

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Shri Ramit Kochar, Accountant Member**

**ITA No. 1049/Ahd/2023  
Assessment Year 2017-18**

Premila Mukeshbhai Shah, 5, Saraswati Society, Opp Baliyadev Party Plot, Odhav Industrial Estate Odhav, Ahmedabad- 382415, Gujarat PAN: GFGPS8953M (Appellant)	v.	The Income Tax Officer, Ward-3(3)(5), Pratyaksh Kar Bhawan, Ahmedabad- 380015, Gujarat (Respondent)
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**Assessee by: Shri Parin S. Shah, A.R.**

**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. 1049/  
Ahd / 2023 for assessment year 2017-18 filed by the assessee  
before Income Tax Appellate Tribunal, Ahmedabad has arisen  
from the appellate order dated 16<sup>th</sup> October, 2023 passed by

the learned Commissioner of Income-Tax(Appeals),National Faceless Appeal Centre(NFAC), Delhi vide DIN & Order No. ITBA/NFAC/S/2023-24/1057103878(1) , which in turn has arisen from the assessment order dated 19-12-2019 passed by the ld. Assessing Officer u/s. 144 of the Act vide order No. ITBA/AST/S/144/2019-20/1022887039(1) .

2. The brief facts of the case are that return of income was filed by the assessee on 10-08-2017 , declaring total income of Rs. 2,94,806/-. The return of income was processed by Revenue u/s. 143(1). The case of the assessee was selected for scrutiny under CASS , and accordingly notice u/s. 143(2) was issued by the Assessing Officer. The reasons for scrutiny was deposit of cash during demonetization period. Statutory notices u/s 142(1) were issued to the assessee by the Assessing Officer, and the Assessing Officer asked the assessee to file various details such as nature of business conducted by the assessee, bank account statement, balance sheet & Profit and Loss Account, cash book, source of cash deposit in bank during demonetization period as well as during the pre and post demonetization period and the audit report. But the assessee did not respond to the notices issued, and thereafter fresh notices was issued by the Assessing Officer u/s. 142(1) of the Act from time to time during assessment proceedings as mentioned in page 2 of assessment

order which AO has claimed to have been duly served on the assessee, but the same also remained un-complied with. During the course of assessment proceedings on the basis of AIR information available, the notice was issued u/s. 133(6) by the Assessing Officer to the Indian Bank calling for the account opening, account statement, KYC, cash deposit during demonetization period , and the Indian Bank duly furnished the requisite information called for by the Assessing Officer. Finally show cause notice dated 11.12.2019 was also issued to the assessee by the Assessing Officer, which was claimed to have been duly served by the AO on the assessee. But the assessee failed to comply with the aforesaid show cause notice also. The Assessing Officer invoked provisions of Section 144(1)(b) and framed best judgment assessment by making an addition of Rs. 10,84,100/- being cash deposited during demonetization period as unexplained u/s. 69A of the Act r.w.s. 115BBE of the Act. Alternatively, the AO also made additions of the aforesaid amount u/s 68 of the 1961 Act as unexplained cash credit.

3. Aggrieved, the assessee filed first appeal with ld. CIT(A). The ld. CIT(A),NFAC issued notices to the assessee, but the assessee did not reply. The CIT(A), NFAC dismissed the appeal of the assessee ex-parte in-limine without adjudicating the issues on merits raised by the assessee , by holding as under:-

*“During the course of appellate proceedings vide notices dated as per the above chart the appellant was requested to file reply. However no submissions were made during the entire appellate proceeding. During the assessment proceedings also the assessee failed to submit any reply to the assessing officer despite given several opportunities. It can be seen that assessee has neither submitted any reply nor taken any initiative to respond to any of the notices despite giving number of opportunities in last three years. It is pertinent to mention here that appeal belongs to Assessment Year 2017-18 and the assessee has failed to produce any submission during the appellate proceedings in support of his grounds of appeal. So it is held that the appellant had nothing more to submit except for raising the ground.*

*4.1 The Hon'ble ITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B. N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it. Keeping in view of the aforesaid factual position, the appeal filed by the appellant is, therefore, decided on merits.*

*5. In the instance of the case the assessee during the course of assessment proceedings has not challenged the contention of the AO that the appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in this regard. I have gone through the record before me and based on the record I have decided to adjudicate the issue on the merits of the case. In the instant case the AO has rightly assessed Rs.13,78,906/-. Since the appellant failed to substantiate appellant's claim and additions made by the Assessing Officer of Rs. 10,84,100/- is hereby confirmed.*

*Further during course of appellate proceedings assessee has failed to produce any submission /evidence in support of his appeal proceedings. In the absence of any evidence, whatsoever, whether documentary or otherwise I am constrained to agree with the approach adopted by the AO in making the addition. The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed.*

**5. Ground Nos. All grounds of the appeal are hereby dismissed.”**

4. Aggrieved assessee has filed second appeal with Tribunal, Shri Parin S. Shah, appeared on behalf of the assessee while the Department is represented by Shri N.J. Vyas. The ld. counsel for the assessee had filed the adjournment application

but in view of the appearance of the counsel for the assessee, Shri Parin S Shah, Advocate withdrew withdrew his adjournment application and argued the matter. The Ld. counsel for the assessee submitted that the CIT(A) has dismissed the appeal of the assessee without deciding the issues on merit in accordance with law ex-parte in-limine , and there is no compliance of provisions of section 250(6) of the Act and it is prayed that the matter can be set aside to the file of ld. CIT(A) for fresh adjudication. The ld. Counsel for the assessee drew our attention to ground number 2 raised by the assessee in Memo of appeal filed with ITAT wherein the assessee has specifically raised ground of appeal that the appellate order passed by ld. CIT(A) is not in compliance of provisions of Section 250(6). The ld. Departmental Representative relied upon the order of the authorities below but fairly submitted that the matter can go back to the file of ld. CIT(A) as the learned CIT(A) has not decided the issues on merit and simply upheld the assessment order passed by the Assessing Officer.

5. I have heard both the parties and considered the material on record . I have observed that the ld. CIT(A),NFAC has dismissed the appeal of the assessee for non-prosecution by simply upholding the assessment order passed by the Assessing Officer. The ld. CIT(A) has not adjudicated the

issues arising in the appeal before him on merits in accordance with law in compliance with provisions of section 250(6), but has dismissed the appeal filed by the assessee ex-parte in limine without deciding the issues arising in the appeal on merits in accordance with law. It is pertinent to mention that in the statement of facts filed by the assessee with CIT(A) , the assessee has claimed that the assessee is engaged in the business of retail trade of stationary and seasoned item . The assessee has claimed turnover of his retail business in cash of Rs. 15,95,957/- and the assessee has declared net profit of business of Rs. 2,94,806 u/s. 44AD of the Act. It was stated in the statement of fact that the assessee has deposited cash sale proceed in the same saving bank account number 610603449 with Indian bank. The CIT(A) did not adjudicate this issue as well other issues arising in the appeal on merits, and simply dismissed the appeal of the assessee by upholding the addition made by the Assessing Officer. The ld. CIT(A) has claimed to have issued notice of hearing to the assessee, but there is no mention of mode of service of notice nor whether the notices were served on the assessee. Infact , in statement of fact filed before ld. CIT(A), the assessee has taken one of the plea that statutory notices issued by the AO were not served on the assessee. The power of ld. CIT(A) are co-terminus with the power of Assessing Officer which even includes power of enhancement(Section

251(1)(a)). The ld. CIT(A) is required to adjudicate the issues on merit in accordance with law , as is provided u/s. 250(6). The ld. CIT(A) has to state point for determination, his reasons for decision and the decision thereof as provided u/s 250(6). The assessee has claimed that he is in business of retail trade of stationary and seasonal items, and has availed presumptive scheme of taxation u/s 44AD. 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), and to adjudicate issues arising in the appeal before him on merits in accordance with law. 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) ought to have called for assessment record. 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 filing of documents/details by the assessee. 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 ld. 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 ld. 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 ld. CIT(A) in deciding the issues. If the ld. CIT(A) simply dismiss the appeal merely because the assessee did not appear before ld. CIT(A) or did not comply with the notices 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 ld. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits . There is not even mention of the service of the notice by ld. CIT(A) to the assessee. In the present case, it is observed that ld. CIT(A) has dismissed the appeal of the assessee ex-parte in limine without deciding the issues arising in the appeal before him on merits, 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 is not sufficient . The ld. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO. He could have made enquiries himself or have caused enquiries to be made by the AO and submit remand report to him to enable ld. CIT(A) to adjudicate the appeal(Section 250(4)). There are other vast powers vested under the 1961 Act with ld. CIT(A). 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 circumstances and fairness of both the parties, in the interest of justice, the appellate order of 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 01<sup>st</sup> July, 2024

**Sd/-**  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated 01/07/2024**

**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