

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No: 03/Rjt/2023
Assessment Year: 2011-12**

Shri Surendrakumar Fulchand Jain, Office No. 106, Rishi Corner, Plot No. 20, Ward 12/A, Gandhidham-Kutch PAN No: ABRPJ8704C (Appellant)	Vs	The ITO, Ward-2, Gandhidham (Respondent)
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**Assessee Represented: Shri R. K. Doshi, A.R.
Revenue Represented: Shri V.J. Boricha, Sr. D.R.**

Date of hearing : 31-07-2023
Date of pronouncement : 27-09-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee against the exparte Appellate order dated 29.11.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), as against the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2011-12.

2. The Grounds of Appeal raised by the assessee before the Ld. CIT(A) are as follows:

Ground no. 1 The order of the learned AO is bad in law and contrary to facts of the case.

Ground no. 2 The learned AO has erred in assessing the total income at Rs. 33,32,850/- against the returned income of Rs. 13,16,943/-.

Ground no. 3 The learned AO has erred in reopening the assessment u/s. 147 of the Act.

Ground no. 4 The learned AO has erred in not providing the appellant adequate opportunity of being heard

Ground no. 5 The learned AO has erred in rejecting the books of accounts u/s 145(3) of the Act and estimating the net profit @ 5 percentage of the total turnover and thereby making an addition of Rs.20,15,904/- to the returned income of your appellant relying upon the decision of the honorable ITAT Bench-A Kolkata in the case of M/s. Surendra Salt Traders

Ground no. 6 The learned AO has erred in initiating the penalty proceedings u/s. 271(1)(c) of the Act

Ground no. 7 The order of the Learned AQ is illegal, unjustified and against the principles of natural justice

Ground no. 8 Without prejudice to the above your appellant craves leave to add amend, alter, vary or withdraw all or any of the grounds on or before the hearing off the appeal.

3. The Ld. NFAC given three hearings namely on 05-01-2021, 07-04-2021 and 12-11-2022 and the assessee sought adjournment in all the three occasions. Therefore the appeal filed by the assessee was dismissed by Ld. NFAC on the ground that the assessee failed to file written submissions as well as supported evidences before the Appellate Authority.

4. Aggrieved against that order, the assessee is in appeal before us raising the following Grounds of Appeals before us.

1. Grounds of Appeal as under are without prejudice to one another.

2. The Reopening of Assessment under section 147 of the Act is bad in law and contrary to the Fact of the case.

3. The Assessment Order u/s.147 r.w.s. 143(3) of the Act is bad in law as well as facts.

4. The learned CIT(A)/NFAC has erred in confirming addition of Rs.20,15,904/- without providing adequate opportunity of being heard Appellate.

5. The learned CIT(A)/NFAC has erred in confirming addition of Rs.20,15,904/- by confirming the rejection of books of account u/s.145(3) of the Act and estimation the net profit @5% of the total turnover.

6. On the facts and in the circumstances of the case and in law, the Hon'ble CIT (A)/NFAC erred in confirming the action of the learned AO.

7. The order of the learned CIT (A)/NFAC u/s.250 of the Act is bad in law and contrary to the facts of the case.

8. The order of the learned CIT (A)/NFAC is illegal, unjustified and against the principles of natural justice.

9. Without prejudice to the above your petitioner craves leave to add, amend, alter, vary or withdraw all or any of the grounds on or before the hearing of appeal.

5. Ld. Counsel Mr. R.K. Doshi appearing for the assessee submitted before us a detailed Paper Book and submitted the hearing before the Ld. NFAC were during Covid-19 period, the assessee sought for adjournment for the first two hearings. Thereafter for the third hearing fixed on 28-11-2022, the assessee sought for an adjournment, on the ground of preparation of submissions. However without granting further time, Ld. NFAC passed the exparte order, dismissing the assessee appeal.

5.1. Ld. Counsel further submitted similar issue of estimation is pending before Ld. NFAC for the Assessment Year 2010-11 and detailed submissions already filed by the assessee before Ld. NFAC and the same is pending disposal. However in this case the reopening of assessment itself is being challenged and the A.O's finding that bills, vouchers and supporting evidences were not furnished by the assessee is also not correct since the assessee's books of accounts are duly audited after verification of the bills and vouchers. Therefore the Assessing Officer's

estimation of net profit at 5% is also incorrect and therefore in the interest of justice, the matter may be set aside back to the file of Ld. NFAC for adjudication on merits.

6. Per contra, the Ld. Sr. D.R. Shri V.J. Boricha appearing for the Revenue has no serious objection in setting aside the matter back to the file of Ld. NFAC and decide the case on merits by properly hearing the assessee.

7. Recording the above statements of both parties, the exparte order passed by Ld. NFAC is hereby set aside with a direction to Ld. NFAC to grant adequate opportunity to the assessee to explain its case with relevant materials and then pass orders in accordance with law. We are not adjudicating the grounds raised before us on validity of jurisdiction and others, since the matter is set aside back to the Ld. NFAC for fresh adjudication. Needless to say, the assessee should cooperate with the Appellate proceedings by furnishing all the necessary details before the Ld. NFAC. Thus the appeal filed by the Assessee is partly allowed.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27 -09-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 27/09/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee

2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट