

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.596/SRT/2023 (AY 2017-18)

(Hearing in Physical Court)

Vikram Udeshanghbhai Padhiyar F-3, Star Garden Residency, New Katargam, Surat 394107 PAN No. CKIPP 5230 P	Vs	Income Tax officer, Ward-3(2)(4), Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh Sheth, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar Sr-DR
अपील पंजीकरण/Appeal instituted on	29.08.2023
सुनवाई की तारीख/Date of hearing	11.10.2023
उद्घोषणा की तारीख/Date of pronouncement	11.10.2023

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 31.07.2023 for the assessment year 2017-18 in confirming the addition of Rs. 25.98 Lakhs made under section 69A on account of cash deposits in bank. The assessing officer passed assessment order passed by Income Tax officer, Ward-3(2)(4), / Assessing Officer under section 144 on 10.12.2019.
2. At the outset of hearing, Ld. Authorized Representative (Ld. AR) for the assessee submits that no notice of hearing fixed by the ld CIT(A) was received by the assessee. The ld AR for the assessee submits that while filing appeal in Form-35 the assessee provided the email address and Phone number of his Chartered Accountant (CA) as "vbshahca@gmail.com Ph 9925515546" , however, no notice of hearing of appeal was served on

such email and Phone. Page -4 of the order of Id CIT(A) shows that notice of hearing of appeal was sent at email “ hnpandco9@gmail.com” . such email may have been given at the time of filing return of income. In absence of notice the assessee could not make compliance. The ld AR for the assessee further submits that before the assessing officer the assessee made certain compliance in response to various notices issued to him. Complete details of the banking transaction could not be furnished as the e-assessment procedure was introduced for the first time and the professional were not very well equipped with the procedure. The ld AR for the assessee further submits that assessee is trader of cement and all the sale proceed of cement made in cash was deposits in his bank and almost entire payment was ultimately made to cement companies, which is duly reflected in the bank statement. The copy of bank statement was filed before the assessing officer. Though, the copy of bank statement was filed before assessing officer, but the fact could not be explained properly, which resulted in passing assessment order under section 144 of the Act. The Ld. AR for the assessee submits that assessee has good case on merit and is likely to succeeds, if one more opportunity and to decide the appeal on merit. The ld AR for the assessee prayed for restoring the appeal to the file of assessing officer instead of Id CIT(A) and to decide it afresh on merit, after giving opportunity of hearing to the assessee.

3. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue though supported the order of Ld. CIT(A). In alternative submission, 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 system has issued notice to the assessee as per the data provided by the assessee and now the assessee cannot take the plea the such email, on which the notices were served does not belong to him.

4. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I find that Assessing Officer while passing assessment order under section 144 made addition under section 69A on account of unexplained cash credit The Ld. CIT(A) dismissed the appeal for want of submission. Before me the ld. AR for the assessee vehemently argued that while filing appeal in Form-35 the assessee provided the email address and Phone number of his Chartered Accountant (CA) as “vbshahca@gmail.com Ph 9925515546” , however, no notice of hearing of appeal was served on such email and Phone. Page -4 of the order of ld CIT(A) shows that notice of hearing of appeal was sent at email “ hnpandco9@gmail.com”. On perusal of record, including Form-35, I find merit in the submissions of ld AR for the assessee. Considering the fact that Ld. CIT(A) has dismissed the appeal in *ex parte* order without discussing the merit of the case. The impugned order passed by ld. CIT(A) is not in accordance with mandate of Section 250(6) of the Act. The assessment order was also passed under section 144 for the want of proper compliance. Therefore, I deem it appropriate to restore the appeal back to the file of assessing officer to pass the assessment order afresh. Needless to direct that before passing order afresh, the assessing officer shall provide reasonable opportunity to the assessee. The assessee is also directed to be more vigilant and to make timely compliance of the notice issued by Ld.

CIT(A). With these directions, the grounds of appeal of assessee is allowed for statistical purposes.

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

Order pronounced in the open court at the time of hearing on
Wednesday, 11th October, 2023.

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

Surat, Dated: 11/10/2023

Self

“True Copy”

Copy to:

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

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