

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.1129/SRT/2024

Assessment Year: (2017-18)

(Physical Hearing)

Nainu Bhadu, Plot No.1, Laxminarayan Society, Kadodara, Tal – Palsana, Surat - 394327	Vs.	The ITO, Ward – 1, Bardoli
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AVQPN6835M		
(Appellant)		(Respondent)

Appellant by	Shri Suresh K. Kabra, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	16/01/2025
Date of Pronouncement	22/01/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 31.08.2023 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2017-18.

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

"1. The Ld CIT(A), NFAC has erred and was not just and proper on the facts of the case and in law in confirming the addition of Rs.1,33,90,500/- being deposits in Bank Account.

2. PRAYER

2.1 The addition may kindly be deleted.

2.2 Personal hearing may be granted.

2.3 Any other relief that your honours may deem fit may be granted.

3. The assessee craves leave to add, amend, modify alter or delete any of the grounds at the time of hearing."

3. Brief facts of the case are that assessee filed his return of income for AY.2017-18 on 31.03.2018, declaring total income at Rs.3,02,500/-. The case of the assessee was selected for complete scrutiny under CASS on account of large cash deposit during the year. Various notices and show cause notice were served on the assessee. However, the assessee failed to comply with the notices. In response to show cause notice issued on 24.1.2019, the assessee filed reply on 25.12.2019, but he failed to explain properly. The assessee deposited total cash of Rs.1,33,90,500/- in the Axis Bank Account No. 915020015077919. The gross turnover of assessee was at Rs.13,02,547/- and net income was only Rs.3,02,500/-. The assessee claimed that he is engaged in the business of stitching and job work as well as money transfer business. The assessee has failed to establish existence of actual business of money transfer claimed by him. The assessee had also submitted commission income ledger and journal voucher, but no supporting documentary evidence has been furnished. On perusal of bank book, the AO found that just after cash deposit, fund was transferred to M/s Tech Process Solution Ltd. and Sanjay Kumar Singh. The AO had made the addition of Rs.1,33,90,500/- u/s 68 of the Act and levied tax @ 60% u/s 115BBE of the Act. The AO determined the total income of Rs.1,36,93,000/- against the return income of Rs.3,02,500/-.

4. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) observed that four notices through ITBA portal were sent to the appellant on 31.12.2020, 21.03.2023, 18.07.2023 and 14.08.2023. The

assessee neither complied with any of the notices nor sought for adjournment. The CIT(A) relied upon the following decisions: (i) CIT vs. Gold Leaf Capital Corporation Ltd., in ITA No.798 of 2009, dated 02.09.2011, (ii) M/s Chemipol vs. UoI, Central Appeal No.62 of 2009, (iii) Tukoji Rao Holkar vs. CIT, 223 ITR 480 (MP HC), (iv) CIT vs. B. N. Bhattacharya, 118 ITR 461 (SC), (v) Whirpool India Ltd. vs. DCIT, ITA No.2006/Del/2011, dated 19.12.2011 and (vi) Abhay P. Kalbhor vs. DCIT, ITA No.1469/Pun/2002 and held that assessee is not interested in pursuing the appeal and the same deserves to be dismissed. On merit, the CIT(A) observed that since the appellant did not make any cogent explanation regarding the sources of cash deposits and in absence of documentary evidence, he confirmed the addition made by the AO and dismissed the appeal.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the CIT(A) passed the order u/s 250 of the Act on 31.08.2023 without hearing the assessee in violation of the principles of natural justice. The Id. AR contended that assessee could not represent his case before CIT(A) and the order being an *ex parte*, stood vitiated on account of violation of principles of natural justice. The assessee could not appear before the CIT(A) due to non-service of notice u/s 250 of the Act at the e-mail Id given in the Form No. 35. The e-mail Id for issue of notice and communication was 'raxabhat9750@gmail.com', but notices were sent to 'anilkumarbhat9750@yahoo.com'. The Id. AR has submitted downloaded copies

of the notices from the e-filing portal to substantiate his claim. He, therefore, submitted adequate opportunity of hearing was not given to the assessee. Therefore, Id. AR requested that one more opportunity should be given to the assessee to plead his case on merit before the CIT(A).

6. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities. He submitted that during the appellate proceedings, the assessee was negligent and non-cooperative. However, he did not have any objection if the matter is restored to the file of CIT(A).

7. We have heard both the parties and perused the materials available on record. It is an undisputed fact that assessee has been non-cooperative during the appellate proceedings. However, Id. AR has submitted copies of the notices issued u/s 250 of the Act and contended that those were served on wrong address and not at the address given in Form No.35. The assessee had filed return of income declaring total income of Rs.3,02,500/-, but in the order u/s 143(3), the AO made addition of Rs.1,33,90,500/- u/s 68 of the Act. The same was confirmed by CIT(A) based on the findings in the assessment order due to non-compliance by assessee before CIT(A). However, we find that the CIT(A) had issued four notices which were sent on wrong e-mail Id and not at the official e-mail Id given in Form No.35. Considering all these facts, we are of the view that the assessee was unable to comply before CIT(A) due to circumstances beyond his control. The Id. AR submitted that non-compliance was neither deliberate

nor intentional. He requested that another opportunity may be granted to the assessee to submit all the required explanations and details and plead his case on merit. We are of the view that the principles of natural justice would call for giving another opportunity of hearing to the assessee. Accordingly, we hold that the interests of justice would be met in case the CIT(A) re-adjudicates the entire issue afresh. We, accordingly, set aside the order of CIT(A) and remit the matter to the file of CIT(A) for fresh adjudication in accordance with law after granting adequate opportunity of hearing to the assessee. The assessee is directed to be more vigilant and to furnish all the details and explanations as needed by the CIT(A) by not seeking adjournment without valid reasons.

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

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