

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "DIVISION BENCH-C"
AHMEDABAD

**Before: Shri Ramit Kochar, Accountant Member &
Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 314/Ahd/2023
Assessment Year: 2013-14**

Saket M Jain HUF 42, Amrapalash, Nr. Fun Republic Cinema, Satellite, Ahmedabad-380015 , Gujarat PAN:AACHS4432G (Appellant)	v.	The Income Tax Officer, Ward-5(2)(4), Ahmedabad. (Respondent)
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**Assessee by:None(Adjournment Application-Rejected)
Revenue by: Shri Ashok Kumar Suthar, Sr.DR**

Date of hearing : 05-08-2024
Date of pronouncement : 05-08-2024

आदेश/ORDER

This appeal in ITA No.314/Ahd/2023 for assessment year 2013-14, filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad Division Bench, Ahmedabad has arisen from the appellate order dated 24.03.2023 passed by Ld. CIT(A), NFAC, Delhi u/s.250 of the Income-tax Act,1961

vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1051212079(1), which has in turn arisen from the assessment order dated 30.03.2016 passed by the Assessing Officer u/s. 143 of the Income-tax Act 1961.

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

“1. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in passing an Ex Parte order without providing reasonable opportunity of being heard to the appellant hence the same being against the principles of natural justice and equity requires to be quashed.

2. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in dismissing the appeal of the assessee without rejecting the adjournment application filed by the appellant.

3. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in summarily dismissing the appeal without examining and adjudicating the grounds of appeal raised before him on merits of the case.

4. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the additions /disallowances made by the Assessing Officer as per the Assessment order passed by him.

5. The learned Commissioner of Income Tax (Appeals). NFAC, Delhi has erred in confirming the addition of Rs.25,82,050/- made by the Assessing Officer in respect of Gross profit applying the provisions of Sec. 145 of the Act.

6. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the addition of Rs.63,56,669/- made by the Assessing Officer on account of Peak Credit wrongly applying the decisions in the case of Kalekhan reported in 50 ITR 1 and

Lakhmichand reported in 35 ITR 416 though the facts in present case are distinguishable.

7. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the addition of Rs.48,383/- made by the Assessing Officer on account of undisclosed interest on income tax refund.

8. The appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.”

3. The brief facts of the case are that assessee filed its return of income on 14.09.2023, declaring total income of Rs.11,74,602/-. The return of income was processed by Revenue u/s.143(1) of the Act. The case of the assessee was selected by Revenue for framing scrutiny assessment through CASS. The notice u/s.143(2) of the Act was issued by the AO to the assessee, on 01.09.2014, which was claimed by the AO to have been duly served on the assessee. Thereafter, statutory notice(s) u/s.142(1) of the Act was also issued by the AO to the assessee. In response, Shri Saket Jain Karta of HUF, CA and AR for the assessee attended the assessment proceedings before the AO , and filed written submissions along with requisite details, from time to time. The AO observed that the assessee has derived income from business and profession i.e. trading of timber/wood, income from short term capital gain and from other sources. The assessee is engaged in the business of cutting, falling and selling standing trees. The AO observed from profit and loss accounts of *M/s.Essam Trading Company* of which the assessee is proprietor , that the

assessee has shown income from operation to the tune of Rs. 4,27,28,750/- whereas the assessee has declared net profit of Rs. 5,23,265/- , i.e. GP @ 1.40% on the total turnover . The AO asked the assessee to file the supporting evidences for the sale transaction along with name, address and Profit and Loss account. The assessee submitted that he has purchased standing trees from *M/s.Green Well Orchard*, and sold those trees to 48 parties. Notices u/s.133(6) were issued by the AO to the seller parties to whom the assessee has sold trees. The AO observed that none of the parties has paid any sales tax nor provided any details of sales tax number/TIN/VAT number, and failed to submit the respective bills on the subsequent sales. The copy of the bills submitted did not contain any sale tax details although the sales tax is applicable to timber and wood. Thus , the AO observed that this purchase and subsequent sale of trees claimed to have been made by the assessee lacks genuineness and found to be bogus transaction. The AO observed that sales tax @15 percent is applicable on the sale of timber/wood , but the assessee has not paid any sales tax and failed to submit its sales tax number/TIN/VAT number. The AO also issued Show Cause Notice(SCN) to the assessee, which is reproduced by the AO in assessment order at page 3-4. The assessee submitted its reply to SCN before the AO wherein it was submitted by assessee , in nut-shell, that purchase and sales both are

through account payee cheque's and there is no suppression of income or expenditure . The assessee requested AO to accept GP @1.4% declared by the assessee which is reflected in the audited books of accounts maintained by the assessee. The reply of the assessee was found not satisfactory by the AO owing to elaborate enquiries , Survey conducted on certain parties u/s 133A, analysis made by the AO and the detailed reasons stated by the AO in the assessment order . It was then concluded by the AO that the assessee has suppressed the income and the assessee failed to prove genuineness of the expenditure claimed in its books of accounts . The books of accounts were rejected by the AO u/s.145 of the Act, and profit @ 8% was applied by the AO to the total turnover declared by the assessee to compute income of the assessee, which income stood added by the AO to the income of the assessee after reducing the profit declared by the assessee in its return of income filed with the department, which led to the additions to the tune of Rs. 25,82,050/- being made to the income of the assessee by the AO vide assessment order passed u/s 143(3) of the 1961 Act.

3.2Further there were an addition of Rs.63,56,669/- made to the income of the assessee by the AO on account of Peak Credit in the bank account maintained by the assessee with *Co-operative Bank of Rajkot Limited*, by holding that the

transaction in the said bank account are circular in nature as the payments were allegedly made to *Green Well Orchards* allegedly for purchase of trees in their account maintained to the bank account of the alleged seller maintained with *Karur Vysya Bank* , which payment so made by the assessee for alleged purchase of the trees were preceded by similar entry of credits received from *Karur Vysya Bank*, and hence these bank entries are merely an accommodation entries. The assessee claimed that the entries in the bank account were duly explained , but the AO after making detailed enquiries , concluded that the transactions in the bank account were not genuine , which led to the additions being made to the tune of Rs. 63,56,669/- by the AO to the income of the assessee by holding the same to be unexplained credits in the bank statement as the transactions in the bank account lack authenticity and were merely accommodation entries, vide assessment order passed by the AO u/s 143(3).

3.3 Further there was an addition of Rs.48,383/- being made by the AO as income of the assessee, on account of interest income received by the assessee on Income tax refund granted by the Revenue.

4. Aggrieved , the assessee filed first appeal before Ld.CIT(A) who dismissed the appeal of the assessee on grounds of non

prosecution of the appeal by the assessee. The Ld. CIT(A) issued 4 notices to the assessee i.e on 25.12.2020, 07.12.2022, 10.03.2023 & 20.03.2023 , for compliance on 31.12.2020 , 15.12.2020 , 14.03.2023 and 23.03.2023 respectively. On three occasions i.e. w.r.t. notice dated 25.12.2020, 10.03.2023 & 23.03.2023, the assessee sought adjournment, while there was no compliance w.r.t. notice dated 07.12.2022 issued by ld. CIT(A). On the last date of compliance i.e. w.r.t. notice dated 20.03.2023 for compliance on 23.03.2023, wherein the assessee had filed adjournment application , which stood rejected by ld. CIT(A), and an ex-parte appellate order dated 24.03.2023 was passed by ld. CIT(A) dismissing the appeal of the assessee for non prosecution of appeal by the assessee by holding that the assessee is not aggrieved by the assessment order passed by the AO and the assessee is not interested in prosecuting its appeal. It was further observed by ld. CIT(A) that the assessee has not filed any information or documents during appellant proceedings, to enable ld. CIT(A) to make a judgment on merits, which led to dismissal of the appeal of the assessee by ld. CIT(A), vide appellate order dated 24.03.2023.

5. Still aggrieved , the assessee filed second appeal before the Tribunal , and when this appeal was called for hearing before Division Bench, it was observed that an adjournment

application was filed by the Ld.Counsel for the assessee on the grounds that he has to attend some social function. On earlier occasions also as many as nine times , an adjournment application was filed by the counsel for the assessee, and the Bench granted adjournments. The Bench is functioning on Hybrid/Virtual Mode , wherein the parties have choice to either appear physically in the Court room or alternatively have an option to appear virtually. Thus, there are no reasons to seek large number of adjournments . Thus, we are constrained to reject adjournment application filed by ld. Counsel for the assessee. We have observed that the assessee has filed 2 Paper Books , containing in aggregate 445 pages , which contained documents claimed by the assessee to have been filed before the AO as well as before Ld.CIT(A). The said Paper books carry certificate as is required , duly signed by *Shri Saket M Jain, Karta of assessee HUF*, certifying that the documents contained therein as stated in the Index are part of the record with the department viz. AO and/or CIT(A). The said paper books are placed on record in file. These paper books also carries written submissions claimed to have been filed by the assessee before ld. CIT(A)(page 410 to 445) and large number of evidences/documents claimed by the assessee to have been filed before ld. CIT(A) and/or AO, although ld. CIT(A) has stated in its appellate order that the assessee has not filed any documents/submissions before ld. CIT(A) during

the course of appellate proceedings. Be that it may be so, it is a disputed fact. The Ld. Sr. DR submitted before the Bench, that the assessee did not make any compliance before Ld.CIT(A) as is emerging from the appellate order passed by ld. CIT(A) and no written submissions and/or documents/evidences were filed by the assessee before ld. CIT(A) during the course of appellate proceedings, and the Ld. CIT(A) rightly dismissed the appeal filed by the assessee for non prosecution as the assessee did not comply with the notices issued by Ld.CIT(A). It has also emerged from the appellate order passed by ld. CIT(A) that the assessee filed adjournment application w.r.t. last notice dated 20.03.2023 issued by ld. CIT(A) for compliance on 23.03.2023, but the adjournment application filed by the assessee was rejected by ld. CIT(A), and the ld. CIT(A) proceeded to dismiss the appeal filed by the assessee ex-parte without deciding the issues arising in the appeal on merits.

6. We have considered the contentions of Ld. Sr. DR and perused the material on record. The facts in brief are recorded by us in the preceding para's of this order and the same are not repeated. We have observed that Ld. CIT(A) dismissed the appeal of the assessee for non prosecution although assessee has filed adjournment application w.r.t. last notice dated 20.03.2023 issued by ld. CIT(A) for compliance on 23.03.2023.

The ld. CIT(A) issued as many as four notices and the assessee filed adjournment applications on three occasions out of four occasions , and on the last occasion w.r.t. notice dated 20.03.2023 issued by ld. CIT(A), the assessee duly filed adjournment application which stood rejected by ld. CIT(A) who passed the appellate order on 24th March, 2023. The ld. CIT(A) dismissed the appeal of the assessee ex-parte on 24.03.2023 without deciding the issues arising in the appeal on merits , as is required u/s 250(6) of the 1961 Act. The ld. CIT(A) has stated that the assessee did not filed any submissions and/or evidences/documents before ld. CIT(A) , but it is the claim of the assessee vide 2 paper books filed with ITAT containing in aggregate 445 pages, that written submissions were duly filed and also evidence/documents were filed by the assessee before ld. CIT(A) to substantiate the claim of the assessee , but the ld. CIT(A) has not taken cognizance of the same. It is a disputed fact , but it is true that ld. CIT(A) dismissed the appeal of the assessee in limine without deciding the issues on merit , by upholding/confirming the assessment order passed by the AO. The ld. CIT(A) dismissed the appeal by holding that the assessee is not interested in prosecuting its appeal , and further held that the assessee is not aggrieved by the assessment order passed by the AO. If the assessee is not aggrieved by the assessment order, there was no reasons for

the assessee to have filed first appeal before ld. CIT(A) and also further second appeal before us. The assessee had in fact sought adjournment on the last date of hearing i.e. on 23.03.2023, which was denied by ld. CIT(A). The assessee has also elaborately explained its stand in Statement of fact filed before ld. CIT(A) while filing its appeal with ld. CIT(A). The ld. CIT(A) did not decide the issues arising in the appeal of assessee on merits as is required u/s 250(6) , and dismissed the appeal of the assessee ex parte in limine on the ground of non-prosecution by holding that the assessee is not interested in pursuing its appeal and further that the assessee is not aggrieved by the assessment order passed by the AO. Even, ld. CIT(A) did not deem it necessary and/or appropriate to call for assessment records from the AO to verify the contentions of the assessee raised in SOF filed before ld. CIT(A). The ld. CIT(A) did not verify the facts claimed by the assessee directly and independently , and rather dismissed the appeal of the assessee ex-parte in limine without deciding the issues arising in the appeal on merits in accordance with law. 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. 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 compliance with the notices issued by ld. CIT(A) by holding that the assessee is not interested in prosecuting its appeal , and simply upheld the additions as were made by the AO. The assessee has claimed vide 2 paper books filed with ITAT , that written submissions were filed before ld. CIT(A) along with evidences/documents to substantiate the claim of the assessee, but they were simply not considered by ld. CIT(A). 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 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 file written submissions etc. before Id. CIT(A) (although it is disputed by the assessee) or the assessee did not comply with the notices, ex-parte 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 . It is equally true that the Id. CIT(A) did not examine the documents/evidences claimed to have been filed by the assessee before Id. CIT(A) , as the Id. CIT(A) has given finding that no documents/evidences/written submissions were filed by the assessee during appellate proceedings . The assessee has filed 2 paper books containing in all 445 pages and claim

is made that written submissions along with evidences/documents were filed before ld. CIT(A), which documents/evidences and written submissions requires verification/examination by ld. CIT(A), to arrive at decisions on merits in accordance with law, on the issues raised by the assessee in its appeal filed with ld. CIT(A). It is pertinent to mention here that the assessee has vide ground number 1 to 3 filed before ITAT has specifically raised the issue that ld. CIT(A) has passed an order ex-parte in limine without deciding the issues on merit, in violation of principles of natural justice. Under these facts and circumstances and fairness of both the parties, in the interest of justice, the appellate order passed by ld. CIT(A) dated 24.03.2023 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. We clarify that we have not commented on the merits of the issues in the appeal, and all the contentions are kept open. Thus, the appeal of the assessee is allowed for statistical purposes. We order accordingly.

7. In the result, the appeal of the assessee in ITA No. 314/Ahd/2023 for assessment year 2013-14 is allowed for statistical purposes.

Order pronounced on 05.08.2024 at Ahmedabad in Open Court in the presence of ld. Sr. DR on the conclusion of hearing, and reduced to writing and signed on 12.08.2024, at Ahmedabad

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated : 12/08/2024

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