

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

ITA No. 70/Srt/2023 (Assessment Year 2017-18)

(Physical hearing)

Vallabhbhai Valjibhai Jagani, 452/452, Avadh Vice-Roy Sarthana, Jakatnaka, Surat. <b>PAN No. ACCPJ 3431 E</b>	Vs.	I.T.O., Ward-3(2)(8), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri P.M. Jaggasheth, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	31/01/2023
Date of hearing	04/08/2023
Date of pronouncement	04/08/2023

**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)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 13/12/2022 for the Assessment Year (AY) 2017-18. The assessee has raised following grounds of appeal:

*"1. The learned CIT(A) has dismissed the appeal and wrongly confirmed the addition of Rs. 8,50,000/- without considering the fact that the appellant had seek adjournment.*

*2. The learned CIT(A) has grossly erred in not giving opportunity of being heard which is contrary to the law of natural justice."*

2. Rival contentions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that in response to the notice issued through ITBA portal, the assessee sought adjournment up to 13/12/2022. The Id. CIT(A) instead

of granting adjournment, held that no submission was filed by assessee and the order was passed on 13/12/2022 at 12.37 pm as reflected in his digital signature. The assessee even on earlier occasion, sought adjournment vide application/letter dated 08/02/2021. The Id. CIT(A) dismissed the appeal of assessee in a non-speaking order without following the mandate of Section 250(6) of the Income Tax Act, 1961 (in short, the Act).

3. The Id. AR of the assessee submits that the addition in the assessment order was also made by the Assessing Officer by taking a view that the assessee has not made compliance of show cause notice dated 16/12/2019. The Assessing Officer made addition of Rs. 8.50 lacs on account of cash deposit during demonetization period. The Id. AR of the assessee submits that the assessee was having sufficient cash balance to substantiate the cash deposit. Both the lower authorities passed the order without giving fair and reasonable opportunity to the assessee. The Id. AR of the assessee submits that the matter may be restored to the file of Assessing Officer instead of Id. CIT(A) as the Id. CIT(A) may sought remand report from the Assessing Officer on the submission of assessee.
4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of lower authorities. The Id. Sr.DR for the revenue submits that the assessee was given sufficient and reasonable opportunity but the assessee failed to make compliance.

5. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I find that the Assessing Officer made addition of Rs. 8.50 lacs on account of deposit in bank account during demonetization period by holding that the assessee failed to explain the source of cash deposit. The Id. CIT(A) upheld the action of Assessing Officer in an *ex parte* proceeding. Before me, the Id. AR of the assessee vehemently submitted that he sought adjournment vide application dated 28/11/2022 up to 13/12/2022, copy of screen shot of ITBA portal is filed, which corroborates the contention of Id. AR of the assessee. I find that the Id. CIT(A) has not recorded in the order that any application for adjournment was filed or not, he has reason to reject the application for adjournment. The Id. CIT(A) has not recorded in his order that any adjournment application was filed. Thus, I do not find any justification for *ex parte* proceedings against the assessee. I also find that the Assessing Officer also passed the order for want of compliance, therefore, keeping in view the principles of natural justice, I am of the view that the assessee deserve one more opportunity to contest their case on merit, therefore, the grounds of appeal raised by the assessee is restored back to the file of Assessing officer to decide the issue afresh in accordance with law. 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 and evidences on various

grounds of appeal raised by him, as soon as possible, if so desired without any further delay. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order announced in open court on 4<sup>th</sup> August, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 04/08/2023

*\*Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat