

**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.550/SRT/2023** (AY 2012-13)

(Hearing in Virtual Court)

Abhishek Mandanlal Todi 302, Kanku Ashish, Near Jamuna Nagar Bus Stand, Ghod Dod Road, Surat-395007 <b>PAN No. ACXPT 2141 C</b>	Vs	Income Tax Officer, Ward- 3(2)(6), Surat, Aayakar Bhavan, Room No.109, Nr. Majura Gate, Opp. New Civil Hospital, Surat-395001
<b>अपीलार्थी</b> /Appellant		<b>प्रत्यर्थी</b> /Respondent

निर्धारिती की ओर से /Assessee by	Shri Suresh K. Kabra, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar Sr-DR
अपील पंजीकरण/Appeal instituted on	09.08.2023
सुनवाई की तारीख/Date of hearing	09.10.2023
उद्घोषणा की तारीख/Date of pronouncement	09.10.2023

**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 11.07.2023 for the assessment year 2012-13, which in turn arises out of assessment order passed by Income Tax Officer, Ward-3(2)(6) Surat / Assessing Officer under section 144 r.w.s. 147 of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’ for the sake of brevity) on 11.11.2019. The assessee has raised following grounds of appeal:

“1. The Ld Faceless CIT(A) has erred and was not justified on the facts of the case and in law in confirming the addition of Rs.48,11,091/- without offering opportunity to the appellant disregarding the adjournment file by the appellant on 09/06/2023 and 03/07/2023.

2. PRAYER.

2.1. The addition of Rs.48,11,091/ may kindly be deleted.

2.2 Personal hearing may be granted

2.3 Any other relief that your honours may deem fit may be granted.

3. *The assessee craves leave to add, amend modify alter or delete any of the grounds at the time of hearing.*”

2. Rival submissions of both the parties are heard and record perused.

The Ld. Authorized Representative (Ld.AR) for the assessee submits that NFAC/Ld. CIT(A) dismissed the appeal of the assessee in *ex parte* proceedings and passed non-speaking order. The Ld. AR for the assessee submits that it was not case of non-compliance rather assessee made a request to the NFAC/Ld. CIT(A) vide application dated 09.06.2023 and again vide application dated 03.07.2023 sought for adjournment. The NFAC/Ld. CIT(A) instead of considering the request made by assessee for adjournment passed the impugned order in partly confirming the addition of cash credit, made by the Assessing Officer. The Ld. AR for the assessee submits that Assessing Officer also passed assessment order under section 144 of the Act, and made additions on account of time deposit in HDFC Bank Ltd. The Ld. AR for the assessee submits that the assessee has good case on merit and will definitely succeed, if one more opportunity is given to the assessee to explain the facts and the issues/ additions are adjudicated on merit. The ld AR for the assessee submits that the assessing officer has also not granted fair and sufficient opportunity to the assessee. The ld AR for the assessee prayed for restoring the appeal to the file of Assessing Officer and to decide it afresh on merit.

3. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue after going through the order of lower authorities and submission made by Ld. AR for the assessee, submits that as per para-4 of impugned order passed by NFAC/Ld. CIT(A) the assessee was given

sufficient and reasonable opportunity though assessee has not availed such opportunity. The Ld. Sr-DR for the Revenue submits that NFAC/Ld. CIT(A) while confirming the substantial part granted a relief of reasonable cash available in the hand of assessee on account of past savings. The Ld. Sr-DR for the Revenue submits that assessee should be more vigilant in making timely compliance and not to seek adjournment without valid reason. The ld SR DR for the revenue prayed for dismissal of appeal. In alternative submissions, the ld Sr DR for the revenue submits that in case, the bench is of the view that the assessee deserve any more opportunity, in such situation, the matter may be restored to the file of assessing officer.

4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that Assessing Officer while passing assessment order on 11.11.2019 under section 144 made addition of Rs.51,11,091/- on account of entire credit entries in the account of HDFC Bank Ltd. We find that Assessing Officer while passing the assessment order recorded that assessee was given several notices as recorded in para-2 of the assessment order. On careful perusal of para-2 of assessment order, we find that only effective show cause notice was issued on 06.09.2019 for making compliance by 13.09.2019. The case of assessee for assessment year 2012-13 was re-opened on the basis of information that assessee has made time deposit in his bank account maintained with HDFC Bank Ltd. the assessee was given very short period for making compliance by notice dated 06.09.2019 to make compliance by 13.09.2019. We find that NFAC/Ld.

CIT(A) confirmed substantial part of addition in impugned *ex parte* order by taking view that several opportunities were given to assessee but no submission made on the part of assessee. The ld CIT(A) granted relief of Rs. 3.00 lakhs by taking view that such amount may be of past savings. The Ld. CIT(A) dismissed the appeal for want of submission in a non-speaking order.

5. After considering the facts and circumstances of the case and the submission made by Ld. AR for the assessee before us, we are of the view that the assessee deserve one more opportunity, hence, we deem it appropriate to restore the appeal back to the file of Assessing Officer. The assessing officer is directed to pass the order afresh after providing reasonable opportunity of being heard to the assessee. The Assessing Officer is also directed to consider the submission of assessee or any further submission which may be furnish by assessee. The assessee is also directed to be more vigilant and to make timely compliance of the notice issued by Assessing Officer. With these directions, the grounds of appeal of assessee is allowed for statistical purposes.
6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court after closing hearing on Monday, 9<sup>th</sup> October, 2023.

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
**[लेखा सदस्य/ACCOUNTANT MEMBER]**

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

Surat, Dated: 09/10/2023  
Dkp. Out Sourcing Sr.P.S

Copy to:

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

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