. The assessee has not given any detail before the Assessing Officer. In absence of any detail, the Assessing Officer treated the deposit in assessee's bank account as turnover and estimated income @ 8% of gross receipt against the income declared by assessee @ 0.79% of gross receipt of Rs. 2.30 crores. The Id. Sr.DR for the revenue in his alternative submission submitted that, though, the lower authorities have estimated reasonable profit yet the Bench is of the view that the assessee is required one more opportunity, in such event, the matter may be restored to the file of Assessing Officer instead of Id. CIT(A).
4. In short rejoinder, the Id. AR of the assessee submits that he is agreeing with the alternative plea of Id. Sr. DR for the revenue for restoring the matter back to the file of Assessing officer.
5. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I find that during the assessment, the Assessing Officer issued various notices on the issue

of cash deposit and cheque deposit in the bank account maintained with Union Bank of India, Surat being account No. CA-134827, CA-134825 and CA-125442. The Assessing Officer recorded that despite giving opportunity, the assessee neither submitted reply nor sought any adjournment. The Assessing Officer was of the view that the total deposit in the bank account of assessee were of Rs. 2.24 crores. Apart from this, the turnover of assessee exceeds Rs. 40.00 lacs, the assessee was required to get his account audited and to furnish the copy of same with return of income as per Section 44AB of the Income Tax Act, 1961. The assessee neither furnished such account, therefore, separate proceeding for penalty under Section 271B was initiated. The Assessing Officer further noted that the assessee while filing return of income for impugned assessment year on 26/10/2018, declared income @ 0.79% on gross receipt of Rs. 2.30 crores. The Assessing Officer estimated the income of assessee @ 8% as prevalent in textile business and thereby made addition of Rs. 18,46,210/-. On appeal before the Id. CIT(A), the action of Assessing Officer was upheld. The Id. CIT(A) while upholding the action of Assessing Officer held that the assessee has not given/filed submission despite serving more than four opportunities through ITBA portal.

6. Before me, the Id. AR of the assessee vehemently urged that during first appellate stage, the e-mail ID of one of staff in the officer of Shri Vipin Vora, Chartered Accountant was provided, who left the job which

resulted in non-compliance of various notices. The Id. AR also undertake to be more vigilant in future in making proper compliance. Therefore, considering the fact that the assessee has not given complete details before the Assessing Officer and the action of Assessing Officer was upheld by Id. CIT(A) in ex parte proceedings. Therefore, considering the facts and circumstances of the case, I deem it appropriate to restore all the grounds of appeal back to the file of Assessing Officer to adjudicate the issue afresh in accordance with law. Needless to direct that before passing the order, the Assessing Officer shall grant reasonable and fair opportunity to the assessee. The assessee is also directed to more vigilant and not to seek adjournment without any valid reason as the case relates to A.Y. 2011-12. With this direction, the grounds of appeal raised by the assessee are allowed for statistical purposes.

7. In the result, this appeal of assessee is allowed for statistical purposes only.

Order announced in open court on 10th July, 2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 10/07/2023
**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat