

**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.429/SRT/2024**

**Assessment Year: (2016-17)**

**(Hybrid Hearing)**

Khilan N. Patel (HUF), 6/2201, Nagarsheri, Mahidharpura, Surat – 395003 (Gujarat)	<b>Vs.</b>	The DCIT, Circle – 2(3), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAKHK6987L</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Akshay M. Modi, CA
<b>Respondent by</b>	Shri Mukesh Jain, Sr. DR
<b>Date of Hearing</b>	27/01/2025
<b>Date of Pronouncement</b>	29/01/2025

**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 12.02.2024 by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2016-17.

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

*"1. On the facts and in the circumstances of the case as well in law, the CIT (Appeals), NFAC, New Delhi erred in confirming the order passed by DCIT, Circle 2(3), Surat u/s 143(3) of the Act making additions/disallowances for the aggregate amount of Rs.41,09,821 and hence, the order passed by the AO at the total assessed income of Rs.73,90,841 against the returned income of Rs.32,81,020 is without jurisdiction, perverse, baseless, arbitrary, imaginary and hence, liable to be annulled in toto.*

*2. On the facts and in the circumstances of the case and in law, the CIT (Appeals), NFAC, New Delhi erred in confirming the action of the AO making addition for the alleged unexplained cash credits u/s 68 r.w.s. 115BBE of the*

*Act for Rs. 41,00,000 on misleading, baseless, misconceived and mis-conceptual observations, is being without jurisdiction, arbitrary, perverse, bad in law, invalid and hence, liable to be quashed.*

*3. On the facts and in the circumstances of the case and in law, the CIT (Appeals), NFAC, New Delhi erred in confirming the action of the AO treating the Short-Term Capital Gain of Rs.32,79,845 as the business income on misconceived inferences and hence, the assessment order u/s 143(3) of the Act is bad in law as well on facts and therefore, liable to be quashed.*

*4. On the facts and in the circumstances of the case and in law, the CIT (Appeals), NFAC, New Delhi erred in confirming the action of the AO denying the exempt income of Rs.9,821 claimed u/s 10(34) of the Act and hence, not justified.*

*5. On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate in the right, lawful and proper perspectives the entire correspondences made in the course of assessment proceedings, already been supplied with the appeal memo forming part of the statement of facts including cogent explanations and submissions made in writing by the appellant on various dates along with the various enclosures attached with the said submissions in support of the income earned for Short Term Capital Gain and hence, not justified.*

*6. On the facts and in the circumstances of the case as well in law, the learned CIT (Appeals) has erred both on facts and in law in deciding the appeal ex-parte in violation of the principles of natural justice and without granting to the assessee a fair, proper and meaningful opportunity of being heard and the inferences of the CIT (Appeals) that the appellant is not interested in pursuing the appeal is without jurisdiction, perverse, invalid, arbitrary, bad in law and hence, liable to be struck down.*

*7. Your appellant further reserves his rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.”*

3. Brief facts of the case are that assessee filed his return of income for AY.2016-17 on 07.10.2016, declaring total income at Rs.32,81,020/-. The case was selected for scrutiny under CASS. Seven notices were issued and served upon the assessee along with questionnaire calling for various details. The Assessing Officer (in short, 'AO') found that assessee derived income from capital gain thereon and income from other sources. During the year,

assessee had entered into share transactions of listed securities on which STT was paid and capital gain was declared on such transactions. The volume of such transactions was Rs.100,09,96,274/- during the year and delivery of shares were not taken. Further, assessee had deposited cash in the bank account and subsequently entered into share transactions. It was found that assessee had deposited cash of Rs.41,00,000/- in his bank account. No reply was filed to explain the source of cash deposited which was later invested in share transactions. Hence, Rs.41,00,000/- was added u/s 68 and penalty u/s 271(1)(c) were initiated for furnishing inaccurate particulars of income. The assessee had also disclosed short-term capital gain (STCG) of Rs.32,79,845/-. As the assessee had entered into large volume of transactions of sale and purchase, showing high frequency, continuity and regularity of transactions and the securities were sold without taking actual delivery, the amount shown as "capital gain" was treated as "business income". Penalty proceedings u/s 271(1)(c) were initiated for furnishing inaccurate particulars of income.

4. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) had issued six notices fixing the hearing on 15.01.2021, 12.06.2023, 17.07.2023, 17.10.2023, 12.01.2024 and 09.02.2024. The assessee sought adjournment on five occasions and did not respond to the hearing fixed on 17.10.2023. The CIT(A) referred to section 114(g) of the Indian Evidence Act, 1972, which lays that evidence which could be and is not

produced when, if produced, be unfavourable to the person who withholds it. Burden was on the assessee to prove that facts and findings of AO were not correct. The assessee failed to support his claim with proper evidence. The CIT(A) relied on decisions in case of CIT vs. B. N. Bhattacharya & Another, (10 CTR 354) and various other decisions, which are at pages 10 to 11 of the appellate order and dismissed the ground that AO erred in passing the assessment order. The other two grounds with respect to addition of Rs.41,00,000/- u/s 68 of the Act and treatment of Rs.32,79,845/- as business income instead of STCG were also dismissed because the assessee, even during the appellate proceedings, failed to produce anything in support of his contention and to show that the findings of the AO are not correct. The CIT(A) also denied claim of exemption u/s 10(34), a sum of Rs.9,281/-.

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 reply was filed before the AO. He further submitted that the CIT(A) passed the order u/s 250 of the Act on 12.02.2024 without hearing the assessee in violation of the principles of natural justice. The Id. AR contended that assessee had requested for adjournment which is clear from the appellate order. He requested that the matter may be set aside in the interest of justice and assessee should be given one more opportunity to plead his case before the AO. He undertakes that the appellant would be vigilant and furnish explanation and details expeditiously.

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 the adequate opportunities were given to the assessee during the assessment as well as appellate proceedings. The assessee has been negligent and non-cooperative due to which the addition was confirmed by CIT(A). He submitted that appropriate cost may be imposed on the assessee 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 totally non-cooperative during both assessment as well as appellate proceedings. It is clear from the assessment order that the hearings were fixed on seven occasions, but apart from filing a reply on 17.12.2018, no other submission or details were given by the assessee. The CIT(A) also issued six notices out of which one was not at all responded to and adjournments were sought on five occasions. The CIT(A) has rightly observed that assessee was not serious in pursuing the appeal and did not care for the notices issued and served upon him. The Hon'ble Delhi High Court in case of R. B. Seth Jess Ram Hospital Bros vs. R. B. Seth Jessa Ram Hospital Workmen Union, in Writ Petition (Civil) No. 16502/2024, dated 29.11.2024, after referring to various decisions of Hon'ble Supreme Court and Delhi High Court i.e., Yashpal Jain vs. Sushila Devi & Ors., (2023 SCC OnLine 1377), Ishwarlal Mali Rathod vs. Gopal & Ors., (2021) 12 SCC 612 and Blue Heavens Garments vs. M/s Kids Collections, (2010 SCC

OnLine Del 1124) held that adjournments and pass overs are not a matter of right but only a courtesy extended by the Court. The Hon'ble High Court imposed further cost of Rs.20,000/- apart from upholding the order of the Industrial Tribunal imposing cost of Rs.20,000/- on the petitioner. Considering all these facts and decisions cited supra, we are of the view that the assessee was negligent and non-cooperative before the AO and CIT(A). The appellant sought various adjournments before the CIT(A) and did not furnish any details in three years' time between date of first and last hearing where the matter was pending before CIT(A). The Id. AR submitted that the 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. Considering the fact that both orders were almost *ex-parte*, 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 subject to payment of cost of **Rs.25,000/- (Rupees twenty-five thousand only)** by the assessee to the credit of the "District Legal Services Authority, Surat" within 2 weeks from receipt of this order. Subject to payment of above cost, we 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

diligent 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 29/01/2025.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 29/01/2025

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