

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.475/SRT/2023 (AY 2011-12)

(Hearing in Physical Court)

Chandrakant Gulabbhai Patel Near Ramjimandir, Utadi Road, AT & Post Dungri, Valsad-396375 nilkanthpatelatel@gmail.com PAN No: ANUPP 8675 K	Vs	Income Tax Officer, Ward-1, Valsad
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Shaunak Zaveri, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	14.07.2023
सुनवाई की तारीख/Date of hearing	12.10.2023
उद्घोषणा की तारीख/Date of pronouncement	12.10.2023

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 17.05.2023 for assessment year 2011-12, which in turn arises from the addition made by the Income Tax Officer, Ward-4 Valsad /Assessing Officer in assessment order passed under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 31.10.2018. The assessee has raised the following ground of appeal:-

“1.0(a) That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), [here-in-after referred to as Ld. CIT(Appeals)/(NFAC)] was not justified and grossly erred in dismissing the appeal which is bad-in-law and against principal of natural justice equity, thereby confirming the action of the A.O for the order passed u/s.144 r.w.s 147 of the I.T Act, 1961 which is incomplete and also bad on facts.

1.0(b) Without prejudice that on the facts and in the circumstances of the case, the Ld.CIT(Appeals) was not justified and grossly erred in confirming the action of the A.O has grossly in reopening of case..

2.0 That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O in by accepting the addition on account on unexplained cash deposit amounting to Rs.12,24,986/- in bank account without considering the fact that cash deposit were from receipt from running of restaurant and addition made by the AO which is incorrect & bad-in-law and needs to be deleted in the interest of natural justice and equity.

3.0 That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the AO in by accepting the addition on account on unexplained other deposit amounting to Rs.9,63,200/- in bank account without considering the fact that being the various cheques deposited on various dates in bank account which bad-in-law and needs to be deleted.

4.0 That on the facts and in the circumstances of the case, the LD. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the AO in not justified and erred in confirming the initiated penalty proceedings u/s 271(1)(c) r.w.s.274 of the Act.

2. Rival submission of both the parties heard and record perused. The learned authorized representative (Ld. AR) for the assessee submits that appeal of assessee was dismissed by NFAC/Ld.CIT(A) by taking view that assessment order was passed on 31.10.2018 and first appeal was filed on 04.01.2019, thus, there was delay of 35 days in filing appeal before him. The Ld. AR for the assessee submits that assessee suffered heart attack and was hospitalized since 20.10.2018 and discharged on 03.12.2018, copy of medical prescription, admission & discharged summary is filed. The Ld. AR for the assessee submits that assessee has long history being a heart patient and was advised complete rest by doctor and not to take any stress. The assessee could not file the appeal within prescribed period of limitation before

NFAC/Ld.CIT(A). the delay in filing appeal was neither intentional or deliberate but for the reasons explained above. The Ld. AR for the assessee submits that notice issued by NFAC/Ld. CIT(A) was not received by assessee as it was initial period of Faceless Appeal System. The Ld. AR for the assessee submits that assessee has a good case on merit and likely to succeeds if assessee's appeal is heard on merit. The Ld. AR for the assessee submits that even assessee could not make any compliance before Assessing Officer, which resulted in passing assessment order under section 144 of the Act. 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. The Ld. AR for the assessee submits that assessee suffer order only due to non-compliance before appellate stage 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 no application for condonation of delay along with appeal / Form-35 was filed before NFAC/Ld. CIT(A) though NFAC/Ld.CIT(A) issued several notices for making proper compliance. The Ld.Sr-DR for the Revenue submits that fact in case the Bench of the view that assessee deserves any more opportunity for considering the case afresh, the matter may be restored back to the file of Assessing Officer.

4. I have considered the submission of both the parties and perused the order of lower authorities carefully. I find that Assessing Officer passed assessment order under section 144 by making two additions in the assessment order, first on account of unexplained cash deposit of Rs.9,63,200/- and other deposit of Rs.12,24,946/- respectively. The Assessing Office made addition for want of explanation about source of such deposits. The NFAC/Ld.CIT(A) also noted that various notices were issued to the assessee and that no reply was filed reflected in para-5 of the order of NFAC/Ld.CIT(A) held that assessee in Form-35 has mentioned that assessment order was received on 12.11.2018 and such fact was not substantiated. No explanation regarding delay of 35 days in filing of appeal was filed. The NFAC/Ld.CIT(A) accordingly not condone the delay in filing of appeal and consequently appeal was not admitted, resultantly dismissed.
5. Before me Ld.AR for the assessee vehemently submits that assessee was suffering severe heart related ailment and was hospitalized on 20.10.2018, copy of admission and discharged summarized were filed. On perusal of medical details, I find that assessee was hospitalized at the time of passing assessment order on 31.10.2018. Further as per submission of Ld. AR for the assessee was medically advised to take complete rest and not to take stress. Considering such fact, I find that the delay in filing appeal before NFAC/Ld.CIT(A) was neither intentional nor deliberated but for the reasons explained by Ld. AR for the assessee. No doubt that no such application was filed before NFAC/Ld.CIT(A), yet I find that assessee has reasonably explained

such delay. Therefore, order passed by NFAC/Ld.CIT(A) on 17.05.2023 is set aside. Considering the fact that impugned *ex parte* order of NFAC/Ld. CIT(A) is set aside and further considering the fact that the addition made in assessment order made in under section 144. In such circumstances, in my view, the assessee deserves one more opportunity to contest its case on merit before Assessing Officer. 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 allowed for statistical purposes.

Order pronounced in open court at the time of hearing on 12th October,2023.

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

सूरत/Surat, Dated: 12/10/2023
Dkp. Out Sourcing Sr.P.S

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