

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE HRI WASEEM AHMED, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.47/Rjt/2023  
(Assessment Year: 2013-14)

Shri Manoj Dhanjibhai Pansuriya, Kalpesh S. Doshi & Co., Chartered Accountants, 1006-09, The Spire 2, Nr. Sheetal Park BRTS Stop, 150 ft. Ring Road, Rajkot	Vs.	National Faceless Assessment Centre, Delhi
[PAN No.CDXPP2150C]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Kalpesh Doshi, A.R.
<b>Respondent by:</b>	Shri Ashish Kumar Pandey, Sr. DR

<b>Date of Hearing</b>	13.12.2023
<b>Date of Pronouncement</b>	20.12.2023

ORDER

**PER SIDDHARTHA NAUTIYAL, JM:**

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi in DIN & Order No. ITBA/NFAC/S/250/2022-23/1048147312(1) vide order dated 21.12.2022 passed for Assessment Year 2013-14.

2. The assessee has taken the following grounds of appeals:-

“1. That, the Ld. CIT(A) has wrongly confirmed the re-opening of assessment u/s 147 of the I.T. Act, 1961.

2. That, the Ld. CIT(A) has wrongly confirmed the order passed by Ld. AO without granting proper opportunity of being heard.

3. *That, the Ld. CIT(A) has wrongly confirmed addition of Rs. 42,15,806/- on account of cash deposit and credit entries in the bank accounts.*
4. *That the Ld. CIT(A) has wrongly confirmed addition of Rs. 25,86,356/- on account of difference in turnover as per provisional account and as per the ITR.*
5. *That the Ld. CIT(A) has wrongly confirmed the addition of Rs. 69,348/- on account of difference in cash balance as per provisional account and as per the ITR.*
6. *That, the Ld. CIT(A) has wrongly confirmed initiation of penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961.*
7. *That, the Ld. CIT(A) has wrongly confirmed levy of interest u/s 234A, 234B, 234C and 234D of the I.T. Act, 1961.*
8. *That, the findings of the Ld. AO and Ld. CIT(A) are not justified and are bad-in-law.*
9. *The appellant craves to add, amend, alter or delete any of the above grounds of appeal.”*

3. The brief facts of the case are that the assessee is an individual and engaged in the business of trading in hardware items in the name and style of M/s. Jay Khodiyar Manufacturer. The return of income was filed for the impugned assessment year declaring total income of Rs. 1,77,960/-. The assessment order was passed under Section 144 r.w.s. 147 of the Act determining total income at Rs. 70,49,570/- and the Ld. A.O. made addition to the tune of Rs. 68,71,510/- on account of undisclosed bank transactions.

4. In appeal, Ld. CIT(A) confirmed the assessment order with the following observations:-

*“3.6 This appeal has been filed by the appellant u/s 147 r.w.s. 144 r.w.s. 144B of the IT Act, 1961 claiming that the action of the Assessing Officer is not supported by facts and laws and that it is unjust. In such a situation, it is for the appellant to furnish the submissions with relevant evidence(s), case laws, if any, to support its claim. The burden of proof is always on the person who makes the claim. In this case,*

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*it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed in terms, the initial onus is on the assessing officer to prove that it is taxable. Where, however, the appellant claims exemption, the burden is on the appellant to prove it to be exempt. Same is the position in cases of all allowances, deductions, claims or loss, etc. since an appeal is nothing but the claim of the appellant to prove its claim. The appellant has not availed any opportunity to do so.*

*3.7 Since the appellant has not presented any arguments or submissions or any paper filed in support of its claim, the appeal is decided judiciously based on materials available on record.*

*3.8 I have perused the impugned assessment order u/s 147r.w.s. 144 r.w.s. 144B of the IT Act, 1961. The appellant has neither furnished any submissions in support of the grounds of appeal during the appellate proceedings nor has he made any full and complete submissions before Assessing Officer during assessment proceedings. Taking into account the entire conspectus of the case, I see no reason to interfere with the findings of the assessing officer regarding addition of Rs.68,71,510/- to the total income of appellant u/s 68 of the IT Act, 1961 in the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the IT Act, 1961. Accordingly, these grounds of appeal are dismissed.”*

5. The assessee is in appeal before us against the order passed by Ld. CIT(A). Before us, the Counsel for the assessee submitted that the assessee has a good case on merits. However, Ld. CIT(A) dismissed the appeal of the assessee without giving adequate opportunity to the assessee to present it's case on merits. It was submitted that the first notice regarding the first appellate hearing was issued by the Ld. CIT(A) on 17.11.2022 and the appellate order was passed by Ld. CIT(A) within a short span of one month only on 21.12.2022. It was further submitted that the aforesaid facts clearly demonstrates that order was passed by the appellate authority in a hurried manner without giving opportunity of hearing to the assessee. It was submitted that the assessee was unwell during the period since he was having throat infection and further the fact that the entire appellate proceedings were initiated as well as completed within a short span of one month only, clearly demonstrates that the

assessee was denied a fair opportunity of hearing. Accordingly, the Counsel for the assessee submitted that the matter may be restored back to the file of the Ld. CIT(A) for de-novo consideration in the interest of justice.

6. In response, the Ld. D.R. placed reliance on the observations made by the Ld. CIT(A) in the appellate order.

7. We have heard the rival contentions and perused the material on record. We observe that in the instant case the first notice of hearing was issued to the assessee on 17.11.2022, wherein an adjournment application was filed by the assessee on 22.11.2022 i.e. on the date of hearing. The next date of hearing was given to the assessee to cause appearance on 30.10.2022. No reply was filed by the assessee on 30.11.2022. Thereafter, the Ld. CIT(A) fixed the hearing for 09.12.2022 on which date the assessee filed adjournment application seeking more time to file reply. Thereafter, Ld. CIT(A) proceeded to pass the order on 21.12.2022. Accordingly, it is observed that the entire initiation of proceedings from the date of first issuance of notice dated 17.11.2022 and the final date of passing of order i.e. on 21.12.2022 were all completed within a limited span of one month only. With respect to two notices issued by the Ld. CIT(A), the assessee had made a request for adjournment. Accordingly, looking into the instant facts, we are of the view that the assessee should have been given further opportunity to present its case on merits. Accordingly, looking into the instant facts, in the interest of justice, the matter is being restored to the file of the Ld. CIT(A) to hear the matter

afresh, after giving due opportunity was given to the assessee to present its case on merits.

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

**This Order pronounced in Open Court on**

**20/12/2023**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 20/12/2023

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार Dy./Asstt.Registrar)**  
**आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot**