

**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 Nos.807 & 808/SRT/2024**

**Assessment Year: (2020-21)
(Physical Hearing)**

Soni and Brother, H-29, New Sardar Market, Dumbhai Patia, Surat - 395010	Vs.	The ITO, Ward – 2(3)(6), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAWFS6792H		
(Appellant)		(Respondent)

Appellant by	Shri Ashish Bhoola, CA
Respondent by	Shri Minal Kamble, Sr. DR
Date of Hearing	21/01/2025
Date of Pronouncement	22/01/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These appeals by the assessee emanate from the orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 07.06.2024 and 11.06.2024 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the same assessment year (AY) 2020-21. Both appeals of the assessee pertain to same AY.2020-21. With consent of both parties, the appeals were heard together and are decided by this common order for the sake of convenience and brevity. The appeal of assessee in ITA No.807/SRT/2024 is taken as 'lead case'.

2. The grounds of appeal raised by the assessee in ITA No. 807/SRT/2024 are as under:

“1. Addition of Rs.6,09,954/- being difference of profit @ 10% on commission receipts and profit disclosed in Profit & Loss account:

(a) *On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in not accepting the submission of the appellant that its books of accounts have been duly audited under the provisions of the Income Tax Act, 1961 by a qualified Chartered Accountant.*

(b) *On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in not appreciating the fact that the appellant had produced ledgers of all expenses incurred by it during the year under consideration.*

(c) *On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in not appreciating the fact that the reason for not / making any submission and not producing any evidence during assessment proceedings was due to the fact that the email address on which notices were served belonged to the previous CA of the appellant who no longer handled appellant's affairs. The appellant was not even aware of any ongoing proceedings. The appellant came to know of the proceedings only when a physical notice for recovery of demand was served on it.*

(d) *On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in not admitting the additional evidence under Rule 46A(1) without appreciating the fact that since the appellant was not aware of ongoing assessment proceedings, it could not submit the documents and evidences and if the same are also not accepted during the first appeal proceedings then it would be gross violation of principles of natural justice.*

(e) *On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in not considering the submission of the appellant that Interest paid to Partners Rs.954741/- and Remuneration paid to Partners Rs.484617/- are in a way distribution of profits to partners allowable as per provisions of the Income Tax Act, 1961. If the same are included in Net Profit disclosed by the appellant, the figure comes to Rs.16,12,437/- (NP Rs.173079 + Int. to Partners Rs.954741 + Remuneration to partners Rs.484617) which is approx. 20.59% of commission income i.e. much more than 10% Net Profit as adopted by the AO.*

(f) On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in confirming the additions made by the AO based on estimation of profits @ 10% on commission without rejecting the duly audited books of accounts of the appellant submitted during the first appellate proceedings.

2. Miscellaneous:

(a) The learned Commissioner of Income-tax (Appeals) has erred in not deleting the penalty u/s 270A for undertaking reporting of income as the additions on the basis of which penalty was invoked was not warranted for in view of submission made by the appellant.

(b) the appellant craves to add, alter, delete or amend any other ground of appeal during the course of appeal proceedings.”

3. Facts of the case in brief are that assessee e-filled its return of income on 10.02.2021, declaring total income at Rs.1,83,470/-. The assessee was given six opportunities of hearing, which were not complied by the assessee. The assessee had received commission of Rs.78,30,331/-, but has shown income of Rs.1,73,079/- only. The Assessing Officer (in short, 'AO') estimated net profit @ 10% of total commission receipt and added the difference of Rs.6,09,954/- [Rs.7,83,033 (-) Rs.1,73,079] to the total income in the order passed u/s 144 r.w.s. 144B of the Act.

4. Aggrieved by the order of the AO, the assessee filed appeal before the CIT(A). There was delay of 151 days in filing the appeal before CIT(A). In Form No.35, assessee mentioned that e-mail address on which notices were served belonged to previous CA of the assessee. The appellant came to know about the assessment proceedings only when personnel of IT Department visited premises of assessee to recover the tax. As assessee was not aware of the proceedings, the delay in filing of appeal was requested to be condoned. The

explanation of the assessee was not accepted by the CIT(A) who held that assessee has failed to demonstrate sufficient cause for the delay. He has relied on various decisions which are at para 2.3 to 2.6 of the appellate order. He did not admit the appeal and dismissed the same *in limine*.

4.1 The CIT(A) has also briefly discussed the facts and background of the case. He has considered the submission uploaded in ITBA portal by the assessee. However, the explanation of the assessee was not accepted. The CIT(A) observed that no petition for admission of additional evidence under Rule 46A has been made during appellate proceedings. He did not admit the additional evidence and further observed that such additional evidence is incomplete and do not support the grounds of appeal filed by the assessee. Therefore, the addition made by the AO was confirmed.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (ld. AR) of the assessee filed a paper book, containing 31 pages including written submission in respect of grounds of appeal, copy of audit report, list of expense and affidavit of Shri Mulchand V. Poptani, partner of Soni and Brothers. He submitted that the assessee could not appear as no notice was served on the assessee. As mentioned in Form No.35, the e-mail on which notices were served belonged to previous CA of the appellant. It was sent to the e-mail address 'vireshrudalal1962@gmail.com' instead of correct e-mail address 'sonibrothers@abncoca.in'. The assessee came to know about the assessment order when recovery proceedings were initiated and IT

Department personnel visited his premises for recovery of tax. He submitted that non-compliance was neither intentional nor deliberate and it was due to circumstances beyond control of the assessee. He, therefore, requested to set aside the order of CIT(A) in the interest of justice and grant another opportunity to plead the case of merit.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue has relied on the orders of authorities below. He did not have any objection if the matter is remitted to the file of AO.

7. We have heard both the parties and perused the materials available on record. We have carefully gone through the paper book filed by the Id. AR of the assessee. We find that AO had issued various notices on six occasions including the notices u/s 144 of the Act. The assessee had not responded to any of the notices nor filed any submission or details before the AO. The details of notices are at para 2 of the assessment order. Due to non-compliance by assessee, AO completed assessment u/s 144 r.w.s. 144B of the Act by determining total income at Rs.7,93,424/- against returned income of Rs.1,83,470/-. Before the CIT(A), the assessee filed the appeal late which was not condoned and appeal was not admitted. The CIT(A) has also not admitted the additional evidence under Rule 46A of the IT Rules and confirmed the addition of Rs.6,09,950/-. Before us, the Id. AR submitted that the registered e-mail id in the Income-tax e-filing portal was 'sonibrothers@abncoca.in' but notices of hearing were sent to e-mail 'vireshrudalal1962@gmail.com'. Due to above reasons, assessee was not aware of the assessment proceedings

and therefore, delay occurred in filing appeal before CIT(A). Hence, Id. AR requested to grant another opportunity in the interest of justice. Considering the facts of the case, we are of the view that the principles of natural justice would call for giving another opportunity of hearing to the assessee. The expression "sufficient cause" used in section 249(3) of the Act is sufficiently elastic to enable the CIT(A) to apply the law which subserves the ends of justice. It has been held in a number of cases that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Accordingly, we hold that the interests of justice would be met in case the AO re-examines the entire issue afresh. The AO has passed an *ex parte* order u/s 144 of the Act due to non-submission of various details. Hence, we set aside the order of CIT(A) and remit the matter to the file of AO with a direction to pass fresh assessment order in accordance with law after granting adequate opportunity of hearing to the assessee. The assessee is given liberty to file details and evidences in support of its return of income. It is also directed to file details and evidences as needed by the AO by not taking adjournment without valid reason. With these directions, grounds of appeal raised by the assessee are allowed for statistical purposes.

8. Since, we have set aside the order of the CIT(A) and restored the matter to the file of AO, the other grounds become academic in nature and do not require adjudication.

9. In the result, appeal of the assessee is allowed for statistical purposes.

ITA No.808/SRT/2024 (AY: 2020-21)

10. This appeal is against the order of CIT(A) dismissing the penalty order passed by AO for AY.2012-13, where AO levied penalty of Rs.95,153/- u/s 270A of the Act for under reporting total income to the tune of Rs.6,09,954/-. The CIT(A) confirmed the penalty order passed by AO u/s 270A of the Act.

11. The facts of the case have already been discussed at para 3 of this order. After completion of the assessment order u/s 144 r.w.s. 144B of the Act, dated 07.09.2022, the AO has issued various notices for the penalty proceedings u/s 271A of the Act, which had been initiated during the assessment proceedings. Since the assessee did not respond to the notices, the AO has levied penalty u/s 271A of the Act amounting to Rs.95,153/-. Aggrieved, the assessee filed appeal before the CIT(A) who confirmed the penalty order.

12. We have set aside the order of CIT(A) and restored the matter to the file of the AO for fresh assessment after hearing the assessee in ITA No.807/SRT/2024 (supra). Since the matter has been restored to the AO for fresh adjudication, there is no basis at all for levy of penalty u/s 271A of the Act. Hence, the penalty order does not survive and the resultant order of CIT(A) is quashed. We make it clear that the AO may initiate proceedings u/s 271A of the Act during the fresh assessment proceedings, if required conditions are fulfilled. Accordingly, the ground is allowed for statistical purpose.

13. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 22/01/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 22/01/2025

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