

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 497/SRT/2023 (AY: 2011-12)**

(Physical hearing)

Parvatiben Bhagubhai Patel, Dungri, Ponia Falia Udwada, Valsad – 396185. PAN : AFIPP2146M	Vs.	The ITO, Ward -7, Vapi
APPELLANT		RESPONDEDNT

Appellant by	Shri Mehul Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of institution	20/07/2023
Date of hearing	30/11/2023
Date of pronouncement	30/11/2023

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 Learned Commissioner of Income Tax (Appeals) [in short 'Ld. CIT(A)'] / Learned National Faceless Appeal Centre (in short 'the NFAC'), Delhi, dated 18.05.2023 for Assessment Year (AY) 2011-12. The assessee has raised the following grounds:

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard.

2. On the facts and circumstance of the case as well as the law on subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making an addition of Rs.9,37,909/- representing FOR maturity amount.

4. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of

Assessing Officer in making an addition of Rs.9,80,000/- on account of alleged cash deposits.

5. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making an addition of Rs.3,170/- on account of alleged interest earned.

6. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making an addition of Rs.3,49,752/- on account of alleged estimated salary received by the assessee.

7. It is therefore prayed that above addition made by the assessing officer and confirmed by CIT(A) may please be deleted.

8. The appellant craves leave to add or alter or delete any of the ground or grounds of appeal at the time of the hearing before Your Honour.”

2. Rival submissions of the parties heard and record perused. The learned authorised representative (ld. AR) of the assessee submits that Assessing Officer as well as ld. CIT(A) passed an *ex parte* order without giving fair and reasonable opportunity to the assessee. The ld. AR submits that case of assessee was reopened on the basis of information that assessee has made cash deposits in bank account. Before issuing notice under section 148, the assessee was issued query letter. In response to said query letter, the assessee furnished complete details. The assessee was not aware about the Income Tax proceeding and was under the impression that once the assessee given complete details, which may be sufficient as no income from assessment was escaped. The Assessing Officer passed the assessment order under section 144 by making addition on account of cash deposits as well as addition of salary income without appreciating the facts in a proper manner. Aggrieved by the additions in the assessment, the assessee filed appeal before ld. CIT(A). The appeal was

filed in 2019. The ld CIT(A)/ NFAC issued only one notice for the first time in the month of May 2023 as reflected in para 5.1 of impugned order and dismissed the appeal of assessee *in limine*. The notice was served on the e-mail address of the consultant who has not informed the assessee. The alternative e-mail address of assessee on ITBA portal. No such notice was served upon assessee through such e-mail. The ld. CIT(A) has not given fair and reasonable opportunity. The ld. AR for the assessee submits that assessee has good case on merit and is likely to succeed if one more opportunity to contest the case on merit is allowed to assessee. The ld. AR for the assessee submits that assessee was not served with the reasons recorded. The assessee has already applied to the assessing officer, which has not been supplied to the assessee so far. The ld. AR submits that matter may be restored back to the file of Assessing Officer with the liberty to the assessee to raise legal and factual objection before Assessing Officer and further allow to file her submissions and evidences to substantiate the cash deposit as well as salary income.

3. On the other hand, ld. Senior Departmental representative (ld. Sr. DR) for the Revenue supported the order of lower authorities. The ld. Sr. DR submits that assessee is a habitual defaulter and in a habit not to honour the notices issued by the lower authorities. The ld. Sr. DR for the Revenue submits that it is a fit case to confirm the order of ld. CIT(A) as the assessee does not deserve any leniency.
4. I have considered the submission of both the parties and perused the orders of lower authorities carefully. I find that the Assessing Officer

noted that no return of income is filed by the assessee. The Assessing Officer was having information that assessee has deposited cash of Rs.9,80,000/- in the bank account for Bank of Baroda (BoB) and also earned salary income on which TDS was made. The Assessing Officer issued a query letter to the assessee. The assessee in response to such query letter submitted that the said amount was withdrawn for her daughter's marriage which was redeposited by her. Such explanation is duly recorded by Assessing Officer in assessment order. Such explanation was not accepted by Assessing Officer. The Assessing Officer after obtaining necessary approval recorded the reasons of reopening and issued notice under section 148. The Assessing Officer noted that no compliance was made by assessee nor any show cause was replied. The Assessing Officer recorded such observation in para no.4 of assessment order and ultimately after serving final show cause notice completed assessment under section 144 and made addition of Rs.19,56,784/-. The action of Assessing Officer was upheld by ld. CIT(A).

5. Before me, the ld. AR of the assessee vehemently urged that assessee was not afforded fair and reasonable opportunity to contest the addition either at the first appellate stage. It is also urged by ld. AR that the assessee under impression that once she was given detailed reply to substantiate cash withdrawal and reasons thereof, was that marriage of daughter of assessee was fixed during the relevant period. The ld. AR also urged that there is double addition of cash as well as salary income. Considering the facts and circumstances of the case that lower authorities passed *ex parte* order, in my view, the assessee deserve one

more opportunity to contest the addition on merit, therefore matter is restored back to the file of Assessing Officer with the direction to provide reasons recorded to the assessee. The assessee will be at liberty to raise legal and factual objection if so available under law. The assessee is also given liberty to file written submissions as well as evidences to substantiate the cash deposit and salary income and other information or submission if so desired. Needless to direct before passing the order, the Assessing Officer shall grant reasonable and fair opportunity to the assessee. The assessee is directed to be more vigilant and not to take excuse that she is not aware about the proceeding as now she is being represented by a well-trained and experienced tax professional. With this observation, the grounds of appeal are allowed for statistical purposes.

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

Order pronounced in open court on 30/11/2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 30/11/2023
SAMANTA

Copy to:

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

By Order

// TRUE COPY //

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