

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 No.590/SRT/2023 (AY 2016-17)

(Hearing in Physical Court)

Mukesh Rajendra Prasad Thakur 3-9-9R Navjivan Society, Lamington Road, Mumbai- 400008 PAN : AARPT 3055 D	Vs	Assistant Commissioner of Income Tax, Vapi Circle, Room No.708, 7 th Floor, Fortune Square-II, Chala, Daman Road, Vapi-396191
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	None
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	25.08.2023
सुनवाई की तारीख/Date of hearing	29.12.2023
उद्घोषणा की तारीख/Date of pronouncement	29.12.2023

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 'NFAC/Ld. PCIT'] dated 19.06.2023 for assessment year 2016-17, which in turn arises out of assessment order passed by Assessing Officer passed assessment order under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 18.12.2018. The assessee has raised the following grounds of appeal:-

"1. The learned CIT(A) erred in law and on facts of the case erred in confirming the decision of Assessing Officer in making addition (of depreciation of Rs.1,87,747/- when your assessee had offer for taxation net profit more than the specified percentage of gross receipt under section 44AD of the IT Act 1961).

2. The learned CIT(A) erred in law and on facts of the case in confirming the decision of Assessing Officer in making addition (of agriculture income of Rs.25,02,750/- under section 68 of the Income Tax Act 1961).

3. Your appellant craves liberty to add, alter, amend modify, delete and append any of the grounds of appeal.”

2. The perusal of record shows that impugned order was passed by NFAC/Ld.CIT(A) on 19.06.2023, however, the present appeal is filed before Tribunal on 27.08.2023. Thus there is delay of seven days in filing appeal before Tribunal. On perusal of record we find shows that assessee has filed application for condonation of delay. In the application for condonation of delay, the assessee has contended that impugned order was received on 19.06.2023 through e-mail of accountant, accountant was busy in filing return of income and lost sight in filing the appeal of assessee before Tribunal. In the month of August, 2023, the said accountant recollected and filed before Tribunal on 25.08.2023. The appeal fee for filing appeal was deposited on 04.07.2023. The assessee also pleaded that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred as held by Hon'ble Apex Court in the case of Collector of Land Acquisition Vs Mst Katiji (1987) taxmann.com 1072 (SC).
3. None appeared on behalf of assessee despite the service of notice on more than three occasions by way of registered post Acknowledgment Due (RPAD) as well as through email. In such circumstances, we left no option, except to decide the appeal on the basis of material on record and on hearing the submission of Ld. Senior - Departmental

Representative (Ld. Sr-DR) for the Revenue. The Ld. Sr-DR submits that though the assessee has filed appeal fee in time yet the appeal was filed beyond period of limitation. The ld Sr DR for the revenue submits that bench may take a call in accordance with law. However, on merit, the ld SR DR for the revenue submits that assessee has no case as he has not filed any evidence or submissions to substantiate unexplained credit in his bank account.

4. We have considered the submission of Ld. Sr-DR of the Revenue and perused the materials available on record. First we shall consider the issue of condonation of delay in filing this appeal. We find that assessee explained the delay by taking plea that his accountant has lost sight, though appeal fee was filed on 04.07.2023. Considering the fact that appeal fee was filed in the month of July, 2023, well within time, therefore we find that assessee is diligent in perusing his appeal, hence small delay of seven days is condoned. Now adverting to merit of the case.
5. On merit, we find that assessee filed his return of income for assessment year 2016-17 on 06.10.2016 at Rs.28,49,920/-. In the computation of total income, the assessee claimed net agricultural income of Rs.20,99,630/-. The case was selected for scrutiny. During assessment, the Assessing Officer disallowed the receipt of agricultural income of Rs.25,02,750/- for want of necessary evidence of agricultural produce. The assessing officer also held that even the assessee has not furnished record of land holding, therefore agricultural income was treated as unexplained cash credit. The

assessing Officer further noted that assessee has shown to have purchased vehicle at Rs.12,51,651/- and claimed depreciation @ 15%. The assessee has shown turnover under section 44AD, therefore was held not eligible for depreciation. The Assessing Officer thereby disallowed such depreciation. On appeal before NFAC/Ld.CIT(A) the action of Assessing Officer was upheld. The NFAC/Ld.CIT(A) upheld the action of Assessing Officer in detailed and by a speaking order on both the additions.

6. Further aggrieved assessee has filed present appeal before the Tribunal. Before the us neither assessee has filed even a single document to substantiate his agricultural income nor filed any written submission either on the agriculture income or on the claim of depreciation, despite service of notice on two occasions. In absence of any explanation, written submission or evidence, we do not find any justification to interfere with the order of lower authorities. Thus, both the ground of assessee's appeal are dismissed.

7. In the result, appeal of assessee is dismissed.

Order pronounced in the open court on 29/12/2023.

Sd/- **Sd/-**
(Dr ARJUN LAL SAINI) **(PAWAN SINGH)**
[लेखा सदस्य/ACCOUNTANT MEMBR] **[न्यायिक सदस्य JUDICIAL MEMBER]**

Surat, Dated: 29/12/2022

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. PCIT
4. DR
5. Guard File

By order

//True Copy //

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