

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.244/SRT/2024

Assessment Year: (2020-21)

(Physical Hearing)

Hashim Sikandar Pathan, 9, Maxican Plaza, Udhana Char Rasta, Udhana, Gujarat - 394210	Vs.	The ITO, Ward – 1(2)(6), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ARZP3741R		
(Appellant)		(Respondent)

Appellant by	Shri Mehul Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	14/08/2024
Date of Pronouncement	27/08/2024

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal emanates from the order dated 04.01.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [in short “the CIT(A)”], for the assessment year (AY) 2020-21.

2. The grounds of appeal raised by the assessee are as follows:

*“1. On the facts and circumstances of the case as well as law on subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard.*

*2. On the facts and circumstances of the case as well as the law on subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.*

*3. On the facts and circumstances of the case as well as law on subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in rejecting the books of accounts u/s 145(3) of the Act.*

4. *On the facts and circumstances of the case as well as law on the subject, the leaned CIT(A) has erred in confirming the action of Assessing Officer by making disallowance of Rs.43,50,130/- (being 20% of expense totaling of Rs.2,17,50,649/- debited in profit and loss A/c.) on account of alleged non-business expenditure u/s 37(1) of I.T. Act, 1961.*

5. *It is therefore prayed that the addition made by the assessing officer and confirmed by Ld. CIT(A) may please be deleted.*

6. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of appeal."*

3. The facts of the case in brief are that assessee filed his return of income for AY.2020-21 on 24.12.2020 declaring total income at Rs.37,34,486/- and claimed refund of Rs.13,05,720/-. The assessee is proprietor of HP Services and is also engaged as recovery agent of bank. After issuing various statutory notices and show cause and after considering the reply of the assessee, the AO rejected the books of accounts u/s 145(3) of the Act. He has made ad hoc disallowance of Rs.43,50,130/- u/s 37(1) of the Act. The disallowance includes 20% of salary (Rs.1,91,74,290/-), petrol expenses (Rs.12,18,219/-), travelling expenses (Rs.11,18,600/-) and vehicle expenses (Rs.2,39,540/-) by stating that the same was not incurred wholly and exclusively for the purposes of business. Aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) issued three notices on 23.11.2023, 04.12.2023 and 12.12.2023. The assessee requested for adjournment in respect to first notice. He has not filed any reply in response to the other notices. In absence of any reply from the assessee, the matter was decided *ex parte* by the CIT(A) based on material on record. He observed that the assessee is not vigilant and is negligent. Further, assessee is also non-cooperative. Thereafter, he observed that AO has given complete reasons in the

assessment order for making addition of Rs.43,50,130/- u/s 37(1) of the Act, which was 20% of the unverifiable cash expenditure of Rs.2,17,50,649/-. During assessment proceedings, no documentary evidence / vouchers etc. were filed to establish the authenticity of the expenses debited to the profit and loss account. The CIT(A) also stated that even during appellate proceedings, the assessee failed to furnish any reply / documentary evidences in respect of the grounds of appeal despite being provided adequate opportunity of hearing. In absence of any reply / evidence, he confirmed the addition of Rs.43,50,130/- being 20% of unverifiable cash expenditure of Rs.2,17,50,649/- u/s 37(1) of the Act.

4. Aggrieved by the order of CIT(A), the assessee filed appeal before this Tribunal. The Learned Authorized Representative (Ld. AR) of the assessee submitted that the CIT(A) has passed an *ex parte* order without giving reasonable and sufficient opportunity of being heard to the assessee. The CIT(A) has also passed a non-speaking order which is not as per the mandate of section 250(6) of the Act. He requested that the assessee may be granted another opportunity of hearing to plead his case on merit. He promised to file all the details and evidences in support of his claim for various expenses which have been disallowed by the AO and confirmed by the CIT(A).

5. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) supported the orders of lower authorities. The Ld. Sr. DR for the Revenue submits that CIT(A) issued several notices to assessee but assessee failed to

availed such opportunities. It is duty of assessee to file complete details on the date of hearing or within reasonable time in a faceless regime. He requested to confirm order of CIT(A).

6. We have heard both the parties and perused the materials on record. The Ld. AR has argued that both AO and CIT(A) have passed order without giving reasonable and sufficient opportunities of being heard to assessee. AO made the ad hoc addition u/s 37(1) of the Act because assessee did not file details and explanation. The CIT(A) dismissed appeal by passing a mechanical order without discussing merits of the case. He has simply confirmed the addition made by AO without elaborating the issues in a proper manner. Thus, we find that impugned order passed by the CIT(A) is clearly violative of the express provisions of Section 250(6) of the Act, which provides that the appellate orders of the CIT(A) are to state the points arising in the appeal, the decision of the authority thereon and the reasons for such decisions. The underlying rationale of the provision is that such orders are subject to further appeal to the appellate Tribunal. Speaking order would obviously enable a party to know precise points decided in his favour or against him. Considering the facts and circumstances of the case and the submission of Ld.AR for the assessee that the Assessing Office made addition for the want of evidence, which was confirmed by CIT(A) in *ex parte* order, we are of the considered view that the assessee deserves one more opportunity to contest its case on merit. Considering all the facts, in the interest of justice, we set aside the order of

CIT(A) and remit the matter back to the file of CIT(A) to pass fresh appellate order in accordance with law after granting adequate opportunity of hearing to assessee. The assessee is directed to be vigilant and to furnish all details and explanation as needed by CIT(A) by not seeking adjournment without valid reason. The ground of appeal raised by the assessee is allowed for statistical purposes.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order is pronounced on 27/08/2024 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 27/08/2024

SAMANTA

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// TRUE COPY //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat