

**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.590/SRT/2024

(Assessment Year: 2016-17)

(Hybrid Hearing)

Mukesh Rajendra Prasad Thakur, 3-9-9R, Navjivan Society, Lamington Road, Mumbai – 400008.	Vs.	The ACIT, Vapi Circle, Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BNFPP1452C		
(Appellant)		(Respondent)

Appellant by	Shri Bhupendra Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	29/08/2024
Date of Pronouncement	29/08/2024

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the recalled order vide Miscellaneous Application No.02/SRT/2024, dated 05.07.2024 arising out of ITA No.590/Srt/2023 for assessment year (AY) 2016-17.

2. The facts of the of the case in brief are that the assessee filed return of income for AY.2016-17 u/s 143(3) of the Act on 06.10.2016, declaring total income of Rs.28,49,920/-. The assessee also claimed net agricultural income of Rs.20,99,630/-. The assessee was asked to substantiate his claim of agricultural income with documentary evidence. The assessee had shown gross receipt or Rs.25,02,750/- and after claiming expenses of Rs.4,03,120/-, declared agricultural income of Rs.20,99,630/- in his return of income. The assessee did

not file any details in respect of agricultural receipt of Rs.25,02,750/-.

Therefore, the above amount was treated as unexplained cash credit and added to the total income of assessee u/s 68 of the Act. The AO also disallowed depreciation of Rs.1,87,748/-.

3. Aggrieved by the order of AO, the assessee filed appeal before CIT(A). The CIT(A) issued various notices which were not responded to by the assessee. No evidence was filed by the assessee during the appellate proceeding. Therefore, CIT(A) found no reason to interfere with the AO's order and accordingly, dismissed the ground on agricultural income. Regarding the depreciation, the appellant had declared net profit at specified percentage under 44AD of the Act. As per section 44AD(2) deductions u/s 30 to 38 of the Act are deemed to have been already given and not further deduction u/s those sections are to be allowed. Hence, the CIT(A) confirmed the disallowance of depreciation. In the result, the appeal of the assessee was dismissed.

4. The assessee filed appeal against the order of CIT(A) dated 19.06.2023. The ITAT dismissed the appeal of the assessee vide order dated 29.12.2023. The delay of 7 days in filing the appeal was condoned by the Tribunal in para 4 of its order. However, in absence of any explanation, written submission or evidence, the Tribunal did not find any justification to interfere with the order of lower authorities and both grounds were dismissed. The assessee filed MA No.2/SRT/2024 (arising out of ITA No.590/SRT/2023) for recalling / rectification of the above order of Tribunal. The Learned Authorized Representative (Ld. AR) stated that the instructing Chartered Accountant by

inadvertence filed application in the office of Addl. CIT / Senior Departmental Representative (Ld. Sr. DR) instead in the office of ITAT, Surat. The Ld. AR submitted that non-appearance of the assessee on 29.12.2023 before Tribunal was neither intentional nor deliberate but was due to bonafide mistake. The Ld. AR submitted that assessee has good chance on merit and is likely to succeed if one more opportunity is allowed to contest the appeal.

5. Considering the submission of the assessee, the order of ITAT dated 29.12.2023 was recalled and the case was refiled for hearing on 29.08.2024. Before us, the Ld. AR submitted that the delay has already condoned by the Tribunal and on the same ground, it may be condoned. Regarding the merit, the Ld. AR has submitted paper book containing 135 pages was filed before CIT(A) which was not considered by the CIT(A). This is evident from the remark of the CIT(A) at para 4.2 of the appellate order. He requested that the matter may be set aside and restored to the file of CIT(A) for adjudication on merit after considering the details submitted.

6. On the other hand, Ld. Sr. DR relied on the order of lower authorities. He, however, has no objection if the matter is remitted back to the file of CIT(A).

7. We have considered the rival submissions and perused the material available on record. It is seen that AO passed the order by adding the gross agricultural receipt of Rs.25,02,750/- without allowing expenses of Rs.4,03,120/- claimed by assessee. The reasons for making the addition was that assessee neither responded to the notices nor submitted any details in

respect of the agricultural receipt of Rs.25,02,750/-. The CIT(A) has not interfered with the order of AO because no details or evidence was filed by the assessee. However, the Ld. AR stated that details and evidences were filed before CIT(A), which are at pages 1 to 135 of the paper book. Considering the totality of the facts, we are of the view that adequate opportunity of hearing was not granted to the assessee and the case was decided by the CIT(A) without considering the submission, details and evidences filed by the assessee. Hence, in the interest of justice, we restore the matter to the file of CIT(A) and direct the CIT(A) to pass the order after considering the details submitted and after calling further details, as may be required by him, for deciding the appeal on merit after hearing the assessee. The assessee is directed to be vigilant and to attend the hearing before the CIT(A) without seeking any adjournment bereft of valid reason.

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

Order 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 //

Sr. Private Secretary, ITAT, Surat