

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 148 & 149/SRT/2023 (AY: 2011-12 & 2012-13)  
(Hybrid Hearing)

Sanjaybhai Bavadiya, A/40, Rang Avadhut Society, Sheri No. 3, L.H. Road, Surat-395006 (Gujarat) <b>PAN No. AVJPB 5742 Q</b>	Vs.	I.T.O., Ward 2(3)(4), Surat.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Sapnesh Sheth, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institutions of Appeals	27/02/2023
Date of hearing	27/10/2023
Date of pronouncement	27/10/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. Both these appeals by the assessee are directed against the separate orders of learned National Faceless Appeal Centre, Delhi (in short, the Id. NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) both dated 04/01/2023, for the Assessment years (AY) 2011-12 and 2012-13 respectively. In both these appeals, the assessee has raised similar grounds of appeal. Certain facts in both these years are common, therefore, with the consent of parties both these appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For appreciation of facts, the appeal for the A.Y.

2011-12 in ITA No. 148/Srt/2023 is treated as a "lead case". In this appeal, the assessee has raised following grounds of appeal:

- "1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of assessing officer in initiating proceedings u/s 147 of the I.T. Act, 1961.*
- 2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in passing the order without providing reasonable opportunity of hearing to assessee.*
- 3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of assessing officer in passing ex parte order u/s 144 of the I.T. Act, 1961.*
- 4. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of assessing officer in making addition of Rs. 12,23,022/- u/s 68 of the IT Act.*
- 5. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of assessing officer in making addition of Rs. 71,00,111/- u/s 69 of the IT Act.*
- 6. It is therefore prayed that above addition made by the assessing officer and confirmed by the Id. CIT(A) may please be deleted.*
- 7. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of appeal."*

2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that the Id. CIT(A) passed ex *parte* order without giving fair and reasonable opportunity to the assessee. The present appeal was filed in the year 2019 and notice for hearing was fixed on several occasions and ultimately for 04/01/2023. The assessee requested for adjournment vide application uploaded on ITBA Portal on 04/01/2023. The Id. CIT(A)

instead of granting further time, passed the order on 04/01/2023 itself, by ignoring such request of adjournment. The Id. AR of the assessee submits that the assessee has good case on merit and is likely to succeed, if the assessee is given one more opportunity to explain his case on merit. The Id. AR of the assessee submits that during assessment, the assessee made partial compliance as recoded in para 3 of assessment order. However, the Assessing Officer passed assessment order under Section 144 by making addition on account of unexplained credit in bank under Section 68 of Rs. 12,23,022/- and investment in immovable property of Rs. 71,00,111/- by taking a view that the assessee has not explained the source of investment. The Id. AR of the assessee submits that the matter may be restored back to the file of Assessing Officer instead of Id. CIT(A).

3. The Id. AR of the assessee submits that the facts for A.Y. 2012-13 is almost similar except the fact that the assessee has not raised grounds of appeal against the *ex parte* order passed by Id. CIT(A). The assessee has filed additional grounds of appeal vide application dated 26/10/2023. The additional grounds of appeal may be admitted as no new facts are required to be brought on record for adjudicating the additional grounds of appeal. The Id. AR of the assessee submits that the addition in the A.Y. 2012-13 may also be restored back to the file of Assessing Officer as certain facts are common and interconnected in both the years.

4. On the other hand, the learned Senior Departmental Representative (Id. Sr.DR) for the revenue supported the orders of lower authorities. The Id. Sr.DR for the revenue submits that the assessee was given full opportunity by the lower authorities. The assessee has not shown any reasonable and plausible cause for not filing submission either before the Assessing Officer or before the Id. CIT(A). The assessee does not deserve any leniency at this stage.
5. In without prejudice submission, the Id. Sr. DR for the revenue submits that in case this Bench is of the view that that the assessee deserve any further opportunity to substantiate the claim, the matter may be restored to the file of Assessing Officer with direction to assessee not to make any further default while attending the hearing before the Assessing Officer.
6. We have considered the rival submissions of both the parties and perused the material available on record carefully. We find that the assessee vide application dated 04/01/2023 sought adjournment through ITBA Portal. The Id. CIT(A) instead of granting time, passed the order in dismissing the appeal of assessee. We further find that addition in the assessment order was also made due to non-compliance at the end of assessee which resulted the addition on account of credit in the bank of Rs. 12,23,022/- as well as the investment in land of Rs. 71,00,111/-. Considering the overall facts and circumstances of the case

and following the principles of natural justice, in our view, the assessee is deserve one more opportunity to contest both the additions on merit, thus both the grounds of appeal are restored back to the file of Assessing Officer with direction to reconsider both the issues and pass the order in accordance with law. Needless to direct that before passing the order, the Assessing Officer shall grant reasonable and fair opportunity to the assessee. The assessee is also directed to not to make any default in making compliance before the Assessing Officer. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

**ITA No. 149/Srt/2023 for A.Y. 2012-13**

8. We find that the appeal of assessee for A.Y. 2012-13 was also adjudicated in ex parte proceedings. The Assessing Officer made addition after reopening of the assessment. The addition of Rs. 52,00,903/- was made on account of income from undisclosed sources for want of compliance. Therefore, keeping in view the fact that the appeal of assessee for A.Y. 2011-12 is restored back to the file of Assessing Officer, therefore, this appeal is also restored back to the file of Assessing Officer with similar direction as made in appeal for A.Y. 2011-12.

9. In the result, both the appeals of assessee are allowed for statistical purposes only.

Order announced in open court on 27<sup>th</sup> October, 2023.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 27/10/2023

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat