

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA No. 337/Ahd/2024
Assessment Year 2013-14**

Rajasthan Jain Mitra Parishad, 13,Rajasthan Jain Mitra Parishad, Mangal Murti Complex Opp City Gold, Ashram Road Ahmedabad-380009 Gujarat PAN: AAAAR5349C (Appellant)	v.	The Assessing Officer, NFAC Delhi, Jurisdictional AO:Circle-3(1)(1), Ahmedabad (Respondent)
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Assessee by: Shri Mehul K. Patel, Advocate
Revenue by: Smt. Trupti Patel, Sr. D.R.

Date of hearing : 02-07-2024
Date of pronouncement : 02-07-2024(order signed on 9.7.2024)

आदेश/ORDER

This appeal in ITA No. 337/Ahd/2024 filed by the assessee for the assessment year 2013-14 has arisen from the appellate order dated 26-12-2023 passed by Id. CIT(A),NFAC,

Delhi u/s. 250 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059065771(1)), which in turn has arisen from the assessment order dated 24-08-2021 passed by the Assessing Officer u/s. 147 r.w.s. 144, vide DIN ITBA/AST/S/147/2021-22/1035051590(1).

2. The grounds of appeal raised by the assessee in Memo of appeal filed with the Tribunal , reads as under:-

“(1) That on facts, in law, and on evidence on record, the learned National Faceless Appeal Centre (NFAC) has grievously erred in not affording reasonable and sufficient opportunity of hearing and in deciding the appeal ex-parte.

(2) That on facts, in law, and on evidence on record, the learned National Faceless Appeal Centre (NFAC) has grievously erred in dismissing the appeal by holding that the appellant is not aggrieved with the assessment order, and in not deciding the appeal on merits regarding the addition of unexplained investment of Rs.7,50,000/- made u/s 69 of the Act.

3) The appellant craves leave to add, alter, amend any ground of appeal.”

3. The brief facts of the case are that the assessee has filed return of income for assessment year 2013-14. As per information received by AO from NMS-Cycle for the financial year 2012-13, the assessee has entered into financial transaction of making time deposit of Rs. 7,50,000/- with the banking company. The assessee had not furnished return of income . The notice u/s. 133(6) was issued by AO to the

assessee on 17-01-2020 to verify the aforesaid fact and to explain the source of time deposit of Rs. 7,50,000/- in bank. The assessee did not reply to the notice u/s. 133(6). Thereafter, the AO issued notice u/s. 148 was issued to the assessee to file return of income for the impugned assessment year, which was also not complied with by the assessee. Statutory notices u/s. 142(1) were issued from time to time by the Assessing Officer to the assessee. Neither the return was filed nor any compliance was made by the assessee of the said notices issued u/s. 142(1) of the Act. The show cause notice was also issued by AO to the assessee u/s. 144 of the Act on 09-07-2021, but again there was no compliance by the assessee. The Assessing Officer made the addition of Rs. 7,50,000/- in the hands of the assessee as undisclosed income under the head 'income from other sources' u/s 69 as unexplained investment for which no explanation and supporting documents were furnished by the assessee, and income of the assessee was assessed by AO at Rs. 7,50,000/- vide assessment order dated 24.08.2021 u/s 147 read with Section 144 of the 1961 Act.

4. Aggrieved , the assessee filed first appeal with CIT(A) raising as many as four grounds of appeal. The assessee stated in the grounds of appeal as well statement of facts that the assessee's income during the impugned assessment year

was below taxable limit , and hence there was no income chargeable to tax, the assessee has not filed the return of income. It was further submitted by assessee before ld. CIT(A) that due to unavoidable circumstances and Covid 19 pandemic during the period when assessment proceedings were carried on by the AO, the assessee could not furnish requisite details/explanation as called for by the Assessing Officer . Further, the assessee has raised ground of appeal vide ground no. 2 that the investment of Rs. 7,50,000/- in Fixed Deposit (FD) with HDFC bank was made in the preceding year and not during the year under consideration. It is further stated that in the ground no. 3 that the Assessing Officer has failed to make any inquiry with the HDFC bank to find the year in which the actual investment was made and there could not have been any addition made during the year under consideration owing to no investment has been made of Rs. 7,50,000/- during the impugned assessment year. The ld. CIT(A) issued three notices to the assessee on 7-09-2022, 05-12-2023 and 14-12-2023 for compliance on 14-09-2022, 12-12-2023 and 20-12-2023. With respect to the notice of hearing dated 05-12-2023 issued by the ld. CIT(A), the assessee sought adjournment before CIT(A) which was granted by the CIT(A). With respect to notice of hearing dated 14-12-2023 issued by the ld. CIT(A), the assessee requested for adjournment but CIT(A) declined the adjournment, and ld.

CIT(A) proceeded to pass an ex parte order in limine , dated 26.12.2023 without deciding the issue's arising in the appeal on merits, since the assessee did not file submissions in compliance to notices issued by the ld. CIT(A). The learned CIT(A) also observed that the assessee is not aggrieved with the re-assessment order impugned therein, as the assessee is not interested in pursuing its appeal. Thus, in nutshell, the CIT(A) upheld the reassessment order passed by the Assessing Officer.

5. Still aggrieved , the assessee filed second appeal with the Tribunal. At the outset, the 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) for denovo adjudication of the appeal of the assessee.

6. I have heard both the parties and perused the material on record. I have observed that the assessee has not filed

return of income u/s. 139 nor filed its return of income in pursuance to notice issued u/s 148. The assessee also did not participated in the assessment proceedings . The case of the assessee was re-opened u/s 147/148 based on the information received that the assessee has invested in Time deposit to the tune of Rs. 7,50,000/- in bank .Since, the assessee did not participated in the assessment proceedings and there was no compliance by the assessee, the AO made additions to the tune of Rs. 7,50,000/- in the hands of the assessee. I have also observed that the ld. CIT(A) dismissed the first appeal of the assessee in-limine without deciding the issues on merits which is not in compliance with the provisions of section 250(6) of the Act. The ld. CIT(A) issued notice of hearing on 07.09.2022 for compliance by assessee on 14.09.2022, which was not complied with by the assessee. Thereafter, the appellate proceedings did not took place until the fresh notice of hearing was issued on 05.12.2023 for compliance on 12.12.2023, and the assessee sought adjournment , which was granted by ld. CIT(A). Thereafter, a fresh notice of hearing was issued by ld. CIT(A) dated 14.12.2023 for compliance on 20.12.2023, the assessee sought adjournment which was denied by ld. CIT(A) , and the appellate order was passed in haste by ld. CIT(A) on 26.12.2023 ex-parte in limine without deciding the issues on merits which is not in compliance with the provisions of

Section 250(6). It is painful to note that the ld. CIT(A) had observed that since the assessee has not filed any submissions before him , the assessee is not aggrieved by the reassessment order and is not interested in pursuing its appeal. The assessee has specifically stated in the statement of fact/grounds of appeal that the FDR with HDFC bank of Rs. 7,50,000/- was not taken in the year under consideration as the same was taken in the preceding years, and no additions could be made in the year under consideration. The assessee has further stated in statement of fact/grounds of appeal that the AO failed to make inquiries with HDFC Bank. The ld. CIT(A) did not made any inquiry with HDFC Bank nor directed AO to make inquiry with HDFC bank to verify this contention of the assessee. The ld. CIT(A) did not call for assessment record, nor called for information u/s 133(6) from the HDFC Bank. The Revenue had the PAN number of the assessee , and it would not have been difficult for HDFC Bank to have supplied complete details of all the transactions carried on by the assessee with the HDFC Bank , as now banking transactions as well accounts are linked to PAN/KYC/Adhar etc. and are digitized/computerized , but ld. CIT(A) hastened to dismiss the appeal of the assessee , and in my considered view principles of natural justice are clearly breached by ld. CIT(A). The assessee has stated in grounds of appeal/statement of fact filed before ld. CIT(A) that the

investment in FDR to tune of Rs. 7,50,000/- with HDFC Bank was never made during the year under consideration and the AO failed to make inquiries with HDFC Bank, but still the ld. CIT(A) dismissed the appeal of the assessee ex parte in limine without deciding the issues on merits and without making any inquiries. It is painful to note that the ld. CIT(A) has observed that the assessee is not aggrieved by the reassessment order , if that be so , then there was no need for the assessee to file the appeal with ld. CIT(A) and further to ITAT. As per section 250(6), the CIT(A) has to state the points for determination, decision thereof and reasoning thereof. But in the instant case, the CIT(A) has dismissed the appeal of the appeal of the assessee ex-parte in-limine without deciding the issues on merit. The order passed by the CIT(A) is non-speaking and non-reasoned cryptic order in which ld. CIT(A) has simply upheld the order of the Assessing Officer on the ground that the assessee has not submitted the documents/evidences to support its case, and further that the assessee is not interested in prosecuting the appeal. I have observed that the there is a clear violation of provisions of section 250(6) of the Act on the part of the ld. CIT(A) as the CIT(A) is obligated to pass appellate order by stating points for determination, his decision and reasoning thereof which has not been done by ld. CIT(A). I have observed that ld. CIT(A) passed the appellate order in haste and that too without adjudicating the issues

arising in the appeal before ld. CIT(A) on merits as is required u/s 250(6). Thus, there is clearly breach of principles of natural justice by ld. CIT(A) as proper and adequate opportunity of heard was not granted by ld. CIT(A) to 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 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 i.e. HDFC Bank or other relevant parties, u/s. 133(6). The ld. CIT(A) could have called for assessment records to verify the contentions of the assessee raised in ground of appeal/statement of facts filed before ld. CIT(A). 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 and for non prosecution and simply upholding

the additions. 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, but the appellate order passed by ld. CIT(A) is a non speaking and non reasoned appellate order which is not in compliance with provisions of Section 250(6) and is liable to be set aside. 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 . It is equally true that the assessee also did not comply with the notices issued by ld. CIT(A) and did not file the requisite details/documents to support his contentions. The assessee is also equally responsible for its woes. Under these facts and 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 appellate 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 appellate 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 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 in ITA No. 337/Ahd/2024 for assessment year 2013-14 is allowed for statistical purposes.

Orders pronounced in the open court on 02-07-2024 at the Conclusion of the hearing in the presence of both the parties, and reduced to writing and signed on 09th July, 2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated 09/07/2024

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