

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.485/SRT/2023 (AY 2015-16)
(Hearing in Physical Court)

M/s H.B. Infra Developers 36, Sahaj Park Raw House, Varachha Road, Surat-395006 PAN AAGFH 0413 B	Vs	Income Tax Officer, Ward No.3(3)(2) Surat, Aayakar Bhawan, Majura Gate, Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Akshay M. Modi, CA
राजस्व की ओर से /Revenue by	Shri SM Keshkamat, CIT-DR
अपील पंजीकरण/Appeal instituted on	17.07.2023
सुनवाई की तारीख/Date of hearing	14.09.2023
उद्घोषणा की तारीख/Date of pronouncement	14.09.2023

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 29.04.2023 for assessment year 2015-16, which in turn arises from the assessment order passed under section 143(3) of Income Tax Act, 1961 (‘the Act’) on 27.12.2017. The assessee has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the learned CIT(Appeals) has erred both on facts and in law in deciding the appeal ex-parte in violation of the principles of natural justice and without granting to the assessee a fair, proper and meaningful opportunity of being heard and the inferences of the CIT(Appeals) that the appellant is not interested in pursuing the appeal is without

jurisdiction, perverse, invalid, arbitrary, bad in law and hence, liable to be struck down.

2. The learned CIT(As) has erred in confirming the order passed by the ITO, Ward 3(3)(2), Surat (for the sake of brevity "the AO") making addition to the extent of Rs.3,76,46,000/- for the alleged unexplained cash credits u/s 68 r.w.s. 115BBE of the Act, on misconceived, misconstrued, misleading, baseless, arbitrary and perverse observations, is contrary to law and facts of the case and hence, liable to be quashed.

3. On the facts and circumstances of the case and in law, the learned CIT(As) has erred in confirming the order passed by the AO treating the advance booking money received from the prospective buyers towards the flats to be sold as fictitious and non-genuine trading liability and therefore, the action of the learned AO invoking the provision of sec 68 r.w.s.115BBE of the Act for making addition of Rs.3,76,46,000/- for the alleged unexplained source of closing stock of goods is without jurisdiction, bad-in-law, perverse, arbitrary, conjectural, purely based on presumptions assumptions and guess work and hence, deserves to be deleted.

4. On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate in the right, lawful and proper perspectives the entire correspondences made in the course of assessment proceedings, already been supplied with the appeal memo forming part of the statement of facts including cogent explanations and submissions made in writing by the appellant on various dates along with the various enclosures attached with the said submission and hence, not justified.

5. Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal."

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 30.01.2018. The assessee filed various submissions during physical

hearings. However, later on, the appeal was migrated before NFAC in terms of Union Government Scheme. The Ld. AR for the assessee submits that thereafter, the assessee received notice of the ld CIT(A) for hearing fixed on 21.01.2021, 05.11.2021 and for 28.04.2023. the assessee filed application for adjournment on all three occasion with valid reasons. For last date of hearing fixed on 28.04.2023, the assessee sought time upto 06.05.2023, however, the ld CIT(A) passed the impugned order on 29.04.2023. The ld CIT(A) has recorded in his order that the assessee has not made compliances to his various notices. Such fact is contrary to the record. 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.3,76,46,000/- on account of unexplained cash credits.

3. On the other hand, Ld. Commissioner of Income Tax Departmental Representative (Ld. CIT-DR) for the Revenue supported the order of lower authorities. The ld Sr DR for the revenue submits that as per the documents filed by the assessee, the last date filing submissions to the assessee was given for 28.04.2023, but the assessee filed the alleged application for adjournment on 29.04.2023. Thus, the submissions of the assessee are contrary to their own record.
4. We have considered the submission of both the parties and perused the records. We find that the Assessing Officer made addition of Rs.3,76,46,000/- on account of cash credits by taking view that the assessee has introduced his own unaccounted income in the form of

fictitious, non-genuine loans and advances found credited in its books of accounts. The assessing officer also held that the assessee failed to file contra confirmation of persons who booked flats with substantive evidences and how the booking amount was returned. The ld CIT(A) confirmed the action of assessing officer in ex-parte order for the want of compliance. Considering the facts and circumstances of the case and the submission of Ld. AR for the assessee that the assessee may be given one more opportunity to prove his case, in our view the assessee deserved one more opportunity to contest its cash credits on merit. Therefore, considering the totality of fact and circumstances of the case and the submissions made by both the parties, the grounds raised by assessee is restored back to the file of NFAC/Ld. CIT(A). 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 NFAC/Ld. CIT(A) shall grant reasonable opportunity of being heard to assessee. Hence, ground raised by assessee is restored back to the file of NFAC/Ld. CIT(A) with our above direction.

5. In the result, appeal of the assessee is allowed for statistical purposes. Order pronounced in the open court at the close of the hearing on Wednesday, 14th September,2023.

Sd/- (Dr ARJUN LAL SAINI) [लेखा सदस्य/ACCOUNTANT MEMBER]	Sd/- (PAWAN SINGH) [न्यायिक सदस्य JUDICIAL MEMBER]
Surat, Dated: 14/09/2023 <i>Dkp. Out Sourcing Sr.P.S</i>	

Copy to:

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

// True Copy //

By order

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