

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos.590&660/Ahd/2023
(Assessment Year: 2014-15)

Dharmendra Shantilal Patel-HUF, B/1, Shreejibapa Complex, Abajibabashri Road, Vasna, Ahmedabad-380007	Vs.	Income Tax Officer, Ward-5(2)(1) (Now Ward- 5(3)(1)), Ahmedabad
[PAN No.AAMHP5841E]		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by:	Shri Rignesh Das, Sr. DR

Date of Hearing	09.10.2024
Date of Pronouncement	23.10.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

Both appeals have been filed by the assessee against the order under Section 250 of the Act passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi, vide orders dated 30.05.2023 & 24.07.2023 for Assessment Year 2014-15. Since the facts and issues for consideration are common, both appeals filed by the assessee are being disposed of together by way of a common order.

ITA No. 590/Ahd/2023 A.Y. 2014-15

2. The Assessee has taken the following grounds of appeal:-

“1. The learned CIT(A) erred in law and on facts in confirming the addition of advance of Rs.83,45,000/- made by AO, such addition is required to be deleted.”

3. The brief facts of the case are that the assessee did not file a return of income for the Assessment Year 2014-15. During the Financial Year 2013-14, the assessee advanced a sum of Rs. 83,45,000/- to Shri Dharmendra S. Patel (individual). However, the Assessing Officer was of the view that the failure on part of the assessee to submit a return of income for the relevant assessment year has resulted in this advance escaping assessment. Upon further examination of the assessee's bank statements, the Assessing Officer observed that significant funds were being transferred in and out to various parties. Consequently, the case of the assessee was re-opened under section 147 of the Income Tax Act, and a notice under section 148 was issued on March 28, 2017. In response to the notice issued under section 148, the assessee did not file a return of income. The AO subsequently issued notices under section 142(1) on August 11, 2017, and September 1, 2017, both of which were served upon the assessee, yet no reply or submission was received. A show-cause notice was then issued on November 27, 2017, in which the hearing scheduled for December 7, 2017. The notice informed the assessee of the selection of their case for scrutiny regarding the advance made to Shri Dharmendra S. Patel and mentioned that the assessee had failed to file return of income for the relevant assessment year. The notice asked the assessee to provide an explanation or supporting evidence for their claims on the date of hearing, stating that failure to comply would result in the finalization of the assessment based on existing records without further opportunity for the assessee. Despite

these efforts by the Assessing Officer, the assessee did not attend the hearing nor did he submit any details. Given the absence and lack of response, the AO held that the advance of Rs. 83,45,000/- should be added to the total income of the assessee. Additionally, penalty proceedings were initiated under section 271(1)(c) of the Income Tax Act due to the non-compliance and the resultant underreporting of income.

4. In appeal, again none appeared on behalf of the assessee before Ld. CIT(A). The Ld. CIT(Appeals) dismissed the appeal of the assessee on account of non-compliance and non-appearance before him during the course of appellate proceedings, despite multiple opportunities having been provided to the assessee. While dismissing the appeal of the assessee, Ld. CIT(A) made the following observations:

“In this case the appellant had not filed his return of income for the year but, there was information that the appellant had advanced Rs. 83,45,000/- to a person. The source of that fund remained unexplained. The case was reopened u/s 147 and notices u/s 142(1) issued subsequently, but there was no response from the appellant's end during the course of assessment. The AO issued show cause notice to the appellant on the issue seeking explanation/submission but matter remained non-complied. So, AO was compelled to pass order u/s 144 of the IT Act adding the entire amount of advance given as being out of unexplained source.

The assessment order was passed on 08.07.2017, and from Form 35 it is apparent that appellant received the assessment order/demand notice on 26.12.2017 and filed appeal on 19.01.2018.

The case was fixed for hearing on 04 different dates but there was no compliance from the end of the appellant so far. It appears that the appellant remained non serious in representing his case before the AO and same trend continued before the Appellate Authority.

The appellant was given reasonable opportunity of hearing to represent his case but it appears the appellant preferred not to come up with full fact and information explaining the source of fund for that advances given to Shri Dharmendra S Patel of Rs. 83,45,000/-.

As no return has been filed by the appellant and no account are available on record, there is no scope to verify that issue either. The facts of the case and grounds of appeal of the appellant don't throw any light regarding the source of fund for such advance.

In the facts and circumstance of the case there is no option left to the appellate authority but to confirm the observation of the ld..AO making such addition in his assessment order.

In view of the discussion above, appeal of the appellant is dismissed.”

5. Before us, none appeared on behalf of the assessee, despite multiple opportunities of hearing having been provided to the assessee. We observe that the assessee filed an appeal against the CIT(Appeals) order, in which substantial additions on account of non-disclosure of certain transactions, were confirmed by Ld. CIT(Appeals). Ld. CIT(Appeals) observed that notices were issued to the assessee for hearing on multiple occasions, however, the assessee has repeatedly failed to appear for the scheduled hearings despite proper notifications being sent. Even before us, despite multiple opportunities, the assessee has failed to cause appearance and provide any explanation in support of his case. In light of the established principles in various judicial precedents, it is well-settled that the non-appearance of the appellant before the appellate authority, without any justifiable cause, warrants dismissal of the appeal. The courts have consistently held that an assessee must actively engage in the proceedings, and failure to do so can lead to an inference against them. In the case of **Sukhvinder Singh vs. Ld. CIT(Appeals) 165 taxmann.com 262 (Punjab & Haryana)**, the High Court held that where assessee chose not to appear in terms of notices issued under section 143(2) and section 142(1), Assessing Officer was justified in passing impugned ex-parte assessment order without

giving reasonable opportunity of hearing to assessee. In the case of **Praveen Garg v. ITO 132 taxmann.com 142 (Delhi - Trib.)**, the Tribunal held that where Commissioner (Appeals) had given sufficient notice to assessee before enhancing assessment and had also given several adjournments to assessee for hearing of appeals, but, assessee did not avail opportunity of being heard, contention of assessee that no reasonable opportunity of being heard had been given by Commissioner (Appeals) being without merits was to be set aside.

6. In the instant facts, there has been deliberate non-compliance on part of the assessee at all stages of proceedings. Accordingly, we are of the considered view that the appeal of the assessee is liable to be dismissed. We find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

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7. The Assessee has taken the following grounds of appeal:-

“1. The learned CIT(A) erred in law and on facts in confirming the penalty imposed by AO under section 271(1)(c) of the Income Tax Act, 1961 amounting to Rs.24,03,510/-, such penalty is requested to be deleted.”

8. This appeal filed by the assessee relates to upholding the levy of penalty under Section 271(1)(c) of the Act by Ld. CIT(A), in connection with additions made by the Assessing Officer in quantum appeal in ITA No. 590/Ahd/2023. Since, we are of the considered view that the additions are liable to be sustained in the hands of the assessee, in

absence of any explanation or clarification by the assessee in connection with additions made by the Assessing Officer, we are of the considered view that Ld. CIT(A) has not erred in facts and law in upholding the levy of penalty under Section 271(1)(c) of the Act.

9. In the result, the appeal of the assessee is dismissed.

10. In the combined result, both the appeals filed by the assessee are dismissed.

This Order pronounced in Open Court on

23/10/2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 23/10/2024

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad