

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

ITA No. 698/Srt/2023 (Assessment Year 2011-12)

*(Physical hearing)*

Bharatkumar Nathubhai Patel, 704, Rushikesh Apartment, Tithal Road, Valsad (Gujarat)-396001. <b>PAN No. ASOPP 2041 C</b>	Vs.	I.T.O., Ward-1, Valsad.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Rajesh Upadhyay, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Appeal instituted on	14/10/2023
Date of hearing	18/12/2023
Date of pronouncement	20/12/2023

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

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

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 07/09/2023 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:

- “(1) Ld. CIT(A), NFAC, Delhi has erred in law and on facts to uphold A.O’s reopening of assessment and issue of notice u/s 148 of the Act only because of the incorrect fact that the appellant has deposited Rs. 21,00,000/- in his bank account with Kotak Mahindra Bank Ltd., A/c No. 08201040000291 with Valsad Branch.*
- (2) Ld. CIT(A) NFAC, Delhi has erred in law and on facts to uphold addition of Rs. 21,00,000/- made by the A.O. under the head undisclosed income for the year under appeal.”*

2. Rival submission of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee

submits that both the authorities below passed the order ex parte without giving fair and reasonable opportunity to the assessee and made addition of Rs. 21.00 lacs on account of unexplained cash deposit in bank. The Id. AR of the assessee submits that he has a good case on merit and is likely to succeed if the assessee is given opportunity of hearing. The Assessing Officer in para 3 of his order, has clearly recorded that the notice send under Section 142(1) of the Income Tax Act, 1961 (in short, the Act) on 04/12/2018 and 26/12/2018 was not served and returned bank. The assessment order was passed on 28/12/2018 under Section 144 r.w.s 148of the Act. Similarly, the notice of appeal was not served upon the assessee. The Id. AR of the assessee further submits that the Id. CIT(A) passed a non-speaking order without discussing the merit of the case.

3. 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 Assessing Officer as well as Id. CIT(A) granted fair and reasonable opportunity but the assessee failed to avail such opportunities. Therefore, the assessee does not deserve any further leniency and addition made by the Assessing Officer may be confirmed.
4. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I find that the case

of assessee was reopened on the basis of AIR information that the assessee made cash deposit of Rs. 15.50 lacs with Kotak Mahindra Bank during Financial Year 2010-11 and that no return of income was filed. The Assessing Officer after recording reasons, issued notice under Section 148 of the Act to the assessee. The Assessing Officer recorded that in response to notice under Section 148 of the Act, no return of income was filed by assessee. The Assessing Officer further recorded that notice issued under Section 142(1) of the Act on 04/12/2018 and 26/12/2018 was returned unserved. The Assessing Officer thereafter on the basis of details available with him on AIR information, addition on account of cash deposit of Rs. 15.50 lacs in Kotak Mahindra Bank and credit by clearance of cheques of Rs. 5.50 lacs and made addition on account of unexplained deposits. The assessee filed appeal before the Id. CIT(A). The action of Assessing Officer was upheld by the Id. CIT(A) in ex parte proceedings and non-speaking order. In my view, the substantial right of assessee is involved in the present appeal, therefore, keeping in view the principle of natural justice, the assessee is giving one more opportunity to explain the cash as well as deposit by clearance. Considering the fact the assessment order was passed under Section 144, therefore, I deem it appropriate to restore the issue back to the file of Assessing officer to decide the issue afresh in accordance with law. Needless to direct that before passing the order, the Assessing

Officer shall grant opportunity of hearing to the assessee. The assessee is also directed to be more vigilant in future and not to cause further delay and seek adjournment without any valid reason and to furnish all the details and his submissions and evidences on various grounds of appeal raised by him, as soon as possible, if so desired without any further delay. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order announced in open court on 20<sup>th</sup> December, 2023.

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

Surat, Dated: 20/12/2023  
*\*Ranjan*  
Copy to:  
1. Assessee  
2. Revenue  
3. CIT  
4. DR  
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat