

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1271/SRT/2024

**Assessment Year: (2017-18)
(Hybrid processing hearing)**

Yogeshkumar Manaharlal Hajariwala A/6, Ambika Niketan, b/h Jalaram Mandir, Diva Road, Ankleshwar, Bharuch-395 004	बनाम/ Vs.	Income Tax Officer, Ward- 3(2)(1), Surat, Room # 416, Aaykar Bhavan, Majura Gate, Surat-395 001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AJMPT 4689 H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Ms. Urvashi Shodhan, AR
राजस्व की ओर से /Respondent by	Shri Mukesh Jain, Sr-DR
सुनवाई की तारीख/Date of Hearing	05/03/2025
उद्घोषणा की तारीख/Date of Pronouncement	25/03/2025

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 24.01.2024 by the Commissioner of Income-tax (Appeals)/Addl/JCIT(A)-1, Mumbai [in short 'Ld. CIT(A)'] for the Assessment Year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer u/s 143(3) of the Act dated 09.12.2019. Grounds of appeal raised by the assessee are as under:

"1. Erred in dismissing appeal as ex-parte.

2. Erred in law in confirming addition of Rs.3,91,000/- as unexplained money u/s 69A of the Act.

3. Erred in law in confirming disallowance of deduction claimed u/s 80C of the Act of Rs.1,13,520/-."

2. Facts of the case in brief are that assessee filed his return of income declaring total income of Rs.1,75,230/- for the assessment year 2017-18 on 04.12.2017. The AO issued notices u/s 143(2) r.w.s. 142(1) on various dates through e-assessment portal. However, assessee has not uploaded any single response. The assessee has deposited cash of Rs.3,91,000/- in his bank account maintained with Prime Co-Op. Bank Ltd. and he had also claimed deduction of Rs.1,13,520 u/s 80C of the Act. As the assessee has not produced any evidence in support his claim, the AO added Rs.3,91,000/- and disallowed deduction claimed u/s 80C of the Act. Aggrieved by the addition made by AO, assessee preferred appeal before CIT(A).

3. The CIT(A) issued two notices fixing the hearing on 23.03.2021 and 11.08.2022. But there was no compliance by the appellant. Hence, the CIT(A) proceeded to decide the appeal based on the materials available on record. The CIT(A) relied upon the decisions of CIT vs. S. N. Banerjee & Ors, 10 CTR 354 (SC) and stated that to "prefer an appeal" would mean "effectively prosecuting an appeal". The appellant had not been able to discharge the primary onus/burden statutorily and judicially cast upon him to substantiate the claims made in his appeal. The appellant had not been able to support his contention taken as per the grounds of appeal. The CIT(A) also relied on the decision of Hon'ble Madhya Pradesh High Court in case of Estate of Late Tukojirao Holkar vs. CWT, 223 ITR 480 (MP) and observed that in the absence of any reasonable,

cogent and valid arguments/contentions, the additions/disallowance made by the AO was sustained. The CIT(A) confirmed the addition made by AO and dismissed the appeal of the assessee. As the appellant did not file any reply or evidence and did not avail the opportunities granted to it, the CIT(A) dismissed the appeal.

4. Before us, Ld.AR of the assessee filed additional evidence containing pages 1 to 19 and submitted that assessee was unable to submit before the lower authorities due to unavoidable circumstances. He submitted that this clearly substantiates the nature and source of cash deposit as well as assessee's claim made u/s 80C of the Act. The Ld. AR of the submits that the CIT(A) passed the order u/s 250 of the Act on 24.01.2024 without hearing the assessee in violation of the principles of natural justice. The 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 circumstances beyond his control. Adequate opportunity of hearing was not given to the assessee; therefore, Id. AR contended that one more opportunity should be given to the assessee to plead his case before the AO. He undertakes to be vigilant and furnish explanation and details expeditiously.

5. On the other hand, Ld.Sr-DR for the Revenue supported the order of lower authorities. He stated that assessee has been negligent in pursuing the appeal before CIT(A).

6. We have heard both the parties and perused the material available on record. We find that both lower authorities have passed ex parte orders. Evidently, the assessee did not comply with the notices issued by AO and CIT(A). Hence, addition of cash deposit of Rs.3,91,000/- and disallowance of deduction of Rs.1,13,520/- claimed u/s 80C of the Act have been made by AO, which was confirmed by CIT(A). Ld. AR of assessee submitted that non-compliance by assessee was not deliberate but due to unavoidable circumstances. He has submitted various details which were not submitted before AO or Ld.CIT(A). Rule-29 permits ITAT to admit additional evidence for any substantial cause. Ld. AR submitted that non-compliance was due to unavoidable circumstances. Hence, the additional evidences are admitted. After considering the contentions of both parties, we find that the CIT(A) has not passed an order as per the mandate of section 250(6) of the Act and dismissed the appeal of assessee only on the ground of non-compliance. The order passed by the CIT(A) is clearly violative of the express provisions of section 250(6) of the Act, which provides that the appellate orders of the CIT(A) are to state the points arising in the appeal, the decision of the authority thereon and the reasons for such decisions. The underlying rationale of the provision is that such orders are subject to further appeal to the appellate Tribunal. Speaking order would obviously enable a party to know precise points decided in his favour or against him. Considering the facts and circumstances of the case and the fact that the assessment order was

confirmed by CIT(A) in *ex parte* order, we are of the considered view that the assessee deserves one more opportunity to contest his case on merit. In the interest of justice, we set aside the order of CIT(A) and remit the matter back to the file of AO with a direction to pass fresh order in accordance with law after granting adequate opportunity of hearing to assessee. The assessee is directed to be vigilant and to furnish all details and explanation as needed by AO by not seeking adjournment without valid reason. With this direction, the grounds of appeal raised by the assessee are treated as allowed for statistical purposes. Since, we have remitted the file back to AO for *de novo* adjudication, the other grounds are not adjudicated, being academic in nature.

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

Order is pronounced under proviso to Rule 34 of ITAT, Rules, 1963 on /03/2025 in the open court.

Sd/-
(SANJAY GARG)

न्यायिक सदस्य/JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 25/03/2025

Dkp Outsourcing Sr.P.S*

Sd/-

(BIJAYANANDA PRUSETH)

लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार आयकर अपीलीय अधिकरण, सूरत