

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.527/SRT/2023 (AY 2011-12)

(Hearing in Physical Court)

Mahesh Dyeing & Printing Mills Pvt. Ltd., 104, 105, 107 Shivanand Nagar Ind. Estate, Village Tati Thaiya, Surat-394221 PAN No. AABCM 9282 E	Vs	Dy. Commissioner of Income Tax, Circle-1(1)(1), Surat, Aayakar Bhavan, Nr. Majura Gate, Opp. New Civil Hospital, Surat-395001
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by	Shri Rasesh Shah, C.A
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	04.10.2023
उद्घोषणा की तारीख / Date of pronouncement	04.10.2023

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. CIT(A)"] dated 15.06.2023 for the assessment year 2011-12, which in turn arises out of assessment order passed by Asstt. Commissioner of Income-tax, Circle-1(1)(2) Surat / Assessing Officer under section 143(3) r.w.s. 147 of Income Tax Act, 1961 (hereinafter referred to as 'the Act' for the sake of brevity) on 22.12.2018. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order u/s 250. There were multiple hearing notices and the assessee made compliance when the case was earlier fixed for physical hearing. The

case was remanded at the time of physical hearing on the written submission made by the assessee and the remand report was received on 15.06.2020. The Ld. CIT(A) did not pass the order and the case was thereafter transferred to Ld.CIT(A) NFAC, Delhi. The ld. CIT(A) of NFAC, Delhi has failed to take the cognizance of the physical hearing that took place earlier.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.2,00,000/- u/s 68 as unexplained cash credit in form of alleged bogus share capital.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.75,16,570/- u/s 68 as unexplained cash credit in form of unsecured loans.

4. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.38,580/- u/s 69C as unexplained expenditure in form of alleged unaccounted commission expenses.

5. Even otherwise on the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

6. It is therefore prayed that addition made by assessing officer and confirmed by CIT(A) may please be deleted.

7. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal”

2. At the outset of hearing, Ld. Authorized Representative (Ld. AR) for the assessee submits that assessee appeal filed before Ld. CIT(A) on 17.01.2019 and there were multiple notices of hearings was received by the assessee and he also made compliance, when the case of assessee

fixed in physical hearing. On the submission of assessee, a remand report was called from Assessing Officer. Such remand report was received by Ld. CIT(A) on 16.06.2020. Thereafter, the case was migrated to NFAC/Ld. CIT(A). Before Ld. CIT(A) the assessee requested for adjournment, the Ld. CIT(A) instead of giving adjournment dismissed the appeal in *ex parte* order, without discussing merit and basic fact of the case. The Ld. AR for the assessee submits that assessee has good case on merit and is likely to succeed, if one more opportunity and to decide the appeal on merit. The Ld AR for the assessee prayed for restoring the appeal to the file of Ld CIT(A) and to decide it afresh on merit.

3. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue though supported the order of Ld. CIT(A). In alternative submission, 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.
4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that Assessing Officer while passing assessment order under section 143(3)/147 made addition under section 68 on account of share capital of Rs.2.00 lakh as well as addition of unexplained cash credit under section 68 by treating unsecured loan as non-genuine. The Ld. CIT(A) dismissed the appeal for want of submission. Before us Ld. AR for the assessee vehemently argued that during physical hearing of appeal, submission of assessee was considered, on which remand report called

for from Assessing Officer, which was received on 15.06.2020 and that Ld. CIT(A) has not considered such materials, available before him. This fact is not controverted by ld Sr DR for the revenue, during hearing. Considering the fact that Ld. CIT(A) has dismissed the appeal in *ex parte* order without discussing the merit of the case. The impugned order passed by ld. CIT(A) is not in accordance with mandate of Section 250(6) of the Act. Therefore, we deem it appropriate to restore the appeal back to the file of Ld. CIT(A) with a direction to pass the order afresh after providing reasonable opportunity of being heard. The ld CIT(A) is also directed to consider the submission of assessee, remand report from Assessing Officer or any further submission which may be furnish by assessee. The assessee is also directed to be more vigilant and to make timely compliance of the notice issued by Ld. CIT(A). With these directions, the grounds of appeal of assessee is allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes. Order pronounced in the open court after closing hearing on Wednesday, 4th October, 2023.

Sd/-
(Dr ARJUN LAL SAINI)
[लेखा सदस्य/ACCOUNTANT MEMBER]

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

Surat, Dated: 04 /10/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

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

// True Copy //

Sr. Private Secretary /Private Secretary
/Assistant Registrar, ITAT, Surat