

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

आयकर अपील सं./ITA No.489/SRT/2024

Assessment Year: (2017-18)

(Hybrid Hearing)

Jayantilal Chimanlal Reshamwala, 4/2330, Doriwala, Salabatpura, Surat – 395001	Vs.	The ITO, Ward – 1(2)(2), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABEP8935N		
(Appellant)		(Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	08/04/2025
Date of Pronouncement	05/05/2025

आदेश / O R D E R

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 13.03.2024 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. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.55,00,000/- on account of alleged cash deposited in bank account treated as alleged unexplained money u/s.69A of the Income Tax Act, 1961 and not considering the fact that said amount of Rs.55,00,000/- is explained cash duly withdrawal from the bank in earlier years and thereby out of opening explained cash balance.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in

confirming the action of the Assessing Officer in the law by applying retrospectively the provisions of section 115BBE of the Act and Section 271AAC to the case of appellant being the said provisions in the Law were enacted after event of the cash deposited by the appellant.

3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has not offered adequate opportunities to hear the case and passed ex-parte order and hence the case may please be set aside and restored back to the CIT(A) or AO.

4. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in initiating penalty u/s.271AAC of the Income Tax Act, 1961.

5. It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.

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

3. Brief facts of the case are that assessee filed his return of income for AY.2017-18 on 28.03.2018, declaring total income at Rs.4,31,580/-. The case was selected for limited scrutiny under CASS. Various statutory notices and show cause notice were issued calling for various details relating to the cash deposits made during the year. The reply of the assessee has been discussed at para 4 of the assessment order. The assessee mainly claimed that he had withdrawn cash in the previous year, which has been deposited in his bank account. The cash in hand as on 31.03.2016 was Rs.70,00,298/-. The explanation of assessee was not accepted for the reasons discussed at para 6 of the assessment order. The AO, at para 8 of his order, held that the assessee failed to justify the source of cash deposits amounting to Rs.20,00,000/- in Surat People Co-operative Bank Limited on 20.05.2016 and Rs.35,00,000/- in Central Bank of India in August, 2016. Hence, cash deposits of Rs.55,00,000/-

was treated as unexplained money u/s 69A of the Act and added to the total income.

4. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) issued 3 notices fixing the hearing on 15.01.2021, 04.11.2022 and 05.03.2024. But, there was no compliance by the appellant to any of the notices. Hence, the CIT(A) proceeded to decide the appeal based on the materials available on record. He has reproduced assessment order at page 3 to 6 of his appellate order. The decision is at para 5.3 and 5.4 of his appellate order. He has observed that despite being given many opportunities, appellant did not respond during appellate proceedings nor did he furnish any written submission or evidence in support of the grounds of appeal raised by him. In absence of compliance by the assessee, he was constrained to agree with the findings of the AO and accordingly confirmed the addition of 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 notices, though uploaded on the ITBA portal, were not received by the appellant on the e-mail given in Form 35. He submitted copy of the notices of e-proceedings available in Income-tax portal and submitted that the notices were sent at 'jayantireshamwala@csjariwala.com' instead of 'csjariwala@gmail.com'. Therefore, the assessee did not receipt any notice from the CIT(A). Hence, the non-compliance was not deliberate on the part of the appellant. He submitted that the appellant is ready with all details and

evidences in support of the grounds raised by him in the appeal before CIT(A). He requested that one more opportunity may be given to the appellant to plead his case on merit.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities. He, however, observed that the CIT(A) has passed an *ex parte* order dismissing the appeal without any discussion on merit of the case.

7. We have heard both the parties and perused the material available on record. The AO made addition of Rs.55,00,000/-, being the cash deposits made by the appellant during the year in his bank accounts, by not accepting the explanation of the assessee that the opening cash in hand as on 01.04.2016 was Rs.70,00,298/-. The CIT(A) has dismissed appeal because the appellant did not respond to the notices issued by him. 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 *ex parte* 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 CIT(A) 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 CIT(A) 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 CIT(A) for *de novo* adjudication, the other grounds are not adjudicated, being academic in nature.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 05/05/2025.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 05/05/2024

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 //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat