

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE MS. SUCHITRITA RAGHUNATH KAMBLE, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.404/SRT/2025

Assessment Year: 2017-18

(Hybrid hearing)

Milanben Narendra Choksi MU, WD.No.3/628, Navapura Karva Road, Surat-395 003	बनाम/ Vs.	Income Tax Officer, Ward-1(2)(3), Surat, Room No.118, First Floor, Aaykar Bhawan, Near Majura Gate, Opp. Civil Hospital, Surat- 395001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AAPPC 8557 R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Sapnesh R. Sheth, Advocate
राजस्व की ओर से /Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of Hearing	19/08/2025
उद्घोषणा की तारीख/Date of Pronouncement	26/09/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 11.02.2025 by the National Faceless Appeal Centre, Delhi/ Commissioner of Income-tax (Appeals), [in short, 'NFAC/CIT(A)'] for assessment year (AY) 2017-18, which in turn assessment order passed by National Faceless Assessment Centre, Delhi/Assessing Officer (in short, "AO") u/s 144 of the Act on 27.12.2019.

2. The ground of appeal raised by the assessee is as under:

1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in passing ex-parte order without providing reasonable opportunity of hearing to assessee.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer of passing ex-parte order u/s 144 of the I.T. Act, 1961.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer in rejecting book results of assessee by invoking provisions of Section 145 of the I.T. Act, 1961.

4. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer in making addition of Rs.31,75,017/- by estimating G.P on account of alleged lower valuation of closing stock.

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

3. The facts of the case the assessee an individual engaged in the business of trading of gold, silver and ornaments in her proprietary concern viz. M/s. N.N. Choksi. The assessee had filed her return of income for the year under consideration i.e. A.Y. 2017-18 on 28-10-2017 declaring total income of Rs.5,64,650/-. The case of the assessee was taken up for scrutiny by issuing notice u/s. 143(2) of the Act dated 24-09-2018. During the course of the assessment proceedings, in response to various notices u/s. 142(1) the appellant had made submissions. The assessee was requested to show cause as to why the book results should not be rejected and adjustment in stock should be made accordingly. However, assessee neither replied nor submitted any details in compliance of aforesaid show cause notice. In absence of compliance, the AO proceed for completing the 'best judgment assessment' u/s 144 of the Act on the basis of material available on records. On verification of the details and material available on record, the AO observed that the assessee had purchased 999 gold bars but after conversion, she had sold some

of the gold bars as 916 gold bars and despite conversion of the gold bars, the closing stock was not increased by that ratio. The AO estimated that the entire quantity of gold of 13219.000 grams as sold by the assessee during the entire year under consideration is 916 gold bars and accordingly, he had converted the entire quantity sold during the year from 999 gold bars to 916 gold bars *i.e.* the entire quantity sold has been reduced to total gold of 12120.724 grams ($916 \times 13219 / 999$) from 13219.00 grams, and the closing stock of the assessee has been increased by 1098.276 grams (*i.e.* 13219.000 grams - 12120.724 grams). Thereafter, on applying the average rate of purchase in the month of March thereon of Rs.2890.91 per gram, the closing stock of the assessee has been increased by the AO by Rs.31,75,017/- (*i.e.* 1098.276 x Rs. 2890.91) and the same addition has been made. In making the impugned addition, the AO has also invoked the provisions of section 145 of the Act by rejecting the regularly maintained and audited books of account of the assessee.

4. Aggrieved by the addition made by the AO, assessee preferred appeal before CIT(A). The CIT(A) issued six notices fixing the hearings on 18.01.2021, 08.02.2022, 10.08.2023, 26.06.2024, 11.11.2024 and 16.12.2024. However, there was no response from the appellant till their date of passing the order u/s 250 of the Act on 11.02.2025. Therefore, the CIT(A) observed that assessee had not pursued the appeal in an effective manner and hence he passed the impugned order *ex parte* primarily on the basis of documents/details available

on record. The grounds relating to best judgment assessment u/s 144 has also been dismissed because assessee remained unresponsive during assessment proceedings. As regards the addition of Rs.31,75,017/- by estimating GP of impugned lower valuation of closing stock, the CIT(A) has dismissed the grounds in para-5 to 8 of the appellate order. In the result, appeal of assessee was dismissed.

5. Aggrieved by the order of CIT(A), the assessee has filed the present appeal before the Tribunal. The Ld. AR filed a small paper book and argued that both the AO and CIT(A) have passed *ex parte* orders due to non compliance by the assessee. The Ld. AR submitted that assessee did not receive any notice from the CIT(A) because notices were sent in the e-mail id. of the erstwhile CA. As the notices were sent to a wrong e-mail and not on the e-mail address in Form-35, neither the notices of hearing nor the order u/s 250 of the Act was received in the official e-mail id. Hence, the assessee could not file the necessary details before lower authorities. It is submitted by Ld.AR, that during the entire year, the assessee has sold only 999 gold bars but it was only at the end of the year *i.e.*, in the month of March, 2017 that the assessee had sold some 916 gold bars after conversion. However, the AO without appreciating the aforesaid fact has wrongly estimated that the entire quantity of gold of 13219.000 grams as sold by the assessee during the entire year under consideration is 916 gold bars. It is further submitted by the Ld. AR that the AO has grossly erred in treating the sale of the entire year as sales made of

916 gold bars. The Ld. AR, therefore, requested that one more opportunity should be given to assessee to contest the case and matter may be remitted back to the file of AO to decide the case on merit in the *de novo* assessment.

6. On the other hand, Ld.Sr-DR has not opposed the prayer made by Ld. AR to set aside the matter to the file of AO.

7. We have heard both the parties and perused the materials available on record. We find that both the AO and CIT(A) have passed *ex parte* orders. The AO has passed the assessment order u/s 144 of the Act. The CIT(A) has also passed the order because assessee did not attend three notices issued by him. The Ld. AR submitted that the non-compliance was neither deliberate nor intentional. He requested for one more opportunity in the interest of justice and fair play. The Ld. Sr-DR has also not opposed or countered submission of Ld.AR. He has rather agreed that the matter may be restored back to the file of AO. Considering the facts and circumstances of the case and the submission of Ld. AR for the appellant that the *ex parte* assessment order was confirmed by CIT(A) in *ex parte* order, we are of the considered view that appellant deserves one more opportunity to contest his case on merit. It is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to plead his case. Accordingly, we hold that the interests of justice would be met in case the AO examines the case of appellant afresh subject to the payment of cost of Rs.10,000/- (Rupees ten thousand only) by the appellant to the credit of the **'PM National Relief**

Fund' within three weeks from receipt of this order. Subject to the payment of above cost, we set aside the order of CIT(A) and remit the matter back to the file of AO for *de novo* assessment and to pass a speaking order after affording reasonable opportunity of being heard to appellant. The appellant is also directed to be more vigilant and furnish explanation and submit relevant details and documents before the AO. For statistical purposes, the appeal of the appellant is treated as allowed.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 26/09/2025 in the open court.

Sd/-
(SUCHITRITA R KAMBLE)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 26/09/2025
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**

// True Copy //

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत