

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1235/SRT/2024

Assessment Year: (2011-12)

(Physical hearing)

Dipesh Naresh Sattarshakwala, B-304, Sweet Residency, Near Sitaram Nagar, Honey Park Road Adajan, Surat-395009 PAN No. BJGPS 6238 A	Vs.	I.T.O., Ward 1(2)(1), Surat.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Sh. P.M. Jagasheth CA
Department represented by	Sh. Mukesh Jain, Sr. DR
Date of hearing	19/02/2025
Date of pronouncement	03/03/2025

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals), [in short, the Id. CIT(A)] dated 07.10.2024 for the Assessment Year (AY) 2011-12. Though, the assessee has raised multiple grounds of appeal, however, in our considered view, the substantial grounds of appeal relate to (i) validity of reopening under section 147 and issuance of notice under section 148, (ii) if Id. CIT(A) erred in confirming action of Assessing Officer (AO) in making addition of Rs. 98.60 lacs on account of unexplained expenditure/ purchases and (iii) if Id. CIT(A) erred in not allowing sufficient opportunity and in passing ex-parte order.
2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that no fair and proper opportunity was given to the assessee during the hearing before Id

CIT(A). The assessee filed appeal in 2019. At the time of filing appeal, the assessee in Form-35 has given e-mail address of his AR as of "jagashethcal@gmail.com" for the purpose of service of notice of hearing of appeal. However, no notice was sent through such email address, rather notice was sent through different email at dipesh_17shakwala@yahoo.com, which was discovered on visiting ITBA portal. It was revealed that only one notice under section 250 was sent through such email address that to on 28.01.2021, which was severe Covid Pandemic period, copy of screen shot of ITBA portal is filed on record. The impugned order was passed on 07.10.2024. The appeal of the assessee was pending since 2019. The assessee was not served with notice of appeal, thus, prevented in making compliance of such notices for the reasons explained hereinabove. The assessee has good case on merit, and is likely to succeed, if one more opportunity may be allowed to the assessee to contest his appeal on merit. The Assessing Officer (AO) also passed ex-parte assessment order by disallowing entire expenses/the alleged bogus purchases. The Id CIT(A) also passed ex-party order without discussing merits of the case. The Id. AR of the assessee submits that the AO also passed assessment order for the want of submissions. The Id. AR of the assessee submits that he undertakes on behalf of assessee to be more vigilant in future in complying the notices issued by the lower authorities and would file his submissions of first date of hearing by either of the lower authority. He prayed to restore the matter back to the file of AO.

3. In alternative and without prejudice submissions, the Id AR of the assessee submits that AO in his finding has recorded that assessee is in the business of cheque discounting and provided bogus bills and that during assessment, the

assessee failed to provide details of fund trail. Thus, keeping in view of the business activities of assessee, a reasonable addition on account of commission on the alleged bogus billing may be sustained. Suart bench and Ahmedabad bench has added commission income ranging from 0.5% to 2.00% percent of turnover, and he is ready to offer @ 6.00% of alleged disputed transaction, and in case his submission is acceptable, than, he will not pressed any other legal or factual grounds of appeal.

4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR), for the revenue submits that the assessee is habitual defaulter in making compliance. In case the Bench is of the view that the assessee deserves any relief, the matter may be restored back to the file of CIT(A) only with the direction to file appropriate reply and evidence to substantiate various issues.
5. We have considered the submissions of both the parties and have perused the orders of the lower authorities carefully.
6. We find that while passing assessment order, the AO made addition of Rs. 59.36 lacs on account of cash deposits during demonetization and further addition of Rs. 98.60 lacs bogus expenditure/ purchase / transaction with Dhawal Govindbhai Patel, who was providing cheque discounting. The Id CIT(A) confirmed the action of AO in ex-parte order. We find that the assessee filed appeal on 01.01.2029, however, first notice was issued to the assessee on 28.01.2021, through email, other than email provided on Form-35. Admittedly only one notice was issued to the assessee on 28,01.2021, yet the impugned order was passed on 07th October 2024, that is after more than three and half year of issuing notice to the assessee. In our considered view, the assessee was not allowed fair and reasonable to

contest the appeal, thus, order passed by the Id CIT(A) is set aside. On careful consideration of facts and the submissions of Id AR of the assessee, we are of the view that the assessee is interested in pursuing his appeal on merit. Further, considering the facts that substantial rights of the assessee are involved in the present case and both the lower authorities have passed order ex-parte and / or for the want of compliance, therefore, the matter is restored back to the file of AO to pass assessment order afresh and in accordance with law. Needless to direct that before passing the order, the AO shall grant fair and reasonable opportunity of hearing to the assessee. The assessee is also directed to be more vigilant in future and not to cause further delay and seek adjournment without any valid reason and to furnish all the details and his submissions and evidences on various grounds of appeal raised, as soon as possible. Considering the facts that we have restored the matter back to the file of AO, therefore, adjudication on alternative submissions of the assessee have become academic. In the result, the grounds of appeals raised by the assessee are allowed for statistical purposes.

7. In the result, this appeal of assessee is allowed for statistical purposes only.

Order announced in open court on 03 March, 2025.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER
Surat, Dated: 03/03/2025
**self / by author*

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER