

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, “SMC” BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

**आ.अ.सं./ITA No.529/SRT/2023** (AY 2011-12)

(Hearing in Physical Court)

Suhel Mohamed Salim Bhajjuwala, S-14, Ahmed Nagar Manubar Road, Bharuch- 392001 <b>PAN No: AJWPB 9750 D</b>	Vs	Income Tax Officer, Ward-1(3), Bharuch, Station Road, Hari Kunj Building, Above Bank of Baroda, Bharuch-392001
<b>अपीलार्थी/ Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

निर्धारिती की ओर से /Assessee by	Shri Krutarth Desai, AR & Ms Disha Kharod, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/ Appeal instituted on	01.08.2023
सुनवाई की तारीख/Date of hearing	20.12.2023
उद्घोषणा की तारीख/Date of pronouncement	20.12.2023

**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 National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld.CIT(A)”] dated 26.05.2023 for assessment year 2011-12, which in turn arises from the addition made by the Assessing Officer in assessment order passed under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 24.12.2018. The assessee has raised the following ground of appeal:-

“1) In the facts and circumstances of the case, the reassessment proceedings under the provisions of section 147 of the Income Tax Act itself is bad in law and contrary to the settled position of law. The essential element to initiate reassessment proceedings is “**reason to believe**” and not “**change of opinion**”. Therefore, the reassessment itself

*is bad in law and therefore, reassessment proceedings may please be quashed and set aside.*

*2) In the facts and circumstances of the case, the learned assessing officer has erred in making addition of Rs.1532000/- towards cash deposited in the bank account and therefore, the addition deserves to be quashed and set aside.*

*3) In the facts and circumstances of the case, the addition made under section 68 of the Income Tax Act to the tune of Rs.1000000/- is totally unwarranted and not within the four corners of law and therefore, the addition deserves to be quashed and set aside.*

*4) The appellant craves for leave to add or amend or alter or delete any of the grounds of.”*

2. On perusal of record, it shows that present appeal is barred by just one day of the prescribed period of limitation for filing this appeal before the Tribunal. The Ld. Authorized Representative (AR) for the assessee prayed that delay of just one day was committed due to miscalculation of appeal period and the Ld. AR for the assessee has shown sufficient and *bona fide* cause for condonation of delay.
3. On the other hand, Ld. Senior Departmental Representative (Sr-DR) for the Revenue has not opposed the delay in filing appeal before the Tribunal.
4. Considering the submission of both the parties and taking note of the fact that calculation of appeal period before the Tribunal. Thus, I find merits in the submission of Ld.AR for the assessee for condonation of delay, considering the fact that plea of assessee was circumstances situation. The delay in filing appeal is condoned and admitted for decision on merits. Now I will advert to discuss the merits to the appeal.

5. Rival submissions of both the parties are heard and record perused.

The Ld. AR for the assessee submits that Assessing Officer as well as NFAC/Ld. CIT(A) has not given reasonable and fair opportunities to the assessee. Though the Assessing Officer passed assessment order under section 143(3) r.w.s, 147 of the Act, however, on perusal on para-6.6 of assessment order, it was clearly discernable that addition on account of cash deposit is made for the want of proper explanation and evidence. The NFAC/Ld.CIT(A) confirmed the action of Assessing Officer in *ex parte* proceedings by holding that assessee was given three opportunities and no response was made on the part of assessee. The Ld. AR for the assessee submits that assessee is a semi-literate person and was not capable with technicality of e-mail and SMS automation procedure generated from ITBA portal. The Ld. AR for the assessee submits that the assessee has good case on merit and will definitely succeed, if one more opportunity is given to the assessee to explain the facts and the issues/ additions are adjudicated on merit. The ld AR for the assessee further submits that he undertakes on behalf of assessee to be more vigilant in future and not to make any default for making such compliance. The ld AR for the assessee prayed for restoring the appeal to the file of Assessing Officer and to decide it afresh on merit.

6. On the other hand, Ld. Sr-DR for the Revenue after going through the order of lower authorities and submission made by Ld. AR for the assessee, submits that as per para-4.2 of impugned order passed by NFAC/Ld. CIT(A) the assessee was given sufficient and reasonable

opportunity though assessee has not availed such opportunity. The Ld. Sr-DR for the Revenue submits that NFAC/Ld. CIT(A) while confirming the substantial part granted a relief of reasonable cash available in the hand of assessee on account of past savings. The Ld. Sr-DR for the Revenue submits that assessee should be more vigilant in making timely compliance and not to seek adjournment without valid reason. The ld SR DR for the revenue prayed for dismissal of appeal. In alternative submissions, the ld Sr DR for the revenue submits that in case, the bench is of the view that the assessee deserve any more opportunity, in such situation, the matter may be restored to the file of Assessing Officer.

7. I have considered the rival submissions of both the parties and perused the order of lower authorities carefully. I find that Assessing Officer made the addition in the assessment order on account of cash deposited in bank account of Rs.15.32 lakh and addition of Rs.10 lakh on account unsecured loan and both additions were made for want of proper explanation and evidence. I further find that NFAC/Ld.CIT(A) confirmed the addition in *ex parte* and by non-speaking order. I find that substantial right of assessee are involved in the present appeal, therefore, considering the fact and circumstances of the case and the submissions of ld AR for the assessee that additions were made for want of proper representation. Therefore, considering the request of Ld. AR for the assessee is restored back to the file of Assessing Officer for further adjudication. The assessee is also directed to be more vigilant in future and to file

all reply and query as and when asked by Assessing Officer without any further default. With these directions, the grounds of appeal of assessee is allowed for statistical purposes.

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

Order pronounced in the open court after closing hearing on Wednesday, 20<sup>th</sup> December, 2023

**Sd/-**  
**(PAWAN SINGH)**  
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 20/12/2023

*Dkp. Out Sourcing Sr.P.S*

Copy to:

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

By order

// True Copy //

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