

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, “**SMC**” BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

**आ.अ.सं./ITA No.427/SRT/2023** (AY 2010-11)

(Hearing in Physical Court)

Bhavesh Nagjibhai Talpada 40, Shraddha Row House, Opp. Sarthana Community Hall Sarthana, Surat-395006 <b>PAN No: AGEPT 4662 K</b>	Vs	Income Tax Officer, Ward-3(1)(2), Surat, Anavil Business Center , Adajan, Surat-395007
<b>अपीलार्थी/</b> Appellant		<b>प्रत्यर्थी /</b> Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	23.06.2023
सुनवाई की तारीख/Date of hearing	17.08.2023
उद्घोषणा की तारीख/Date of pronouncement	17.08.2023

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

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld.CIT(A)”] dated 24.04.2023 for assessment year 2010-11, which in turn arises from the addition made by the Assessing Officer in assessment order passed under section 144 r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 12.12.2017. The assessee has raised the following ground of appeal:-

*“1.On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer in passing ex-parte order u/s 144 of the I.T. Act, 1961.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in passing appellate order without providing reasonable opportunity of hearing to assessee.*

3. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer in making addition of Rs.25,03,790/- as unexplained investment under the IT Act.*

4. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) NFAC has erred in confirming the action of Assessing Officer in making addition of Rs.21,68,585/- as undisclosed income under the IT Act.*

5. *On the facts and circumstances of the case as well as law on the subject the learned Commissioner of Income Tax (Appeals) NFAC has erred in confirming the action of Assessing Officer in making addition of Rs.10,141/- as undisclosed income under the IT Act.*

6. *It is therefore prayed that above addition made by Assessing Officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

7. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of appeal.”*

2. Rival submissions of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue heard and record perused. At the outset of hearing, Ld. AR for the assessee submits that NFAC/Ld. CIT(A) passed impugned order in *ex parte* proceedings without giving fair and reasonable opportunities of being heard to assessee. The Ld. AR for the assessee submits that assessee filed appeal on 16.06.2018 as per order of NFAC/Ld. CIT(A) and notice of hearing was issued for the first time in November, 2021 and thereafter in April, 2022 and finally in April, 2023. The Ld. AR for the assessee submits that assessee was not served the notice issued by NFAC/Ld. CIT(A) therefore prevented by sufficient cause as assessee was not informed by representative who was also not well verse with the hearing through virtual mode. Ld. AR for the assessee submits that NFAC/Ld. CIT(A) dismissed appeal in

limine without discussing the facts of the case and the impugned order is not in accordance with law mandate 250(6) of the Act. The Ld. AR for the assessee submits that assessee has a good case on merit and likely to succeed, if assessee is given one more opportunity to contest the grounds of appeal / additions on merits. The Ld. AR for the assessee also submits that assessment completed under section 144 of the Act for want of details. The Ld. AR for the assessee submits that matter may be restored to the file of Assessing Officer so that assessee may file proper response to various additions.

3. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities and submits that assessee was given sufficient and reasonable opportunities either before Assessing Officer or before NFAC/Ld. CIT(A) and assessee does not deserve any leniency for restoration of appeal before Assessing Officer or NFAC/Ld. CIT(A).
4. I have heard the submission of Ld. AR for the assessee and Ld. Sr-DR) for the Revenue and have gone through the order of lower authorities carefully. I find that the assessing officer made various additions, which have been challenged by the assessee in various grounds of appeal. The assessing officer made additions for the want of proper reply from assessee. The ld CIT(A) confirmed the all the addition in *ex-parte* order in dismissing the appeal of the assessee in limine. The order of ld CIT(A) is not in accordance with the mandate of section 250(6) of the Act. Considering the fact that valuable right of assessee are involved in the present appeal and NFAC/ld CIT(A) passed *ex parte* order. Therefore, in my view, the assessee deserves

one more opportunity to contest his case on merit. Therefore, all the grounds of appeal raised by assessee are restored back to the file of Assessing Officer to decide all the issues afresh in accordance with law. Needless to direct the Assessing Officer shall grant opportunity of hearing to the assessee. The assessee is also directed to be more vigilant and to make compliance in time and not to seek adjournment without any reason and to file all relevant documents and evidence before Assessing Officer as and when called for. In the result, grounds of appeal raised by assessee are allowed for statistical purposes.

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

Order pronounced in open court at the close of the hearing on  
Thursday, 17<sup>th</sup> August, 2023.

Sd/-  
**(PAWAN SINGH)**  
[न्यायिक सदस्य JUDICIAL MEMBER]

सुरत/Surat, Dated: 17/08/2023

*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Senior Private Secretary/ Private  
Secretary/Assistant Registrar, ITAT, Surat