

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER
आ.अ.सं./ITA No.406/SRT/2023 (A.Y. 2016-17)

(Hearing in Physical Court)

Vama Infra Ground Floor Veronaa Residency, Harikrishna Campus Vraj Chowk, Surat- 395001 PAN : AAKFV 3593 K	Vs	Deputy Commissioner of Income Tax, Circle-2(1)(2), Aayakar Bhawan, Majura Gate, Surat- 395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by	Shri Sapnesh R Sheth, C.A
राजस्वकीओरसे /Revenue by	Shri Airiju Jaikaran, CIT-DR
अपील पंजीकरण/Appeal instituted on	06.06.2023
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 “NFAC/ld. CIT(A)”] dated 04.05.2023 for the assessment year 2016-17, which in turn arises out of assessment order passed by DCIT, Circle-2(1)(2), Surat / Assessing Officer under section 144 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide order dated 19.12.2018. The assessee has raised the following grounds 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 passing appellate order without providing reasonable opportunity of hearing to assessee and without adjudicating the matter on merits.

2. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of Assessing Officer in passing ex-parte order u/s 144 of the I.T. Act, 1961.*

3. *On the facts and in 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 Assessing Officer in disallowing closing stock for verification of Rs.2,34,48,560/- (**20% of total closing stock**).*

4. *On the facts and in 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 Assessing Officer in making addition on account of unexplained expenditure of Rs.1,08,60,810/- for want of verification. Without prejudice to the above, the appellant puts forth the grounds placed before the CIT(A) for consideration.*

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

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

2. Rival submissions of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income-Tax Departmental Representative (Ld. CIT-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 NFAC/Ld. CIT(A) has not passed speaking order on merit as per mandate of Section 250(6) of the Act. The Ld. AR for the assessee submits that assessee received notice of hearing dated 16.03.2022 for fixing appeal on 30.03.2022 and assessee made request for adjournment unto 14.04.2022 (copy of screen sort of ITBA portal is filed on record). The Ld. AR for the assessee further submits that

thereafter, no notice on the e-mail provided by assessee was served rather it was sent on e-mail address at csjariwala@gmail.com . Such e-mail was not related to the assessee, such fact evident on sub-para-3 on page-3 of order of NFAC/Ld. CIT(A). The Ld. AR for the assessee submits that assessee has a good case on merit and likely to success 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. CIT-DR for the Revenue supported the order of lower authorities. In alternative submission, Ld. CIT-DR for the revenue 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. We have considered the submissions of both the parties and have gone through the order of lower authorities. We find that Assessing Officer made addition of Rs.2.34 crores on account of disallowance of 20% of closing stock of Rs.11.72 crores for want of verification and addition of Rs.1.08 crores on account of expenses on purchase for want of verification. The NFAC/Ld. CIT(A) confirmed the action of Assessing Officer by holding that assessee was served various notices and assessee failed to furnish proper written submission. On careful perusal of the

order of NFAC/Ld. CIT(A) we find that it is not the case of assessee that it has not received any notice. Rather the assessee made request for adjournment on certain occasions even for date fixed on 30.03.2022 though, assessee sought for adjournment upto 14.04.2022 and such request is not narrated by NFAC/Ld. CIT(A) in his order and dismissed the appeal in limine. The 1st CIT(A), dismissed without discussing the nature of addition and the bare fact of the case. In our view, the substantial right of the assessee are involved in its appeal, therefore keeping in view the principle of natural justice, We, instead of going into controversy, whether the assessee defaulted in attending the proceedings despite service of notice or not, before the NFAC/1st CIT(A). We find that the order of the NFAC/1st CIT(A) is not in accordance with mandate of section 250(6) of the Income Tax Act. Section 250(6) of the Act mandates that the NFAC/Ld. CIT(A) while deciding the appeal is required to pass order on points of determination (grounds of appeals), decision therein on and reasons for such decision. Therefore, considering the facts and circumstances of the case, the appeal of the assessee is restored back to the file of the Assessing Officer to decide all the grounds of appeal on merit in accordance with law. Needless to order that before passing the order the Assessing Officer shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the Assessing Officer as and when the date of hearing and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. In the

result, the grounds of appeal by assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 17/08/2023.

Sd/-

(Dr ARJUN LAL SAINI)

Sd/-

(PAWAN SINGH)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat, Dated: 17/08/2023

Dkp. Outsourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

By order

// True Copy //

Sr.P.S./Assistant Registrar, ITAT, Surat