

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

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

**ITA No. 330/Ahd/2024  
Assessment Year 2017-18**

Shrey Jitendra Panchal, D-903, Akshardham Towers, Nr. Police Stadium, Shahibaug, Ahmedabad-380004 Gujarat PAN: AFSPP3856Q (Appellant)	v.	The Income Tax Officer, Ward-1(2)(4), Ahmedabad (Respondent)
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**Assessee by: Shri Parimalsinh B. Parmar, A.R.  
Revenue by: Smt. Trupti Patel, Sr. D.R.**

Date of hearing : 01-07-2024  
Date of pronouncement : 01-07-2024

**आदेश/ORDER**

This appeal in ITA No. 330/Ahd/2024 filed by the assessee for assessment year 2017-18 is directed against the appellate order dated 19<sup>th</sup> January, 2024 passed by Id. Commissioner of Income Tax(Appeals),National Faceless Appeal Centre(NFAC),Delhi in DIN and Order No. ITBA/NFAC/S/250/2023-24/1059947418(1), which in turn has arisen

from the assessment order passed by ld. Assessing Officer u/s. 143(3) of the 1961 Act, dated 16-12-2019 in Order No. ITBA/AST/S/143(3)/2019-20/1022435523(1).

2. The Grounds of appeal raised by the assessee in Memo of appeal filed with the Income Tax Appellate Tribunal, Ahmedabad, reads as under:-

*“The following grounds are without prejudice to each other.*

*In view of the facts and circumstances of the case –*

*1. The Learned CIT(A) erred in law and on facts in confirming addition of Rs.30,25,000/- by treating Cash Deposited during Financial year 2016-17 in Bank accounts as Unexplained Money u/s 69A. The Addition confirmed by the learned CIT(A) ex parte deserves to be deleted. The same be deleted now.*

*2. The Learned CIT(A) has erred in not properly appreciating the facts, various submissions, explanations and information submitted by the appellant during the assessment proceedings which ought to have been considered in proper perspective before passing the impugned order.*

*3. The ex Parte order passed by the Learned CIT (A) is invalid and bad in law as the appellant could not make submissions due to reasons beyond his control. It be so held now.*

*4. The appellant craves leave to add, amend, alter, delete, change or modify any or all grounds of appeal before or at the time of the hearing.”*

3. The brief facts of the case are that the assessee filed return of income on 17-11-2017 declaring total income of Rs. Nil. The case was selected for framing scrutiny assessment under CASS. Notice u/s. 143(2) was issued by the Assessing Officer on 22-09-2018 through ITBA Portal, and further statutory notices u/s 142(1) were issued to the assessee from time to time by the Assessing Officer to furnish required

details as called for by the Assessing Officer. The assessee in response thereof filed required details. The assessee also furnished cash book. The Assessing Officer observed that the assessee is an individual and assessee has shown sales of goods of Rs. 7,07,638/- as well as sale of services of Rs. 32,00,255/-. It was observed by AO that during demonetization period, the assessee deposited Rs. 30,25,000/- in the bank account maintained with Bank of India, Subhash Bridge Branch, Ahmedabad(A/c. No. 203710110003000). The Assessing Officer observed that the assessee has shown Rs. 32,00,255/- as consultancy income. The assessee explained that the assessee is engaged in the business of consultancy of interior decoration. The assessee was asked by the Assessing Officer to submit educational qualification, the nature of interior designing consultancy provided during the year, service tax registration certificate, service tax return etc.. The assessee did not furnished the aforesaid documents. However, the assessee submitted that the cash of Rs. 30,25,000/- was received from 10 persons for interior designing work done by the assessee. The name and addresses of the aforesaid persons along with the amount received from them in cash was submitted by the assessee before the AO. Notices u/s. 133(6) were issued by the Assessing Officer to five persons , out of the aforesaid ten persons , to verify the genuineness of the assessee's claim for interior designing consultancy . All the

said notices were delivered by the postal authority except in one case i.e. Ansarbhai Shaikh. In response to the notice u/s. 133(6), Shri Hamalbhai Patel stated that he has not made any payments to the assessee during financial year 2016-17. It was stated that he sold his house to Smt. Harsha Jitendra Panchal , Mother of the assessee on 30-09-2015 , and the Assessing Officer concluded that the assessee has misused the name of the said Shri Hamalbhai Patel for reporting the receipt from him. Except Ansarbhai Shaikh, all the other persons have not responded to the notice. Thus, Assessing Officer concluded that the genuineness of the cash receipt from these persons are doubtful. Notice u/s. 142(1) dated 04.12.2019 was issued to the assessee by the Assessing Officer to prove the onus of cash receipt from the above persons. The assessee did not furnish any explanation which led to the additions to the tune of Rs. 30,25,000/- made by the Assessing Officer as income of the assessee from undisclosed sources to be taxed as income from other sources which was brought to tax by the AO u/s. 69A r.w.s. 115BBE of the Act.

4. Aggrieved, the assessee filed first appeal with ld. CIT(A), and ld. CIT(A) issued as many as four notices to the assessee. The assessee sought adjournment on two occasions while the two notices remained uncompiled with by the assessee , and the assessee did not file any reply/submission before the

CIT(A) . The ld. CIT(A) dismissed the appeal of the assessee ex-parte on the ground that the assessee has not filed any document/submission before the Assessing Officer and the assessee is not interested to pursue the appeal. Thus, the assessment order passed by the AO was upheld by ld. CIT(A).

5. Aggrieved , the assessee filed second appeal with Tribunal. At the outset ld. counsel for the assessee submitted that the ld. CIT(A) has passed an ex-parte order in limine without deciding the issues on merit and the said order is non-speaking cryptic order which is not in compliance with provisions of Section 250(6) , and prayers were made to set aside the order of the CIT(A) and restore back the matter to the file of ld. CIT(A) for fresh adjudication of the appeal. The ld. Departmental Representative relied upon the orders of authorities below , but fairly submitted that the matter can be set aside back to the file of CIT(A).

6. I have considered the rival submissions and perused the material on record. I have observed that the ld. CIT(A) has passed a cryptic non-speaking, non-reasoned appellate order by merely upholding the assessment order passed by the Assessing Officer without deciding the issues arising in the appeal before ld. CIT(A) on merit , and by passing an ex-parte order in limine which is not in compliance with the provisions

of section 250(6) of the Act. I have observed that there is deposit of Rs. 30,25,000/- by the assessee in the bank account and the assessee has submitted explanation that the said cash has been received from 10 persons on account of interior designing work, which cash stood deposited in the bank account. I have observed that the assessee has not given complete details before the Assessing Officer. Further, the Assessing Officer has made inquiry u/s. 133(6) with respect to 5 persons out of aforesaid 10 persons, and one of the person has stated that he has not given any cash to the assessee. One notice u/s. 133(6) returned back un-served , while three persons did not respond to the assessee. No summons u/s 131 were issued by the AO to the persons who allegedly gave cash to the assessee for doing interior designing consultancy work. I have observed that ld. CIT(A) issued two notices on 11.01.2021 and 20.11.2023 , wherein the assessee sought adjournment which was granted by ld. CIT(A). While the last two notices dated 06.12.2023 and 02.01.2024 were issued by ld. CIT(A) , but the same remained uncompiled with by the assessee. The ld. CIT(A) dismissed the appeal of the assessee by an appellate order dated 19.01.2024. Thus effectively, the appeal was disposed of within one and half month of issuance of the third notice on 06.12.2023. In my view, proper and adequate opportunity of being heard was not provided by ld. CIT(A). Be it so may be, the ld. CIT(A) has to pass an speaking

and reasoned order by adjudicating the issues arising in the appeal on merit as is required u/s. 250(6) which has not been done in the instant case, as the appellate order passed by ld. CIT(A) is a cryptic non speaking and non reasoned order wherein the issues arising in the appeal are not adjudicated on the merits of the issue and the assessment order passed by the AO was upheld on the grounds that the assessee has not filed any documents/details during appellate proceedings before ld. CIT(A). 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, the decision and the reasons for decision thereof as provided u/s 250(6). The assessee has claimed that he is in business of consultancy of interior designing and the cash amount of Rs. 30,25,000/- was allegedly received form 10 persons for rendering interior designing services . No independent inquiries were made by ld. CIT(A), and it appears that ld. CIT(A) even did not call for assessment records. 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 to the persons who have allegedly rendered interior designing consultancy service or could have called for information from these 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) 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, w.r.t. notices dated 06.12.2023 and 02.01.2024 . 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 two notices issued by ld. CIT(A) dated 06.12.2023 and 02.01.2024, and did not file the requisite

details/documents before ld. CIT(A) to support his contentions. Thus, the assessee is equally responsible for its woes. 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 ld. 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.

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

Order pronounced in the open court on 01-07-2024 at the Conclusion of the hearing and reduced to writing and signed on 03<sup>rd</sup> July, 2024

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

**Ahmedabad : Dated 03/07/2024**

**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