

**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.496/SRT/2023** (AY 2015-16)

(Hearing in Physical Court)

Sai Developers TP-69, Block No.123 FP-11 1/4, Ayodhya Nagri, Ambika Township Ni Chokdi, Nr. Vinayak Enclave, Dindoli, Surat-395006 <a href="mailto:Acqfs5411h@gmail.com">Acqfs5411h@gmail.com</a> <b>PAN No: ACQFS 5411 H</b>	Vs	Income Tax Officer, Ward-3(1)(5), Surat, Room No.115, 1 <sup>st</sup> Floor, Anavil Business Centre, Adajan, Surat- 395009
<b>अपीलार्थी</b> /Appellant		<b>प्रत्यर्थी</b> /Respondent

निर्धारिती की ओर से /Assessee by	Shri Manojkumr N Makhania, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	20.07.2023
सुनवाई की तारीख/Date of hearing	13.09.2023
उद्घोषणा की तारीख/Date of pronouncement	13.09.2023

**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 “Ld. NFAC/Ld.CIT(A)”] dated 22.05.2023 for assessment year 2015-16, which in turn arises from the addition made by the Income Tax Officer, Ward-3(1)(5) Surat /Assessing Officer in assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 24.11.2016. The assessee has raised the following ground of appeal:-

“1. The Commissioner Income Tax (Appeal), National Faceless Appeal Centre was not justified in passing ex-parte order defying natural justice to the appellant.

2. On the facts and in the circumstances of the case as well as in law, the Learned Commissioner of Income Tax (Appeals), NFAC was not justified

*in passing ex-parte order dismissing the appeal of the appellant on the ground that the appellant has been given proper opportunities and is not aggrieved with the assessment order impugned herein and is not interested in prosecuting the same.*

*3. On the facts and circumstances of the case as well as in law, the Learned Commissioner of Income Tax (Appeal), NFAC was not justified in confirming addition of Rs.20,00,000/- on account of unsecured loans taken from various parties treating such unsecured loans as unexplained cash credit u/s 68 of the Act.*

*4. Without prejudice to the above, the CIT(A), NFAC dismissed the appeal without dealing with even basic facts of the matter.*

*5. It is therefore, prayed that the CIT(A), NFAC not having dealt with any of the grounds of appeal in the right earnest the matter may be restored to the file of the CIT(A), NFAC.*

*6. Your appellant reserves its right to add, alter, amend, alter, and/or withdraw any ground of appeal at the time of hearing of the appeal.”*

2. Rival submission of both the parties heard and record perused. The learned authorized representative (Ld. AR) for the assessee submits that assessee filed its appeal before NFAC/Ld. CIT(A) on 19.01.2018 through Advocate Nileshkumar I. Shukla, who expired on 24.06.2018. The Ld. AR for the assessee submits that assessee has not received any notice about various dates of hearing fixed by NFAC/Ld. CIT(A) and those notices, if any, served through e-mail provided by late Nileshkumar Shukla, Advocate. The Ld. AR for the assessee submits that assessee is neither having the copies of details filed before assessing officer or before ld CIT(A) by their Advocate Nilesh Shukla. The assessee is trying the find out the old brief of his Advocate. The assessee has a good case on merit and likely to succeeds if assessee is given one more opportunity to represent its

case on merit. The Ld. AR for the assessee submits that Assessing Officer made addition under section 68 of the Act against the loan received from three persons, namely, Paresh H Radadiya, Rajnikant V Savaliya and Anvindhbai B. Godhani. The assessee availed very meagre amount of loan from three persons. The Ld. AR for the assessee submits that as per assessee, they furnished details during assessment proceedings to prove identity, creditworthy and genuineness of lenders and now again ready to furnish complete details for the satisfaction of lower authorities. The Ld. AR for the assessee submits that assessee suffer order only due to non-compliance before appellate stage and he undertake on behalf of assessee to be more vigilant in pursuing assessee's appeal before NFAC/Ld. CIT(A) as and when called for. The Ld. AR for the assessee submits that he has furnished fresh e-mail address for the purpose of issuing notice on electronic mode. The Ld. AR of the assessee finally prayed that matter may be restored back to the file of NFAC/Ld. CIT(A) with the liberty to assessee to furnish complete details to prove the identity, creditworthiness and genuineness of such loan transaction. To support his contention, Ld. AR for the assessee filed copy of paper cutting of prayer meeting of late Nileshkumar I Shukla Advocate.

3. On the other hand, learned Senior Departmental Representative (Ld. Sr-DR) for the Revenue supported the order of lower authorities. Ld. Sr-DR for the Revenue submits that as per alternative plea raised by

Ld. AR for the assessee that Ld. CIT(A) has considered all the merit of the case and pass the order on the basis of material available on record and passed order on merit. Ld. Sr-DR for the rev submits that assessee does not deserve any further leniency for furnishing submission / evidence before NFAC/Ld. CIT(A).

4. In the rejoinder submissions, the ld. AR for the assessee submits that impugned order of NFAC/Ld. CIT(A) is not a speaking order, in fact, in para-5 of this order, NFAC/Ld. CIT(A) simply reproduced entire assessment order from pages 5 to 8 in his order. And in concluding paragraph the ld CIT(A) has not given any independent findings, except narrating that Assessing Officer discussed all the issues in assessment order while making such addition and that no response was made by assessee in respect of grounds of appeal despite giving opportunities. Thus, order of NFAC/Ld. CIT(A), in fact, as *ex parte* order without considering the merits of the case. The appeal of assessee was pending from the year 2018 and dismissed in limine in *ex-parte* order.

5. I have considered the submission of both the parties and perused the order of lower authorities carefully. I find that Assessing Officer made addition under section 68 of the Act by treating the loan as unexplained cash credit by holding that assessee has given its own-money to the creditors to provide loan by depositing in their bank accounts. The NFAC/Ld. CIT(A) confirmed the addition in *ex parte* proceedings by taking view that despite granting sufficient

opportunities to assessee for want of evidence. Now before me, the Ld. AR for the assessee vehemently submitted that present appeal was filed by Advocate, Nileshekumar I Shukla in the year 2018 and subsequently he died in June, 2018. And that assessee had not received any communication about fixing dates of hearing before NFAC/Ld. CIT(A). I find that Ld. AR for the assessee has filed copy of newspaper cuttings about prayer meeting of late advocate, Shri Nileshekumar Shukla. Considering the facts and circumstances, the NFAC/Ld. CIT(A) has confirmed the addition made by Assessing Officer in *ex parte* proceedings for want of proper compliance on the part of assessee. I therefore find that assessee has shown a reasonable cause for non-compliance due to their counsel. In such circumstances, in my view, the assessee deserves one more opportunity to contest its case on merit before NFAC/Ld. CIT(A). Therefore, grounds of appeal raised by assessee are restore back to the file of NFAC/Ld. CIT(A) to adjudicate the issue afresh in accordance with law. Needless to direct that before passing the order afresh, the ld CIT(A) shall grant reasonable opportunity of hearing to the assessee. The assessee is also given liberty to furnish complete details to prove identity, creditworthiness and genuineness of such loan transaction. The assessee is also further directed to be more vigilant and to make compliance in time as and when called for by NFAC/Ld. CIT(A). in the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.

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

Order pronounced in open court at the close of the hearing on Wednesday, 13<sup>th</sup> September,2023.

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

सूरत/Surat, Dated: 13/09/2023  
*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