

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.448/SRT/2023 (AY 2013-14)

(Hearing in Virtual Court)

Rajesh Shantilal Shah 432 New GIDC, Kabilore-396424 [PAN BEGPS 3146 J]	Vs	Deputy Commissioner of Income Tax, Navsari Circle, Navsari- 396445
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Mehul Shah, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	03.07.2023
सुनवाई की तारीख/Date of hearing	05.09.2023
उद्घोषणा की तारीख/Date of pronouncement	06.09.2023

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 20.06.2023 for the assessment year 2013-14, which in turn arises out of assessment order passed by Dy. Commissioner of Income Tax, Navsari Circle / Assessing Officer under section 143(3) of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) on 31.03.2016. The assessee has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard. The assessee had sought for adjournment on 08.06.2023 for hearing on 27.06.2023. However, the learned CIT(A) passed the order on 20.06.2023.

2. *On the facts and in the circumstances of the case as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order. There was multiple physical hearings before the learned CIT(A) and in fact the case was remanded and the remand report was received on 03.04.2017. However, the learned CIT(A) has failed to take the cognizance of the same.*

3. *On the facts and in the circumstances of the case as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making the addition of Rs.40,0,00,000/- on account of alleged unexplained cash deposits.*

4. *On the facts and in the circumstances of the case as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making disallowance of Rs.5,02,236/- on account of commission expenses.*

5. *On the facts and in the circumstances of the case as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making disallowance of Rs.9,12,946/- on account of general expenses.*

6. *On the facts and in the circumstances of the case as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making disallowance of Rs.1,36,300/- on account of bonus payable.*

7. *It is, therefore, prayed that above addition made by the Assessing Officer and confirmed by CIT(A) may please be deleted.*

8. *The appellant craves leave to add or alter or delete any of the ground or grounds of appeal at the time of the hearing before your honour.”*

2. Rival submissions of both the parties heard and record perused. At the outset of hearing, Ld. Authorized Representative (Ld.AR) for the assessee submits that assessee filed appeal before Ld. CIT(A) on 28.05.2016. The assessee filed various submissions during physical hearings. However, later on, the appeal was migrated before NFAC in terms of Government Scheme. The Ld. AR for the assessee submits that thereafter assessee received notice regarding to furnish

submission. The assessee vide his application filed on 12.06.2023 sought an adjournment upto 27.06.2023, however, the ld. CIT(A) instead of granting time, dismissed the appeal of assessee by holding that no response was made by assessee. The finding of NFAC/Ld. CIT(A) is contrary to the fact. The Ld. AR for the assessee submits that he has filed copy of screen shot of ITBA portal showing that in response to notice issued on 26.05.2023 for filing response by 12.06.2023, the assessee filed an application on 08.06.2023 for seeking an adjournment upto 27.06.2023. No notice thereafter was received by assessee. The Ld. AR for the assessee submits that he has a good case on merit and is likely to succeeds, if one more opportunity is given and the appeal is decided on merit. The Ld. AR for the assessee submits that Assessing Officer made addition of Rs.40.00 lakh on account of unexplained cash deposits and various other additions on ad hock basis, consisting of commission expense, general expense and bonus paid to employees.

3. The Ld. AR for the assessee in his alternative submission, submitted that though he has already filed detailed written submission before Ld. CIT(A) on which remand report called for from Assessing Officer. In the event of filing fresh submissions, the ld CIT(A) may gain sought remand report, so to avoid such repeated process, the matter may be restored to the file of Assessing Officer with the liberty to assessee to make fresh submissions on various additions.

4. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that Ld. CIT(A) issued various notice to assessee. The assessee failed to availed such opportunity, except to seek date that too only one date of hearing. It is the duty of assessee to file complete details on the first date of hearing or within reasonable time in a faceless regime.
5. We have considered the submission of both the parties and perused the records. We find that the Assessing Officer made addition of Rs.40.00 lakh on account of deposit in bank account by taking view that assessee failed to complete details to discharge his onus despite giving sufficient opportunities. Similarly, on other additions on account of commission expense, general expense and bonus paid, the assessing officer made *ad hoc* addition for the want of submissions. Considering the facts and circumstances of the case and the submission of Ld. AR for the assessee that the assessing officer made addition for the want of evidence, which was confirmed by ld CIT(A) in ex-party order. Thus, in our view the assessee deserves one more opportunity to contest his various additions on merit. Therefore, considering the totality of fact and circumstances of the case and the submissions made by both the parties, the various grounds raised by assessee are restored back to the file of Assessing Officer. The assessee is also directed to be more vigilant for making submission in time and not to seek adjournment without any valid reason. Needless

to say before passing the order afresh the Assessing Officer shall grant reasonable opportunity of being heard to assessee. Hence, various grounds raised by assessee are restored back to the file of Assessing Officer with our above direction.

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

Order pronounced in the open court on 06/09/2023.

Sd/-

(Dr ARJUN LAL SAINI)

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

Surat,

Dated: 06/09/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

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

Sd/-

(PAWAN SINGH)

By order

// True Copy //

Sr. Private Secretary /Private Secretary /Assistant
Registrar, ITAT, Surat