

**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 Nos.463-464/SRT/2023 (AY 2016-17)**

(Hearing in Hybrid process)

Dinesh Naranbhai Koshiya C/1, 404, Krishna Residency, Laxmikant Ashram Road, Katargam, Surat-395004 <b>PAN No: AUYPK 6786 B</b>	Vs	Income Tax Officer Ward-3(2)(2), Surat, Aayakar Bhawan, Majura Gate, Surat-395001
<b>अपीलार्थी</b> /Appellant		<b>प्रत्यर्थी</b> /Respondent

निर्धारिती की ओर से /Assessee by	Shri Bipin Jariwala, Advocate
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	07.07.2023
सुनवाई की तारीख/Date of hearing	08.11.2023
उद्घोषणा की तारीख/Date of pronouncement	08.11.2023

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

**PER BENCH:**

1. These two appeals by assessee are directed against separate order of National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld.CIT(A)”] both dated 13.06.2023 for assessment year 2016-17, which in turn arises from the addition made by the Assessing Officer in assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 24.12.2018. In ITA No.463/SRT/2023 the assessee has challenged the addition made in quantum assessment, however in *ITA No.464/SRT/2023*, the assessee has challenged the penalty levied under section 271B of the Act for non-furnishing audit report in Form No.3CB & 3CD. Facts in both the appeals are common, therefore both the appeals are clubbed heard together and are decided by common order. In *ITA*

No.463/SRT/2023, the assessee has raised the following ground of appeal:-

*“1 On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.54,96,125/- on account of alleged investment with Jainum Share and Jainum Commodity for shares/commodity/securities/F and O during the year treated as alleged unaccounted source of funds used for investment in shares.*

*2.On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income tax (Appeals) has not offered adequate opportunities to hear the case and passed ex-parte order and hence the case may please be set aside and restored back to the CIT(A) or AO.*

*3. It is therefore prayed that the above addition may please be deleted as learned members of the Tribunal may deem it proper.*

*4. Appellant craves leave to add, alter or delete any ground(s) either before or in course of hearing of the appeal.”*

2. Rival submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Sr. Departmental Representative (Ld. Sr-DR) for the Revenue heard and record perused. At the outset of hearing, Ld. AR for the assessee submits that NFAC/Ld. CIT(A) dismissed the appeal of assessed in *ex parte* proceedings and without giving reasonable and fair opportunities to the assessee during appellate proceedings. The Ld. AR for the assessee submits that Assessing Officer also made addition of Rs.54,96,125/- on account of investment with Jainam Shares & Jainam Commodities, for the want of proper explanation. The Ld. AR for the assessee submits that assessee has a good case on

merit and likely to succeed if assessee is given opportunity to contest the case on merits. The Ld.AR for the assessee submits that Assessing Officer also made the addition for the want of reply and explanation. The Ld. AR for the assessee submits that appeal of assessee was pending since 2019 and taken up for hearing in January 2021 during severe Covid pandemic and after long time the month of April and May, 2023. The Ld AR for the assessee submits that the matter may be restored back to the file of assessing officer with the liberty to the assessee to file his submissions.

3. On the penalty levied under section 271B, the Ld.AR for the assessee submits that Assessing Officer levied the penalty by taking view that assessee has not furnished audit report and that notices of hearing to explain the reason for non-furnishing such audit report was served upon the assessee and that non response was made by assessee. The Ld.AR for the assessee submits that Assessing Officer as well as NFAC/Ld. CIT(A) have passed the order in *ex parte* procedure. The Ld. AR for the assessee reiterated that substantial right of assessee are involving both the appeals 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 with liberty to furnish proper explanation and evidence to substantiate his contention in both the appeals.
4. On the other hand, 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 the duty of assessee who

has not appeared before lower authorities and the lower authorities have no option but to decide on the basis of materials available on record. 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.

5. We have considered the submission of both the parties and perused the order of lower authorities carefully. We find that no doubt before lower authorities, the assessee has not furnished complete details, resultantly the Assessing Officer made addition of Rs.54,96,125/- on account of unexplained investment with Jainam Share and Jainam Commodity. Before us Ld. AR for the assessee undertakes that assessee will be more vigilant in future and will make compliance of all the notices as and when called for by Assessing Officer. Thus, considering overall facts and circumstances and ground of appeal raised by assessee, we set aside the impugned *ex parte* order, passed by ld CIT(A) and restore the matter back to the file of assessing officer with the liberty to assessee to furnish complete details about the source of investment or other evidence, if any. We direct the Assessing Officer to consider all such evidence and documents pass a speaking order 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. 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 in quantum assessment is allowed for statistical purpose.

6. Considering the facts that we have restored the grounds of appeal in quantum assessment and further find that the assessing officer as well as Id CIT(A), both passed the order in penalty under section 271B for want of explanation, therefore, the grounds of appeal in ITA No. 464/Srt/2023 is also restored back to the file of assessing officer. The assessee is directed to filed his reply and substantiate the facts if there was any reasonable cause for no furnishing audit report for the year under consideration. The assessing officer is also directed to pass the order afresh after considering the explanation of assessee. In the result, the grounds of appeal in ITA No. 464/Srt/2023 is also allowed for statistical purpose.
7. In the result, both the appeals of the assessee are treated allowed for statistical purposes.

Order pronounced in open court at the close of the hearing on  
Wednesday, 8<sup>th</sup> November,2023.

<b>Sd/-</b> <b>(Dr ARJUN LAL SAINI)</b> <b>[लेखा सदस्य/ACCOUNTANT MEMBER]</b>	<b>Sd/-</b> <b>(PAWAN SINGH)</b> <b>[न्यायिक सदस्य JUDICIAL MEMBER]</b>
सूरत/Surat, Dated: 08/11/2023	
<i>Dkp. Out Sourcing Sr.P.S</i>	

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

Senior Private Secretary/ Private  
Secretary/Assistant Registrar, ITAT, Surat