

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA Nos.451 to 453/SRT/2023

(AYs 2011-12, 2014-15 & 2016-17)

(Hearing in Physical Court)

Engineering Professional Co. Pvt. Ltd. 444, Royal Arcade, Opp. Sarhana Zoon, Varachha Road, Near Sarhana Jakat Naka, Surat-395006 PAN : AABCE 0313 Q	Vs	Deputy Commissioner of Income Tax, Circle-1(1)(1), Surat, Aaykar Bhavan, Majura Gate, Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri P.M. Jagasheth, C.A
राजस्व की ओर से /Revenue by	Shri Ritesh Mishra CIT-DR & Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	05.07.2023
सुनवाई की तारीख/Date of hearing	28.12.2023
उद्घोषणा की तारीख/Date of pronouncement	28.12.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These three appeals by single assessee are directed against the separate orders of National Faceless Appeal Centre (NFAC), Delhi/Ld. CIT(A) dated 02.02.2023, 04.05.2023 & 19.04.2023 for assessment years (AYs) 2011-12, 2014-15 and 2016-17 (assessment year-wise), which in turn arose out separate assessment orders passed by Assessing Officer under section 144 r.w.s 147 r.w.s. 143(3) dated 30.11.2016, 20.12.2016 and 24.12.2018 respectively. With the consent of both the parties, all the appeals were clubbed,

heard together and are decided by consolidated order to avoid conflicting decisions.

2. Rival submissions of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income Tax-Departmental Representative (Ld.CIT-DR) for the Revenue heard and record perused. At the outset of hearing, Ld-AR for the assessee submits that there is delay of one day in filing appeals, for assessment years 2014-15 and 2016-17. The impugned orders were passed on 04.05.2023 and 19.04.2023. However, the present appeals are filed on 05.07.2023 due to miscalculation of period of limitation. However, there is delay of 88 in filing appeal for assessment year 2011-12. The impugned order was passed on 02.02.2023 though present appeal is also filed on 05.07.2023 along with other connected appeals. The Ld. AR of the assessee submits that the impugned order passed by NFAC/Ld.CIT(A) was not communicated to assessee and assessee came to know about the passing order when order for assessment years 2014-15 and 2016-17 were served. The Ld. AR of the assessee submits that there is no intentional or deliberate on the part of assessee. The Ld. AR of the assessee submits that assessee has good case on merit and is likely to success that technicality may be avoided when cause of substantial justice is pitted against the technical consideration.
3. On the other hand, Ld. CIT-DR for the Revenue submits that Bench may take view in accordance with law, if the bench is of the view that the contention of the Ld.AR of the assessee.

4. On considering the submissions of both the parties, we find that there is only one-day delay in filing appeals for assessment years 2014-15 & 2016-17 respectively. However, there is delay of 88 days in filing appeal for assessment year 2011-12. Considering the submission of both the parties and explanation offered by Ld. AR of the assessee that the assessee was not aware about the order till the order for other years was served, therefore, we find it sufficient cause for condoning the delay in filing those appeals. Now advertent to merit of the cases.
5. The Ld. AR of the assessee submits that Assessing Officer as well as NFAC/Ld.CIT(A) passed *ex parte* order without giving fair and reasonable opportunities of being heard to assessee. The Ld. AR of assessee submits that Assessing Officer while passing the assessment order made addition on account disallowance of purchase @ 25% as well as unexplained cash credit on account of credit in the bank account. The NFAC/Ld.CIT(A) confirmed the action of Assessing Order in *ex parte* proceedings. The Ld.AR of the assessee submits that substantial right of the assessee are involved in all three assessment years, therefore matter may be restored back to the file of respective Assessing Officer with a liberty to allow proper opportunity of being heard to assessee.
6. On the other hand, Ld.CIT-DR submits that lower authorities has given fair and proper opportunities to the assessee though assessee chose not to appear before the lower authorities and now claiming fair and reasonable opportunity though assessee does not deserve

any lenient even otherwise the Bench of the view and matter may be restored back to the file of respective Assessing Officer with a direction to assessee to be more vigilant in future and not to make default before lower authorities as and when called for.

7. We have considered the submissions of the parties and perused the materials available on record. We find that in assessment year 2014-15, the Assessing Officer made addition on account of credit entry/ cash deposits in the bank account and added entire credit in the bank account of assessee. The Assessing Officer also disallowed 25% of purchase shown by assessee.

In assessment year 2011-12, the Assessing Officer made addition of Rs.1.80 lakh for want of TDS for making payment to M/s Patel Earth Movers, Khambhat.

Similarly, in assessment year 2016-17, the Assessing Officer made addition of Rs.7.73 lakh on account of unexplained cash credit in the bank account addition of Rs.1,26,55,848/- on account of current liability. Assessment in all three years were made for the want of proper compliance by assessee. In all three years, the NFAC/Ld.CIT(A) confirmed the additions in *ex parte* proceedings. Considering the fact that value right of assessee was involved in all three years. Therefore, keeping in view the principle of natural justice, the grounds of appeal raised by assessee, in all three years are back to the file of respective Assessing Officer to examine or verify all the confirmations of sundry creditors and to pass order in accordance with law, after giving reasonable opportunity of being

heard to assessee. The assessee is also directed to furnish all the evidence at the earliest possible of time before Assessing Officer as and when call for.

8. In the result, all the grounds raised by the assessee are allowed for statistical purposes.
9. In combined result, all the appeals of the assessee are allowed for statistical purposes. A copy of the instant common order be placed in the respective case file(s).

Order pronounced in open court at the close of the hearing on Thursday, 28th December,2023.

Sd/-
(Dr ARJUN LAL SAINI)
[लेखा सदस्य/ACCOUNTANT MEMBER]
Surat, Dated: 28/12/2023
Dkp. Out Sourcing Sr.P.S

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

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

By order

// True Copy //

Sr. P.S./Assistant Registrar, ITAT, Surat