

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

**आयकर अपील सं./ITA No.309/SRT/2024**

**Assessment Year: (2017-18)**

**(Hybrid Hearing)**

Mulchand Virumal Poptani, H-29, New Sardar Market, Dumbhal Patia, Surat - 395010	<b>Vs.</b>	The ITO, Ward – 3(2)(10), Surat
<b>स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: AGPPP2981G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Shaunak K. Zaveri, CA
<b>Respondent by</b>	Shri Vinod Kumar, Sr. DR
<b>Date of Hearing</b>	28/08/2024
<b>Date of Pronouncement</b>	29/08/2024

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal emanates from the order dated 22.01.2024 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, “the CIT(A)”] for the assessment year (AY) 2017-18.

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

*“1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) – NFAC, [here-in-after referred to as Ld. CIT(Appeals)] was not justified and grossly erred in dismissing the appeal which is bad-in-law and against principle of natural justice equity, thereby confirming the action of the AO for the order passed u/s 143(3) of the I.T. Act, 1961 which is incomplete and also bad on facts as appellant was not provide opportunity to submit documentary evidence.*

*2(a) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the AO in by accepting the addition on account of unexplained cash credit u/s 69A totaling amounting to Rs.16,96,500/- in*

*Prime Coop bank account and taxed total income u/s 115BBE of the Act at the rate of 60 percent without providing an opportunity which is incorrect and amp; bad-in-law and needs to be deleted in the interests of natural justice and equity.*

*2(b) Without prejudice to above ground, that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the AO in by accepting the addition on account of unexplained cash credit u/s 69A totaling amounting to Rs.16,96,500/- in Prime Coop bank account belong to appellants partnership firm.*

*3. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the AO in not justified and erred in confirming the initiated penalty proceedings u/s 271AAC r.w.s. 274 of the Act in respect of income referred to in section 69A and penalty proceeding u/s 274 r.w.s. 272A(1)(d) of the Act.*

*4. That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated here-in-above, either before or at the time of hearing of this appeal.”*

3. The facts of the case in brief are that the assessee filed his return of income for assessment year 2017-18 on 28.02.2018 declaring total income at Rs.5,05,180/-. The assessee's case was selected for limited scrutiny under CASS with the reason "Cash deposit during demonetization period". Notices u/s 143(2) was issued on 24.09.2018 and duly served upon the assessee. Thereafter, notice u/s 142(1) of the Act was issued to the assessee on 16.08.2019 asking to furnish certain details. The assessee submitted his reply along with submission dated 12.10.2019 in ITBA portal. The Assessing Officer (in short, 'the AO') observed that the assessee has made cash deposits of Rs.16,96,500/- in his bank account with Prime Co-operative Bank, Surat during the demonetization period i.e. 09.11.2016 to 30.12.2016. Despite of issuance of various notices, the assessee has not

explained the source of the cash deposits in his bank account. Further, the AO issued a show cause notice to the assessee to explain as to why the cash deposits of Rs.16,96,200/- should not be added to his total income. There was no response from assessee. Therefore, the AO treated total cash deposits of Rs.16,96,500/- made in his bank accounts is treated as unexplained cash credits and added it to the total income of the assessee. Accordingly, the addition of Rs.16,96,500/- was made to the total income of the assessee u/s 69A of the Act. Penalty proceedings u/s 271AAC of the Act was also initiated.

4. Aggrieved by the order of AO, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) issued 3 notices but assessee did not respond to the notices. Thereafter, Ld. CIT(A) observed that assessee was not vigilant and he proceeded to decide the appeal based on material available on record. In the result, the appeal was dismissed.

5. Aggrieved by the order of Ld. CIT(A), the assessee filed appeal before this Tribunal. Learned Authorized Representative (Ld. AR) of the assessee assailed the impugned order by contending that assessee could not represent his case before Ld. CIT(A) and the order being an *ex parte* order, stood vitiated on account of violation of principles of natural justice. The Ld. AR submits that during the appellate proceedings, the assessee could not appear before the Ld. CIT(A) due to circumstances beyond its control. The assessee has sought adjournment before the Ld. CIT(A) which is evident from the order of Ld. CIT(A). Adequate opportunity of hearing was

not given to the assessee, therefore, Ld. AR contended that one more opportunity should be given to the assessee to plead his case before the Ld. CIT(A).

6. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue submitted that assessee was negligent during the appellate proceedings; hence, appeal of the assessee should be dismissed.

7. We have heard both the parties. It is an undisputed fact that the assessee did not respond to the notices issued to him by the Ld. CIT(A) on 10.02.2021, 14.07.2023 and 02.08.2023. Therefore, the Ld. CIT(A) has upheld the order of the Assessing Officer and dismissed the appeal by observing that the assessee was totally non-compliant. The Ld. AR submitted that the assessee had requested for adjournment and he could not appear before CIT(A) due to circumstances beyond his control. The Ld. AR requested for one more opportunity in the interest of justice and fair play. We find that assessee could not plead his case properly before the Ld. CIT(A). We also note that Ld. CIT(A) has passed the *ex parte* order due to non-compliance by the assessee before him. The Ld. AR stated that one more opportunity of hearing may be given to him for presenting his case properly. We are of the view that one more opportunity should be given to the assessee to plead his case. It is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving

deeper into the merits of the case, in the interests of justice, we set aside the order of Ld. CIT(A) and restore the matter back to the file of Assessing Officer for fresh adjudication and to pass a speaking order after affording sufficient opportunity of being heard to the assessee. The assessee is also directed to furnish explanation and submit the relevant details and documents before the Assessing Officer expeditiously without taking adjournment without valid reason. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 29/08/2024 in the open court.

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

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

Surat

दिनांक/ Date: 29/08/2024

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

By Order

**// TRUE COPY //**

Assistant Registrar/Sr. PS/PS  
ITAT, Surat