

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

ITA No. 392/Srt/2023 (Assessment Year 2015-16)

(Physical hearing)

Sagar Embrotech, 94, Village Popada Hojiwala Industrial Estate, Gate No. 2, Sachin Palsana Road, Surat-394230. PAN No. ABRFS 9325 C	Vs.	A.C.I.T., Circle-1(2), Aayakar Bhawan, Majura Gate, 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	02/06/2023
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 03/05/2023 for the Assessment Year (AY) 2015-16. The assessee has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in levying penalty of Rs. 2,22,240/- u/s 271(1)(c) of the Income Tax Act, 1961.*
- 2. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has not offered adequate opportunities to the assessee and passed ex parte order and hence the case may please be set aside and restored back to the CIT(A) or AO.*
- 3. It is therefore prayed that the above penalty may please be deleted as learned members of the Tribunal may deem it proper.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”*
2. Rival contentions 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 the Id. CIT(A) passed the order ex parte in a cryptic manner that the assessee has not made compliance of his notices. In fact, the assessee in response to the notice of Id CIT(A), sought adjournment vide application dated 01/11/2022 which was allowed. However, subsequent notice issued by Id. CIT(A) through ITBA portal on 20/04/2023 was delivered in spam folder of Shri Kunal Patel, C.A. in his e-mail ID No. kunalpatel_ca@yahoo.com, copy of screen shot of mail in spam folder is filed. The Id. AR of the assessee submits that non-filing of submission or response to the last notice of Id. CIT(A) is neither intentional nor deliberate. The assessee is really interested in contesting the penalty on merit. The Id. AR of the assessee submits that he has good case on merit and is likely to succeed and will suffer prejudice if one more opportunity be not given to the assessee to contest the case on merit. The Id. AR of the assessee prayed to restore the matter back to the file of Id. CIT(A) for allowing the assessee to file its submission.
3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of Id. CIT(A). The Id. Sr. DR for the revenue submits that in Form-35, e-mail address was given

other than Shri Kunal Patel, C.A. and no explanation about such e-mail is given by the Id. AR of the assessee.

4. In the short rejoinder submission, the Id. AR of the assessee submits that there is always primary e-mail address available in the ITBA portal which was of Kunal Patel, C.A., however, the e-mail address of Id. AR was mentioned in Form-35 and no such notice on e-mail address of Shri P.M. Jagasheth, C.A. was ever served in the present appeal.
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 levied penalty under Section 271(1)(c) of the Income Tax Act, 1961 (in short, the Act) of Rs. 2,22,240/- being 100% of tax sought to be evaded on the additions of Rs. 7,19,234/- in the assessment order. The additions in the assessment order was on account of disallowance of depreciation and disallowance under Section 40(a)(ia) of the Act. The Id. CIT(A) confirmed the order of Id. CIT(A) by dismissing the appeal in an ex parte order. I find that the order of Id. CIT(A) is cryptic and not in accordance with mandate of Section 250(6) of the Act. Even the Id. CIT(A) has not referred the basic fact leading to levy of penalty. Considering the submissions of both the parties, I find that the assessee has reasonable cause for not responding or filing submission before the Id. CIT(A) as the notice sent by ITBA portal was delivered in Spam folder, therefore, I deem it appropriate to restore the matter back to the file of Id. CIT(A) 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 4th 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