

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 541/Ahd/2023
Assessment Year 2015-16**

Rahul Mansukhbhai Raiyani 43B, Purshottam Nagar, Productivity Road, Akota, Vadodara, Gujarat-390020 PAN: AGJPR4785Q (Appellant)	Vs	The DCIT Circle-1(2), Vadodara (Respondent)
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**Assessee Represented: None
Revenue Represented: Shri V.K. Mangla, Sr.D.R.**

Date of hearing : 29-04-2024
Date of pronouncement : 30-04-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the ex-parte appellate order dated 04.05.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2015-16.

2. The Brief facts of the case is that the assessee is an individual and engaged in the business of property Developers and Retailers. For the Asst. Year 2015-16, assessee filed its Return of Income on 01.08.2016 declaring total income of Rs.8,34,600/-. The case was selected for scrutiny assessment to verify whether the sundry creditors are genuine and the depreciation claimed is admissible. The Assessing Officer issued six hearing notices to the assessee to verify the claim, the assessee failed to furnish any details before the A.O. Therefore the A.O. made disallowance of depreciation of Rs.3,04,279/-, unexplained investment of Rs.1,34,03,090/- and unexplained cash credit of Rs.1,28,68,843/- and determined the total income as Rs.2,74,10,818/- and demanded tax thereon.

3. Aggreived against the exparte order, assessee filed an appeal before Ld. CIT(A), NFAC. The Ld. NFAC given five opportunities to hearing between 15.02.2021 to 26.04.2023. The assessee failed to respond to only of the notices issued and failed to file "written submission" before Appellate Authority. However the Ld. NFAC considered the Grounds of Appeal filed by the assessee and deleted the addition of Rs. 1,22,05,837/- being the confirmation produced by the assessee from Shri Nimity R. Sangani. As regarding remaining additions, the assessee failed to provide any information, thereby Ld. NFAC confirmed the additions and partly allowed the appeal.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The ld. CIT(A) erred in violating the principle of natural justice by not granting adjournment, i.e., an opportunity of being heard, to the appellant, despite the appellant's request. In the interest of natural justice, the appellant requests that your honour provide one more opportunity of being heard.

2. Because the ld. CIT(A) erred in law as well as on facts while confirming the aggregate addition of Rs. 1,43,70,381/- which included an addition of Rs. 6,63,012/- related to Sundry creditors, Rs. 1,34,03,090/- related to fixed asset, and Rs. 3,04,279/- due to disallowance of depreciation expense.

3. Because the ld. CIT(A) has erred in law as well as on the facts in confirming addition of Rs. 6,63,012/- u/s. 68 of the Act as unexplained cash credit. Whereas these are the genuine creditors which is correctly shown in liability side of the balance sheet.

4. Because the ld. CIT(A) has erred in law and on the facts of the appellants case in confirming addition of Rs. 1,34,03,090/- u/s. 69B of the Act as unexplained investment.

5. Because the Id. CIT(A) has erred in law and on the facts of the appellants case in confirming disallowance of depreciation expenses claimed during the year aggregating to Rs.3,04,279/- u/s. 37 of the Act.

6. The appellant craves leave to add/alter any of the grounds of appeal before or at the time of hearing.

5. Today is the 9th time of hearing of this appeal, none appeared on behalf of the assessee in spite of service of notices. But an adjournment letter was sought from C.A. Jigar Adhyaru requesting to grant time of 15 days for compilation of necessary submissions and Paper Book. Even in the previous hearings, the C.A. Jigar Adhyaru had made identical request for preparation of the case and thereby the appeal was adjourned for six occasions. However the assessee failed to file any details before us. Further it is seen that C.A. Jigar Adhyaru is not provided with letter of authorization from

the assessee. Therefore the request made by the AR is hereby rejected. This clearly shows that the assessee is not interested in conducting the above appeal. Therefore we dispose of this appeal with the materials available on record.

6. Ld. Sr. D.R. Shri V.K. Mangla appearing for the Revenue submitted that both before the Assessing Officer as well as before Appellate Authority, the assessee failed to file any material evidences. Thus it is submitted that the issue is squarely covered by the Hon'ble High Court of Gujarat in the case of PCIT Vs. Ashokji Chanduji Thakor in Tax Appeal No. 1160 & 1161 of 2018 dated 09-10-2018, wherein the Hon'ble High Court after considering the Tax Appeal No. 710 of 2018 dated 2-06-2018 set aside the order passed by the Tribunal and restored the exparte appellate order and assessment order. Following the above Jurisdictional High Court judgment, the exparte order passed by the Ld. CIT(A) and Assessing Officer does not require any interference and the present appeal filed by the assessee is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. It is seen from the assessment records, the assessee has not responded to the various notices and not filed relevant documents or materials before the Assessing officer. Therefore the Assessing officer passed an exparte order u/s. 144 of the Act. Even before the Ld. CIT(A), five opportunities of hearing were given to the assessee from 15.02.2021 to 26.04.2023 the assessee neither filed written submissions nor requested for

any adjournment of the hearings. Therefore the Ld. CIT(A) passed an exparte appellate order, we do not find any infirmity in the order passed by the Ld. CIT(A) on merits giving partial relief to the assessee. Further the assessee failed to file any documents, materials before us and also not filed before the Lower Authorities.

7.1. In the above circumstances, the Jurisdictional High Court of Gujarat in the case of Ashokji Chanduji Thakor (cited supra) held as follows:

...Both these appeals are filed by the Revenue. Revenue has challenged the judgment of the Income Tax Appellate Tribunal, Ahmedabad [Tribunal for short dated 27th December 2017 by which the Tribunal was pleased to remand the proceedings before the CIT(A) for fresh adjudication. The Tribunal noted that despite service of notices, before CIT(A) no one appeared on behalf of the assesses. No written response was also made. Despite this, the Tribunal placed the matter back before the Ld. CIT(A) for fresh consideration.

We may noticed that in case of the group of assesseees, this Court in Tax Appeal No. 710 of 2018 and connected appeals, by judgment dated 27th June 2018 had reversed such a view of the Tribunal. The Court was of the opinion that the Tribunal had exercised its discretion without stating reasons.

Eventually, the Court made the following observations:

"8.0. It is required to be noted that in the present case right from very begging i.e. assessment proceeding, assessee was non cooperative. Number of opportunities were given by the AO, however assessee did not cooperate and even did not file any reply. Therefore, considering the material on record, the AO made addition as unexplained investment. Even before the learned CIT(A) also the assessee was non cooperative. Number of opportunities were given to the assessee to represent his case, however none remained present on behalf of assessee. Thereafter, the learned CIT(A) proceeded further with the appeal ex parte and decided the appeal on merits and confirmed the order passed by the AO confirming additions of unexplained investment. Thus, even learned CIT(A) also decided the matter on merits. On going through the orders passed by the AO as well as learned CIT(A), we are of the opinion that in absence of any explanation by the assessee on the investment in question, AO was justified in making the addition of unexplained investment and thereafter learned CIT(A) was justified in confirming the same. Therefore, even the order passed by the learned CIT(A) which was on merits was not required to be interfered with by the learned CIT(A) and ought not to have been quashed and set aside without assigning any reasons. Under the circumstances, the impugned orders passed by the learned Tribunal cannot be sustained.

9.0. In view of the above and for the reasons stated above, the questions of law are answered in favour of the Revenue and against the assessee and impugned common judgment and order passed by the learned Tribunal in IT(SSJA No.117/AHD/2015 to IT(SSIA No.122/AHD/2015 is hereby quashed and set aside and the orders passed by the AO as well as learned CIT(A) are restored. All the appeals are allowed accordingly. No costs."

In the result, these Tax Appeals are also allowed.

Impugned common order of the Tribunal is set aside."

8. Respectfully following the above judgment of the Jurisdictional High Court, we have no other option than to dismiss the appeal filed by the assessee.

9. In the result, the appeal filed by the Assessee in ITA No. 541/Ahd/2023 is hereby dismissed.

Order pronounced in the open court on 30-04-2024

Sd/-

(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 30/04/2024

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद