

**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.455/SRT/2023** (AY 2011-12)

(Hearing in Physical Court)

Goyal Knitfab Pvt. Ltd. Block No.505, National Highway No.8, Palsana, Surat-394315 <a href="mailto:info@goyalknitfab.com">info@goyalknitfab.com</a> <b>PAN No: AABCG 3803 B</b>	Vs	Assistant Commissioner of Income Tax Circle-1(1)(2), Surat, Room # 108, Aayakar Bhawan, Majura Gate, Surat-395001
<b>अपीलार्थी</b> /Appellant		<b>प्रत्यर्थी</b> /Respondent

निर्धारिती की ओर से /Assessee by	Shri Suresh K Kabra, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	05.07.2023
सुनवाई की तारीख/Date of hearing	13.10.2023
उद्घोषणा की तारीख/Date of pronouncement	13.10.2023

**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 "Ld. NFAC/Ld.CIT(A)"] dated 02.05.2023 for assessment year 2011-12, which in turn arises from the addition made by the ACIT, Circle-1(1)(2), Surat /Assessing Officer in assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.12.2018. The assessee has raised the following ground of appeal:-

*"1 The Ld. CIT(A) NFAC has erred and was not just and proper on the facts of the case and in law in dismissing the appeal ex-parte and by a non-speaking order.*

*2.1 The appeal may be kindly restored back to the CIT(A) for fresh hearing and opportunity.*

*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 submission of both the parties heard and record perused. At the outset of hearing, Learned Authorized Representative (Ld. AR) for the assessee submits that NFAC/Ld.CIT(A) dismissed the appeal of assessed in *ex parte* proceedings and without discussing the merits of the case. The Ld. AR for the assessee submits that assessee sought adjournment on the date of compliance fixed on 01.05.2023, the Ld. CIT(A) instead of granting adjournment application dismissed the appeal of assessee by taking view that assessee has not filed any submission in support of its claim. The ld AR for the assessee submits that it is not a case of complete non-compliance, rather the assessee sought adjournment for valid reasons on earlier three occasions. The Ld. AR for the assessee submits that assessee has a good case on merit and likely to succeeds if assessee is given opportunity to contest the case on merits. The Ld. AR for the assessee prayed before Bench to restore the matter to the file of Assessing Officer to adjudicate all the issues afresh after giving reasonable opportunity of being heard to assessee. is given one more opportunity to represent its case on merit and he undertake on behalf of assessee to be more vigilant in pursuing assessee’s appeal before Assessing Officer.
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 assessee was given sufficient opportunities and it is assessee was seeking adjournment and ultimately not made compliance for the date fixed on 01.05.2023. The Ld. Sr-DR for the Revenue submits that fact in case the Bench of the view, that the assessee deserves any leniency for considering the case afresh, the matter may be restored back to the file of Assessing Officer instead of NFAC/Ld.CIT(A) as before Assessing Officer assessee has not made proper compliance.

4. In rejoinder submission, Ld. AR for the assessee submits that he is fairly accepting the submission made by Ld. Sr-DR for the Revenue that the matter may be restored back to the file of Assessing Officer and he undertake that assessee furnish the reply, however, the Assessing Office considered the reply of some other assesseees.
5. We have considered the submission of both the parties and perused the order of lower authorities carefully. We find that appeal of assessee was filed before NFAC/Ld.CIT(A) on 05.02.2019 and date of hearings for making compliance fixed on 09.02.2021, 12.04.2022 & 08.06.2022. The NFAC/Ld.CIT(A) himself accepted that assessee sought adjournment on three occasions. Finally, hearing was fixed for furnishing submission by assessee on 01.05.2023. The NFAC/Ld. CIT(A) dismissed the appeal by taking view that no reply was furnished and concluded that assessee has not filed any argument or submission, resultantly upheld the action of Assessing Officer. We find that present case is complete non-compliance rather the

assessee was seeking adjournment, which was ultimately allowed and only on 01.05.2023, the Id CIT(A) concluded that no submissions or arguments was furnished by the assessee. Rather, before us, the Ld.AR for the assessee submits that he has filed application for adjournment and instead of allowing adjournment prayer, the Ld. CIT(A) finally passed impugned *ex parte* order on 02.05.2023. We find that Assessing Officer also made addition under section 68 of Rs.50.00 lakh by taking view that assessee failed to prove identity, creditworthiness and genuineness of such investors, for invested the share capital and share premium. Thus, considering overall facts and circumstances and ground of appeal raised by assessee we set aside the impugned *ex parte* order, passed without giving fair and reasonable opportunity to the assessee. In such circumstances, in our view, the assessee deserves one more opportunity to contest its case on merit before Assessing Officer. Further considering the fact that the addition made in assessment order under section 68 was also made for the want of proper explanation. Therefore, we deem it appropriate to restore the matter back to the file of Assessing Officer instead of NFAC/Ld.CIT(A). Therefore, grounds of appeal raised by assessee are restore back to the file of Assessing Officer to adjudicate the issue afresh in accordance with law. Needless to direct that before passing the order afresh, the Assessing Officer shall grant reasonable opportunity of being heard 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 Assessing Officer. 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  
Friday, 13<sup>th</sup> October,2023.

**Sd/-**

**(Dr ARJUN LAL SAINI)**

**[लेखा सदस्य/ACCOUNTANT MEMBER]**

सूरत/Surat, Dated: 13/10/2023

*Dkp. Out Sourcing Sr.P.S*

**Sd/-**

**(PAWAN SINGH)**

**[न्यायिक सदस्य JUDICIAL MEMBER]**

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