

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 642/SRT/2023 (AY: 2012-13)

(Hybrid hearing)

Shyam Vilas Patil, B-201, Jivan Jyot Co-Op. HSG Soc. Ltd., Silvassa Road, Nr- Haria Parka, Dungra, Vapi -396191. PAN : APXPP7431E	Vs.	The ITO, Ward-8, Vapi.
APPELLANT		RESPONDEDNT

Appellant by	Shri Suresh K. Kabra, CA
Respondent by	Shri J. K. Chandnani, Sr. DR
Date of institution	20/09/2023
Date of hearing	14/11/2023
Date of pronouncement	14/11/2023

Order Under Section 254(1) of Income tax Act

PER PAWAN SINGH, JUDICIAL MEMEBR:

1. This appeal by assessee is directed against the order of Learned Commissioner of Income Tax (Appeals) [in short 'Ld. CIT(A)'] / Learned National Faceless Appeal Centre (in short 'the NFAC'), Delhi, dated 13.05.2022 for Assessment Year (AY) 2012-13. The assessee has raised the following grounds:

"1. The Ld Faceless CIT(A) has erred and was not justified on the facts of the case and in law in confirming the addition of Rs.12,53,500/-.

2. PRAYER

2.1 The Addition of Rs.12,53,500/- may kindly be deleted.

2.2 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 submissions of the parties were heard and record perused. At the time of hearing, the learned Authorised Representative (in short

'the ld. AR') of the assessee submits that there is delay of one day in filing appeal before Tribunal. The ld. AR for assessee submits that the delay of one day is due to miscalculation of period of delay. The impugned order passed by ld. CIT(A) was received by assessee only on 21.07.2023 and this appeal was filed on 20.09.2023. The delay is miscalculation of the period. The ld. AR submits that there is no intentional or deliberate delay and the same may be condoned on his oral application. The assessee has good case on merit and would suffer prejudice if the delay is not condoned.

3. On merit of the case, the ld. AR of the assessee submits that ld. CIT(A) passed *ex parte* order in dismissing the appeal without discussing merit of the case. Though, before ld. CIT(A), the assessee filed detailed statement of fact. The ld. CIT(A) without considering the fact, upheld the order of Assessing Officer. The ld. AR of the assessee submits that notice of hearing of appeal was not communicated to the assessee, so the assessee could not file his submission. The assessee engaged a tax consultant who has his own e-mail address at the time of filing appeal before ld CIT(A), for the purpose of services of notices. Later on the said tax consultant left his practice and started his automobile business. The notice of hearing may have been communicated at his mobile or his e-mail address which was not communicated to the assessee. Thus, there is sufficient cause for non-compliance of notice of ld CIT(A). The appeal was filed in 2019 and the assessee was waiting for result of the appeal and it was dismissed in limine in ex-party order by ld CIT(A). The ld. AR further submits that before the Assessing

Officer, the assessee could not make proper compliance for the want of proper knowledge of tax litigation. The Assessing Officer made addition on account of cash credit in the bank account by holding that assessee failed to substantiate or explain the nature of credit in his account. The ld. AR of the assessee submits that in fact the assessee was not allowed reasonable and proper opportunity by the lower authorities. The credit in the bank account is not unexplained. The ld. AR of the assessee submits that assessee has good case on merit and likely to succeed one more opportunity to explain the credit is given to the assessee. The ld. AR submits that bank account is not the books of account and the entire credit in the bank cannot be added as income of the assessee. The ld. AR of the assessee submits that he undertakes on behalf of the assessee that assessee would be more attentive in attending the proceeding before lower authorities, if one more opportunity is given to contest the case on merit of the assessee. Undisputed fact is that the lower authorities have passed in absence of assessee, so at least the assessee deserve one more opportunity to contest his case on merit.

4. On the other hand, learned Senior Departmental Representative (ld. Sr. DR) for the Revenue, on the contention of delay in filing appeal, submits that Bench may take appropriate view on considering the plea of ld AR for the assessee. On merit of the case, the ld. Sr. DR submits that assessee has neither attended the hearing before Assessing Officer nor before ld. CIT(A). The assessee has not given reasonable and plausible explanation for non-attendance before lower authorities. In

such situation, the lower authority has no option except to pass the order on the basis of material available on record. The ld. Sr. DR submits that he fully supports the order of lower authority.

5. In rejoinder of the submission, the ld. AR of the assessee submits that order of Assessing Officer is under section 144 and the CIT(A) has not passed the order as per mandate of section 250(6) of the Income Tax Act. The ld. AR for the assessee prayed that matter may be restored to the file of Assessing Officer with the liberty to the assessee to allow to file on the evidences and explanation before the Assessing Officer about the credit in the bank account.
6. I have considered both the parties and perused the material carefully. Considered the contention of both the parties that there is delay of only one day, which is explained as in occurred due to miscalculation of period in filing appeal, therefore taking a lenient view, the delay of one day in filing the appeal is condoned. Now adverting to the merit of the case.
7. I find that case of assessee was reopened on the basis of information that assessee made cash deposits of Rs.12,53,500/- in his bank account with State Bank of India, Vapi. The Assessing Officer has recorded the reasons under section 147, and issued notice under section 148 on 27.03.2019. The Assessing Officer noted that despite service of various notices, the assessee neither made compliance nor file return of income. The Assessing Officer in absence of compliance, treated the entire cash deposits of Rs.12,53,500/- as unexplained money under section 69A in the assessment order dated 30.10.2019

passed under section 147/144 of the Income Tax Act. The ld. CIT(A) confirmed the action of Assessing Officer by taking view that assessee was served several notices, but the assessee has not filed any written submission. The ld CIT(A) in absence of any submission from assessee upheld the order of Assessing Officer on addition on account of cash deposits. Before me, the ld. AR of the assessee vehemently submitted that the assessee was not allowed reasonable and proper opportunity and that assessee has good case on merit and likely to succeed if he is given one more opportunity to contest his case and he further undertake to be more vigilant in future. The credit is the bank account in not unexplained. I find some merit in the submissions of ld AR for the assessee that the lower authorities have passed in absence of assessee, so at least the assessee deserve one more opportunity to contest his case on merit. No doubt before passing the order the lower authorities made efforts to serve the assessee with the notice of hearing. However, considering the principles of natural justice that the assessee remained unrepresented before the lower authorities and suffered addition only for the want of any explanation, therefore, I deem it appropriate to give one more opportunity to the assessee to contest his case on merit and restored the grounds of appeal to the file of Assessing Officer to pass the order afresh. Needless to direct to pass the order, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee. The assessee is also directed to be more vigilant and not to prolong the case by seeking date without any valid

reason. In the result, the grounds of appeal raised by the assessee are allowed.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in open court on 14/11/2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 14/11/2023
SAMANTA

Copy to:

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

// TRUE COPY //

By order

Assistant Registrar/Sr.PS/PS, ITAT, Surat