

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

ITA No. 412/Srt/2024 (Assessment Year 2017-18)

(Physical hearing)

Kapil Gems Pvt. Ltd., C-3, Antwerp Park, Kansara Sheri, Mahidharpura, Surat-395003. PAN No. AAECK 1120 C	Vs.	I.T.O., Ward-1(1)(3), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Prakash Jhunjhunwala, CA with Shri Pawan Jagetia, C.A.
Department represented by	Shri Ravi Kant Gupta, CIT-DR
Date of Institution of Appeal	10/04/2024
Date of hearing	30/08/2024
Date of pronouncement	30/08/2024

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the *ex-parte* order of learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 14/02/2024 for the Assessment Year (AY) 2017-18.
2. Rival submissions of both the parties have been heard and record perused. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that the Id. CIT(A) has passed ex parte order without giving fair and proper opportunity to the assessee. The Id. CIT(A) dismissed the appeal in limine without discussing the merit of the case. The Id. CIT(A) in para 2.2. of his order accepted that the assessee filed application for adjournment even though such adjournment was not

allowed and passed ex parte order. The assessee has good case on merit and is likely to succeed if one more opportunity is given to contest the case on merit. The Id. AR of the assessee submits that he has placed on record copy of adjournment application filed on 30/01/2024, alongwith adjournment application, the assessee filed copy of railway ticket of Director of assessee who was travelling on 01/02/2024 for a family function fixed in first week of February in Ajmer, thus, the assessee has reasonable and sufficient reason for seeking more time for making compliance. Before Assessing Officer, the assessee furnished complete evidence to substantiate the genuineness of sales and purchases. The assessee furnished all documents as required by Assessing Officer. Copy of such document is also placed on record in the form of paper book. The Id. AR of the assessee submits that the Assessing Officer estimated profit @ 2% of gross sales. The Assessing Officer made high-pitched assessment and also made other additions on account of accommodation entry and commission income. The Id. AR of the assessee reiterated that the assessee may be allowed one more opportunity to substantiate the fact before the Id. CIT(A) and he undertake on behalf of assessee to be more vigilant in future in making compliance before the Id. CIT(A).

3. On the other hand, the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue supported the order of Id. CIT(A). The Id. CIT-DR for the revenue submits that the assessee was given more than sufficient opportunity as recorded in para

2.2 and 2.3 of order of Id. CIT(A). When the assessee has not furnished any submission, the Id. CIT(A) has no option except to confirm the order of Assessing Officer.

4. In the rejoinder submission, the Id. AR of the assessee submits that the Id. CIT(A) has not considered the facts and in case the Id. CIT(A) wishes to pass the order on the basis of material available on record he should have at least call the assessment record for appreciation of facts. The Id. AR of the assessee submits that he is not pressing ground of appeal on merit, rather making a limited prayer to restore the matter back to the file of Id. CIT(A) for deciding the matter afresh after allowing one more opportunity to the assessee.
5. We have considered the submissions of both the parties and perused the material on record and have gone through the orders of the lower authorities carefully. We find that the Assessing Officer while passing the assessment order, estimated profit @ 2% of total turnover. The Assessing Officer also made addition on account of disallowance of certain expenditure, addition of commission income and addition on account of cash deposit. The Id. CIT(A) confirmed the action of Assessing Officer in ex parte order by taking view that despite giving opportunity, the assessee failed to file reply. We find that this is not a case of total non-compliance, rather the assessee made a request for adjournment on 30/01/2024. The Id. CIT(A) instead of allowing further time, passed the order on 14.02.2014, in confirming all the additions made by the Assessing Officer.

Considering the overall facts and circumstances of the case, in our view, the assessee deserve one more opportunity to contest his case on merit, therefore, the matter is restored back to the file of Id. CIT(A) to pass the order afresh after giving reasonable and fair opportunity of hearing to the assessee. The assessee is also directed to be more vigilant in future and not to cause further delay by seeking adjournment without any valid reason and to furnish all the details and his submissions and evidences on various grounds of appeal raised, as soon as possible, if so desired without any further delay. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order announced in open court on 30th August 2024.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 30/08/2024

**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat