

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SURAT" BENCH, SURAT**

**BEFORE S/SHRI SANJAY GARG, JUDICIAL MEMBER
AND
BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**ITA No.539 and 540/SRT/2024
Assessment Year : 2017-18**

Ankushkumar Madhubhai Nakrani 34, Mani Nagar Society Nr.Saraswati School, A.K. Road, Fulpada, Surat 395 008 PAN : AFIPN 3686 G	Vs	The ACIT, Cent.Cir.2 Surat.
---	----	--------------------------------

(Applicant)		(Responent)
--------------------	--	--------------------

Assessee by :	Shri P.M. Jagasheth, CA
Revenue by :	Shri Ajay Uke, Sr.DR

मुनवाई की तारीख/Date of Hearing : 18/06/2025
घोषणा की तारीख /Date of Pronouncement: 19/06/2025

आदेश/O R D E R

Per Sanjay Garg, Judicial Member

The captioned two appeals have been preferred by the assessee against the separate orders passed by the Ld.Commissioner of Income Tax(Appeals)-4, Surat [hereinafter referred to as "ld.CIT(A)"] both dated 20.3.2024 under section 250 of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2017-18.

2. The assessee vide ITA No.539/SRT/2024 has contested the confirmation of addition of Rs.88,12,000/- made by the AO under section 69A of the Act. Whereas, vide ITA No.540/SRT/2024 the assessee challenges the confirmation of penalty levied by the AO

under section 271AAC(1) of the Act, which is consequential to aforesaid quantum addition.

3. At the outset, the ld.counsel for the assessee invited our attention to the impugned orders of the ld.CIT(A) to submit that same are *ex parte* of the assessee. The ld.counsel for the assessee has invited our attention to appeal form before the ld.CIT(A) i.e. Form No.35 filed before the ld.CIT(A), wherein, email address of the assessee for service of notice has been mentioned as nakranee_ankush@yahoo.co.in. The ld.counsel has further invited our attention to the details of the notices issued by the ld.CIT(A), as downloaded from the income tax portal, which showed that the notices of hearing were sent by the ld.CIT(A) on different email address, which is mentioned as srshethtax@gmail.com. The ld.counsel for the assessee, therefore, has submitted that the notices sent through electronic mode by the ld.CIT(A) did not come to the notice of the assessee, because they were sent at different email-id and not at the email-id as mentioned in the Form No.35. He, therefore, has submitted that non-representation of the assessee before the ld.CIT(A) was not intentional, but due to the aforesaid reasons. He further submitted that the assessee a fair case on merits, and that the assessee may be given an opportunity to present his case before the ld.AO. In this respect, he has submitted that though the assessee had furnished various details and explanations before the AO, however, certain crucial facts and documents, which were relevant for just and proper decision of the case, have remained to be furnished before the AO. He, therefore, has requested that matter may be restored to the file of the AO.

4. The ld.DR, on the other hand, has relied on the above orders of the ld.CIT(A).

5. Having considered the rival submissions, we are of the view that the interests of justice will be well served, if the matter relating to the quantum addition is restored to the file of the AO. Therefore, the impugned order of the Id.CIT(A) is set aside and the matter relating to ITA No.539/SRT/2024 is restored to the file of the AO for *de novo* assessment on the issue.

Needless to say, the AO will provide adequate opportunity to the assessee to present his case. The assessee is also directed to furnish the requisite details and evidences before the AO and not to seek unnecessary adjournments.

6. As far as the matter relating to the levy of penalty under section 271AA(1) of the Act is concerned, the same is consequential to the quantum addition made/sustained. Since, we have already set aside the order of the Id.CIT(A) while adjudicating the ITA No.539/SRT/2024, and the matter has been restored to the file of the AO for assessment afresh on the issue, therefore, as on the date, there is no addition surviving against the assessee, and thus, the impugned penalty under section 271AAC(1) has legs to stand and the same is ordered to be deleted, and however, with the liberty to the AO that, if after passing of the fresh assessment order, if he will be of the view that the penalty under section 271AAC(1) of the Act is attracted in this case, he may initiate fresh penalty proceedings accordingly.

7. With the above observations, both the appeals of the assessee are treated as allowed for statistical purpose.

Order pronounced on 19th June, 2025

Sd/-
(Bijayananda Pruseth)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

Ahmedabad, dated 19/06/2025

vk*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

1. Date of dictation- 18/06/2025
2. Date on which the typed draft is placed before the Dictating Member
3. Date on which the approved draft comes to the Sr.P.S./P.S. -
4. Date on which the fair order is placed before the Dictating Member for Pronouncement
5. Date on which the file goes to the Bench Clerk : 19-6-2025
6. Date on which the file goes to the Head Clerk.....
7. The date on which the file goes to the Assistant Registrar for signature on the order.....
Date of Despatch of the Order.....