

**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.931 to 934 & 935 to 936/SRT/2024

Assessment Years: (2012-13 & 2013-14)
(Physical Hearing)

Gauravkumar Manilal Patel, 1, Post: Hathuka, Kanbi Faliya, Tal: Valod, Tapi - 394640	Vs.	The ITO, Ward – 3(2)(7), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AOGPP5609G		
(Appellant)		(Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	17/02/2025
Date of Pronouncement	18/02/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

These six appeals by the assessee emanate from the orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 14.08.2024 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AYs) 2012-13 and 2013-14. For AY.2012-13, the assessee has filed appeals against orders of CIT(A) against the assessment order passed u/s 144 r.w.s 147 as well as penalty orders u/s 271F, 271(1)(b) and 271(1)(c) of the Act. For AY.2013-14, the appellate orders were against assessment order u/s 147 r.w.s 144 and penalty order u/s 271(1)(b) of the Act. Since, facts of both the assessment years are similar, with consent of both sides, these appeals were clubbed and heard together for the

sake of convenience and brevity. The ITA No.931/SRT/2024 for AY.2012-13 is taken as the 'lead case'.

2. The grounds of appeal in ITA No.931/SRT/2024 are as under:

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard and without considering submissions and paper book filed during the course of appellate proceedings.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in not considering the initial submission dated 21.05.2022 made by the assessee while passing the appellate order.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order

4. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in reopening assessment u/s. 147 by issuing notice u/s 148 of the I.T. Act, 1961.

5. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of entire credits amounting to Rs. 52,99,059/- on account of undisclosed and unexplained income.

6. It is therefore prayed that the assessment u/s 144 r.w.s 147 may please be quashed and/or that the above addition made by the assessing officer and confirmed by Ld. CIT(A) may please be deleted.

7. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."

3. The ground of appeal in ITA No.932/SRT/2024 are as under:

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard and without considering submissions filed during the course of appellate proceedings.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

3. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in the confirming the action of Assessing Officer in levying penalty of Rs. 10,000/- u/s 271(1)(b) of the I.T. Act*

4. *It is therefore prayed that the above penalty levied by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.*

5. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

4. The ground of appeal in ITA No.933/SRT/2024 are as under:

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in levying penalty of Rs. 14,41,718/-u/s. 271(1)(c) of the I.T. Act, 1961

4. It is therefore prayed that the above penalty levied by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.

5. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

5. The ground of appeal in ITA No.934/SRT/2024 are as under:

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard and without considering submissions filed during the course of appellate proceedings.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in levying penalty u/s 271F of Rs. 5,000/-

4. It is therefore prayed that the above penalty levied by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.

5. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

6. The ground of appeal in ITA No.935/SRT/2024 are as under:

“1. On the facts and in circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard. The date of hearing was 14.08.2024 and when the assessee logged in to upload the submissions, it was discovered that the order was already passed. Even the order of learned CIT(A) does not have any mention of notice dated 07.08.2024 fixing hearing on 14.08.2024.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

3. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in treating the notice u/s. 148 issued on 19.04.2021 after taking prior approval of PCIT, Surat-1 as show cause notice u/s 148A(b) of the Act instead of taking prior approval of Pr. CCIT or PDGIT for issuance of 148A(b) as required by the Act.

4. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in issuing notice u/s. 148 on 27.07.2022 after the expiry of 6 years i.e. after the limitation period as required by the provisions of Sec. 149 of the Act.

5. On the facts and circumstances of the case as well as law on the subject, the Jurisdictional assessing officer has erred in issuing notice u/s. 148A(b) when it was actually required to be issued by the Assessment Unit (NFAC).

6. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs. 55,07,890/- on account of unexplained money u/s. 69A of the I. T. Act, 1961.

7. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs. 1,68,002/-on account of undisclosed short term capital gain.

8. It is therefore prayed that the above addition made by the Assessing Officer may please be deleted or reduced.

9. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

7. The ground of appeal in ITA No.936/SRT/2024 are as under:

1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard and without considering submissions filed during the course of appellate proceedings.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in levying penalty of Rs. 20,000/- u/s 271(1)(b) of the I.T. Act.

4. It is therefore prayed that the above penalty levied by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.

5. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

8. Brief facts of the case are that the assessee did not file return of income for AY.2012-13. The assessee was identified as non-filer in the Non-filers Monitoring System (NMS). NMS aims to identify and monitor persons who enter into high volume transactions and have potential tax liabilities but have still not filed their tax returns. As per AIR / CIB information, assessee had deposited cash of Rs.69,17,170/- in his bank account with Dena Bank. The assessee did not reply to the notice issued u/s 133(6) of the Act. Thereafter, case of the assessee was re-opened u/s 147 of the Act after obtaining approval of the PCIT and notice u/s 148 of the Act was issued on 30.03.2019. The assessee did not file any return in response to the said notice. The Assessing Officer (in sort, 'AO') issued notice to the bank u/s 133(6) of the Act to the Bank and on perusal of the bank statement, he found that there was total credit of Rs.52,99,059/- in the

bank account. In absence of reply from the assessee, order u/s 147 r.w.s. 144 of the Act was passed treating Rs.52,99,059/- as undisclosed and unexplained income of the assessee. Penalty proceedings u/s 271(1)(c), 271(1)(b) and 271F of the Act were also initiated by AO.

9. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) issued 5 notices of hearing on 23.12.2020, 15.12.2021, 26.03.2022, 09.05.2022 and 14.05.2024. But, there was non-compliance by the appellant to the first 4 notices and partial compliance to the last notice dated 14.05.2024. The CIT(A) has reproduced the submission of assessee at pages 5 to 11 of the appellate order. There was also delay of 200 days in filing appeal before CIT(A). The CIT(A) observed it to be a case of deliberate inaction and delay on part of the appeal. The CIT(A) also observed that there was no sufficient cause for the delay. However, he took a lenient view in the interest of justice and condoned the delay. The findings of the CIT(A) is at para 15 of the order. He found that assessee is distributor of mobile recharge of Uninor Company under the trade name of 'Keshari Nandan Enterprises' and he received commission income. He has not filed return u/s 139 or 148 of the Act for AY.2012-13. The CIT(A) observed that deposit of cash of Rs.52,99,059/- in Dena Bank has been duly confirmed by the Bank Manager. No documentary evidences were submitted by the appellant to verify the claim in spite of multiple opportunities given by the CIT(A). Hence, the appellant failed to satisfactorily explain the nature and source of the cash deposit, due to which

the assessment order was upheld by the CIT(A). He also observed that since no attempt was made by the appellant to discharge the onus cast on him, the findings of the AO does not require inference. Accordingly, the appeal was dismissed by CIT(A).

10. 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 both AO and CIT(A) have passed *ex-parte* orders. He submitted that the CIT(A) had issued a notice on 07.08.2024, fixing the hearing on 14.08.2024. However, he passed the order at 3.17 PM on 14.08.2024 without waiting for the reply of the assessee. Since the order was passed on 14.08.2024 itself, reply of the assessee could not be uploaded. The Id. AR has submitted copy of the notice u/s 250 of the Act issued on 07.08.2024 by the NFAC, Delhi where the written submission was required to be furnished on or before 14.08.2024. However, the CIT(A) has not mentioned the said fact in the order u/s 250 of the Act. In the table at para 6 of appellate order, the factum of issue of notice on 14.08.2024 has not at all been mentioned. The Id. AR further submitted that assessee had filed two replies, both dated 21.05.2022, which have not been appreciated and considered by CIT(A). The assessee was a distributor of mobile recharges of Uninor Company from which he derived his income. The assessee did not file return of income as his income was below taxable limit. It was submitted that the cash deposited represent the receipts for the talk time transferred to retailers at small mobile shops and

correspondingly the assessee has made payment to Uninor Company and on the same, assessee earned profit of around 2% to 3%, which is below table income. However, both lower authorities have failed to appreciate the facts of the case and made huge addition to the total income. The Id. AR, therefore, requested to set aside the order of CIT(A).

11. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities. He submitted that the assessee did not furnish any explanation or supporting details before the AO. Even during the appellate proceedings, the appellant was non-compliant and submitted only partial reply. He further submitted that the assessee also filed the appeal late. In view of these facts, he requested that the order may be confirmed or in the alternative, it may be set aside with cost on the appellant.

12. We have heard both the parties and perused the materials available on record. It is an undisputed fact that the assessee has been non-cooperative to the statutory notices and the show cause notice issued to him by the AO and the CIT(A). It is further seen that assessee had not filed his original return of income of AY.2012-13, though there were credit entries to the extent of Rs.52,99,059/- in his bank account with Dena Bank. He had also not filed the return in response to notice u/s 148 of the Act. As stated by the AO, before issue of notice u/s 148 of the Act, a notice was issued to the assessee u/s 133(6) of the Act on 27.02.2019 to give details of the transactions, which was also not replied to. We also find that the CIT(A) has also issued five notices as per the

table given in para 6 of the appellate order. The CIT(A) had issued another notice on 07.08.2024, fixing the date of hearing on 14.08.2024. This is not mentioned in the said table. It is an undisputed fact that the date of hearing in respect of the last notice was on 14.08.2024 and on the same day the order u/s 250 of the Act was passed at 15.17 IST. Therefore, the CIT(A) has passed the order without waiting for the reply on the date hearing on 14.08.2024. Be that as it may, the Id. AR has also not filed any evidence to show that the assessee had in fact filed reply on or before 14.08.2024. Considering all these facts, we are of the view that though the assessee was negligent and non-cooperative before the lower authorities, the CIT(A) should have waited for the reply of the assessee till 14.08.2024. The Id. AR 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 peculiar 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. Accordingly, we hold that the interests of justice would be met in case the AO re-examines the entire issue afresh subject to payment of cost of **Rs.10,000/- (Rupees ten thousand only)** by the assessee to the credit of the 'District Legal Services Authority, Surat' within three weeks from receipt of this order. Subject to payment of above cost, we set aside the order of CIT(A) and remit the matter back to the file of AO with a direction to pass *de novo* assessment order 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 AO by not seeking adjournment without valid reasons. With these directions, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

ITA No.933/SRT/2024 (AY:2012-13):

14. 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. 931/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 271(1)(c) of the Act. As the penalty order does not survive, the resultant order of CIT(A) is quashed. We make it clear that the AO may initiate proceedings u/s 271(1)(c) of the Act during the fresh assessment proceedings, if required conditions are fulfilled. Accordingly, the ground is allowed for statistical purpose.

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

ITA No.934/SRT/2024 (AY:2012-13):

16. 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. 931/SRT/2024 (supra). One of the reasons given by the assessee for not furnishing the return u/s 139(1) of the Act, is that the income of the assessee was below taxable limit and he was not required to file his return u/s 139(1) of the Act. Since the matter has been restored to the AO for fresh adjudication,

after obtaining explanation and necessary details/evidence from the assessee, this issue is also set aside to the file of AO for fresh consideration as per law after granting adequate opportunity to the assessee. We make it clear that the AO may initiate proceedings u/s 271F of the Act during the fresh assessment proceedings, if required conditions are fulfilled. Accordingly, the ground is allowed for statistical purpose.

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

ITA No.932/SRT/2024 (AY:2012-13):

18. Though the appellant has raised five grounds of appeal, they are inter-related and pertain to levy of penalty of Rs.10,000/- u/s 271(1)(b) of the Act. Since the assessee did not comply with the notices issued u/s 148, 142(1), 129 of the Act and the show cause notice issued on 09.10.2019, penalty proceedings were initiated by the AO in course of the re-assessment proceedings u/s 144 r.w.s. 147 of the Act. In fact, the AO has passed an *ex-parte* order u/s 144 r.w.s. 147 of the Act wherein failure of assessee to comply with the notices on four occasions have been mentioned at para 2 of the assessment order. During the subject penalty proceedings, assessee filed written reply without any supporting documents. The AO thereafter issued a show cause notice on 20.05.2021, which was again not responded to. Therefore, the AO levied penalty of Rs.10,000/- u/s 271(1)(b) of the Act. Before CIT(A), the assessee submitted part details. The CIT(A) has taken into consideration the sequence of events wherein assessee did not reply to any of the notices issued on various occasions through the

notices were duly served on the e-mail id provided by the assessee. During the appellate proceedings, no documentary evidences were submitted in spite of multiple opportunities granted by the CIT(A). The CIT(A) observed that the AO has taken a lenient view by levying penalty for one default, though there were multiple non-compliances by the assessee. The appellant has not proved that there was reasonable cause for the said failures within the meaning of section 273B of the Act. We also find that the AO has been very fair and reasonable in levying penalty of Rs.10,000/- for one default only in spite of failure of assessee on four occasions to comply with the notices issued by him. It may be mentioned that section 271(1)(b) requires penalty of Rs.10,000/- for each such failure. Therefore, instead of Rs.40,0000/-, the AO has levied penalty of Rs.10,000/-. Hence, we find no reason to differ from the findings of the lower authorities. Accordingly, grounds are dismissed.

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

ITA No.935/SRT/2024 (AY:2013-14):

20. Facts of the case are similar to the facts of the case of the assessee for AY.2012-13 in ITA No.931/SRT/2024 (supra). The grounds raised by the assessee are also similar. We have set aside the order of CIT(A) and restored the matter to the file of AO for fresh adjudication after granting opportunity to the assessee. Following the same reasons, subject to payment of cost of **Rs.10,000/- (Rupees ten thousand only)** to the credit of “District Legal Services Authority, Surat” the order of CIT(A) is also set aside and restored to the file to AO for

fresh adjudication as per the direction given in the said appeal. The appeal is allowed for statistical purpose.

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

ITA No.936/SRT/2024 (AY:2013-14):

22. Though the appellant has raised five grounds of appeal, they are inter-related and pertain to levy of penalty of Rs.20,000/- u/s 271(1)(b) of the Act. Since the assessee did not comply with the notices issued on five occasions under different provisions of the Act and show cause notice dated 24.04.2023, penalty proceedings u/s 271(1)(b) of the Act were initiated by the AO in course of the re-assessment proceedings u/s 147 of the Act. In fact, the AO has passed an *ex-parte* order u/s 144 r.w.s 147 of the Act wherein failure of assessee on four occasions have been mentioned at para 2 of the assessment order. During the subject penalty proceedings, assessee filed written reply without any supporting documents. The AO subsequently issued a show cause notice on 20.05.2021, which was again not responded to. Therefore, the AO levied penalty of Rs.20,000/- u/s 271(1)(b) of the Act. Before CIT(A), the assessee partially submitted some details. The CIT(A) has taken into consideration the sequence of events wherein assessee did not reply to any of the notices issued on various occasions, which were duly served on the e-mail id provided by the assessee. During the appellate proceedings, no documentary evidences were submitted in spite of multiple opportunities granted by the CIT(A). The CIT(A) observed that the AO has taken a lenient view by levying penalty of Rs.20,000/-

for two defaults, though there were multiple non-compliances by the assessee. The appellant has not proved that there was reasonable cause for the said failures as within the meaning of section 273B of the Act. We have upheld penalty of Rs.10,000/- for such failure in AY.2012-13 in ITA No.932/SRT/2024 (supra). In our considered view, it would be fair and reasonable if the penalty levied u/s 271(1)(b) of the Act is restricted to Rs.10,000/- instead of Rs.20,000/- levied by the AO. Accordingly, the appeal is partly allowed.

23. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 18/02/2024

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 18/02/2024

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