

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA No. 232/Ahd/2024
Assessment Year 2016-17**

Paragkumar Dipakkumar Khamar, 14, Bhagwati Nagar Society, Kalol, District Gandhinagar-382721, Gujarat PAN: BGHPK3539G (Appellant)	v.	The Income Tax Officer, Ward-4, Opp. Jain Derasar, Modhera Four Roads, Mehsana- 382715, Gujarat (Respondent)
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Assessee by: None
Revenue by: Shri N.J. Vyas, Sr. D.R.

Date of hearing : 26-06-2024
Date of pronouncement : 26-06-2024

आदेश/ORDER

This appeal in ITA No. 232/Ahd/2024 for assessment year 2016-17 has arisen from the appellate order dated 15-12-2023 in DIN & Order No. ITBA/APL/S/250/2023-24/1058810135(1) passed by CIT(A) which in turn has arisen from the assessment order dated 12-12-2018 passed by the

Assessing Officer u/s. 144 of the 1961 Act vide order No. ITBA/AST/S/144/2018-19/1014218683(1).

2. The brief facts of the case are that the assessee has filed return of income for the impugned assessment year on 14th March, 2017 declaring income of Rs. 2,64,590/-. The case of the assessee was selected for framing limited scrutiny through CASS. Statutory notices u/s. 143(2) and 142(1) were issued to the assessee by the Assessing Officer , but there was no compliance by the assessee. The Assessing Officer proceeded to frame ex-parte assessment u/s. 144 by making addition of Rs. 13,13,329/- on account of unexplained investment. During the assessment proceedings, the Assessing Officer called for information u/s. 133(6) from M/s. Rajvi Stock Broking Pvt. Ltd.. The said company provided the information which stated that the assessee has made payment of Rs. 7,17,500/- to the said company Rajvi Stock Broking Pvt. Ltd. with respect to security investments. Further, the Assessing Officer observed that there are certain credit entries of Rs. 5,95,829/- in the bank account no. 220010110004028 just before investments in the share/securities . Since the assessee could not explain the aforesaid investment, the AO added the amount of Rs. 13,13,329/- as unexplained investment.

3. The assessee being aggrieved filed first appeal with CIT(A). The ld. CIT(A) issued notices to the assessee but there was no compliance on the part of the assessee, as the assessee

did not respond to the said notices. The ld. CIT(A) dismissed the appeal of the assessee by upholding the order of the Assessing Officer ex-parte in-limine without deciding issue on merit, on the grounds that the assessee has not complied with the notices issued by ld. CIT(A). In statement of fact as well grounds of appeal filed before ld. CIT(A) , the assessee submitted that the assessee did not received notices of the AO as the assessee was out of India and secondly double addition has been made wherein the amount deposited in the bank account is added as well the amount paid out of aforesaid deposits to M/s Rajvi Stock Broking Private Limited was once again added by the AO.

4. Still Aggrieved, the assessee has filed second appeal with Tribunal. None appeared when this appeal was called for hearing before the Tribunal , and the adjournment application has been filed which is signed by 'Mr. Nishit' on behalf of the assessee. No Power of Attorney/Vakalatnama in favour of 'Mr. Nishit' is on record. I reject adjournment application filed by the assessee. . The ld. Departmental Representative relied upon the order of the CIT(A) but fairly submitted that CIT(A) has not decided the issue on merit. It was further submitted that there is non-compliance on the part of the assessee, both at the level of Assessing Officer as well as before the ld. CIT(A).

5. I have considered contentions of the ld. Departmental Representative and perused the material on record. I have

observed that the CIT(A) has dismissed the appeal of the assessee ex-parte in-limine without deciding the issues on merit, by passing a non reasoned and non speaking order, on the grounds that the assessee did not comply with the directions/notices of ld. CIT(A). Even the contentions of the assessee in statement of facts and grounds of appeal that there is a double addition has not been adjudicated by ld. CIT(A). The assessee has contended that the AO made addition on the credit entries in the bank account to the tune of Rs. 5,95,829/- being unexplained credit, and also made addition of payment of Rs. 7,17,500/- to M/s Rajvi Stock Broking Private Limited which was partly made out of the aforesaid deposits in bank account. The assessee has submitted that he was out of India when assessment proceedings were underway. The assessee has specifically raised ground before ld. CIT(A) that double additions were made. The CIT(A) has simply confirmed the order of the Assessing Officer without deciding the issues on merit by passing an ex-parte order in limine , which is not in compliance with provisions of Section 250(6). I have observed that the assessee has specifically raised grounds of appeal that the notice u/s. 143(2) was not received by the assessee. The ld. CIT(A) has not adjudicated these issues on merit. Thus, I have observed that there is non-compliance of provisions of section 250(6) by CIT(A) as he has not adjudicated the issues on merit as had arisen in the

appeal before him as are required by provisions of section 250(6) which required ld. CIT(A) to pass order in writing stating the points for determination , decision thereof and the reasoning thereof. Thus, the CIT(A) is obligated to adjudicate issues arising in the appeal on merit in accordance with law and he cannot simply dismiss the appeal of the assessee by upholding the assessment order of Assessing Officer , on the ground that the assessee did not comply with the notice of hearing. The ld. CIT(A) did not decided the issues raised by the assessee in its appeal filed with ld. CIT(A). The powers of ld. CIT(A) are co-terminus with the powers of the AO including power of enhancement(Section 251(1)(a)). The CIT(A) has power to make such inquiries as he thinks fit and may also direct AO to make such enquiries and report to ld CIT(A), as is provided u/s 250(4). The CIT(A) could have issued summons u/s. 131 to the assessee or could have called for information from third parties u/s. 133(6) , in case there is non-compliance on the part of the assessee. The ld. CIT(A) could have called for the assessment records, before adjudicating appeal of the assessee. There are other powers vested with ld. CIT(A) as is provided under the 1961 Act. The ld. CIT(A) has not rebutted the claim of the assessee, but dismissed the appeal of the assessee on ground of non prosecution. The ld. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as ld CIT(A) is required to

pass reasoned and speaking order on merits in accordance with law. The appellate order passed by Id. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by Id. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issue are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of Id. CIT(A) in deciding the issues. If the Id. CIT(A) simply dismiss the appeal merely because the assessee did not appear before Id. CIT(A) or did not comply with the notices of hearing in limine without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also higher appellate authorities will be deprived to see what weighed in the mind of the Id. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits and shall be a non speaking order. In the present case, it is observed that Id. CIT(A) has dismissed the appeal of the assessee ex-parte without deciding the issues arising in the appeal before him on

merits by passing a non speaking and non reasoned order, and hence the appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely stating the assessment order passed by AO is upheld , and that the assessee has not submitted details/documents or the assessee did not appear/or complied with notice of hearing, is not sufficient to dismiss the appeal of the assessee in limine without deciding the issues arising in the appeal on merits . It is equally true that the assessee also did not complied with the notices issued by ld. CIT(A) and did not file the requisite details/documents to support his contentions. Under these facts and circumstances and fairness to both the parties, and in the interest of justice, the appellate order passed by ld. CIT(A) is set aside and the matter can go back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. The ld. CIT(A) shall pass the order in compliance with the provision of section 250(6) of the Act on merit in accordance with law, in set aside proceedings ,after giving opportunity to both the parties in compliance with principles of natural justice. The assessee on his part is also directed to comply with the direction/notices of CIT(A) , and in case of failure of the assessee, the ld. CIT(A) shall be free to pass such order as deemed fit ex-parte in accordance with law on merits and after complying with the provisions of section

250(6) of the Act. Thus, the appeal of the assessee is allowed for statistical purposes and the matter is restored back to the file of Id. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law. I clarify that I have not commented on the merits of the issues in the appeal. Thus, the appeal of the assessee is allowed for statistical purposes. I order accordingly.

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

Order pronounced in the open court on 26-06-2024 at the Conclusion of the hearing and reduced to writing and signed on 27th June, 2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated 27/06/2024

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