

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.398/SRT/2025

Assessment Year: (2023-24)

(Hybrid hearing)

Raj Kumar Agarwal, B-303, Megh Malhar Apartment, Near Vidhya Bharti School, Bhatar Road, Surat - 395001	Vs.	ITO, Ward – 2(2)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABTPA0902D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Suresh K. Kabra, CA
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	15/09/2025
Date of Pronouncement	21/11/2025

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 20.02.2025 by the Additional/Jt. Commissioner of Income-tax (Appeals)-1, Mumbai [in short 'Addl./JCIT(A)-1'] for the assessment year (AY) 2023-24.

2. The grounds of appeal raised by the assessee are as under:

"1. CIT(A) has erred and was not just and proper on the facts of the case and in law in 'not allowing' confirming the option of new tax regime as claimed by the assessee in his income tax return.

2. PRAYER:

2.1 The option for new tax regime in all be kindly allowed.

2.2 Personal hearing may be granted.

2.3 Any other relief that your honour may deem fit may be granted.

3. The assessee craves leave to add, amend, modify alter or delete any of the grounds at the time of hearing.”

3. The facts of the case in brief are that the assessee derived income from house property, profits and gains of business or profession and other sources. He filed his return of income on 30.07.2023 and computed tax under new tax regime u/s 115BAC of the Act. The Assessing Officer (in short, 'AO'), Centralized Processing Centre (CPC) processed the return but did not allow the option for new tax regime. The AO, CPC has computed tax under the old tax regime by raising demand of Rs.85,910/-. The assessee filed rectification application u/s 154 of the Act, which was rejected by AO, CPC vide e-mail dated 08.10.2024.

4. Aggrieved by the order of AO, CPC, the assessee filed appeal before the Addl./JCIT(A). During appellate proceedings, the Addl./JCTI(A) issued notices, and the assessee sought time for filing a reply within 20 days. Even after the extended period, the appellant has not filed any reply even after lapse of 40 days. A final notice was issued to the assessee but assessee did not respond. The CIT(A) held that assessee has nothing valid to say and the CPC has rightly taxed the income of the assessee. He dismissed the appeal of the assessee.

5. Aggrieved by the order of Addl./JCIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the assessee had clearly chosen the new tax regime u/s 115BAC of the Act, but AO, CPC has ignored the valid option and mechanically applied the old regime. The rectification application u/s 154 of the Act was also rejected. The

assessee could not file his submissions before the Addl./JCIT(A) due to circumstances beyond his control. He submitted that the Addl./JCIT(A) passed an ex parte order without hearing the appellant on merit. Adequate opportunity of hearing was not given to the assessee during the appellate proceedings. The appellant is ready to submit all details and evidences before the Addl./JCIT(A). The Id. AR requested that one more opportunity may be given to the appellant to plead his case on merit. He relied upon the decisions of Tribunal in cases of (i) Harbans Singh vs. AO, CPC, (2024) 165 taxmann.com 146 (Amritsar – Trib.) and (ii) Arun Gopilal Ssmnani vs. ITO, (2025) 174 taxmann.com 33 (Ahd – Trib.)

6. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. He would, however, have no objection if the matter is restored to file of CIT(A).

7. We have heard both the parties and perused the materials available on record. It is not in dispute that the appellant filed return of income under new tax regime u/s 115BAC of the Act. But, the AO, CPC has computed tax under the old tax regime by raising demand of Rs.85,910/-. The Addl./JCIT(A) has dismissed appeal due to the non-compliance to the notices after availing time by way of adjournment. After considering the contentions of both parties, we find that the Addl./JCIT(A) has not passed an order as per the mandate of section 250(6) of the Act and dismissed the appeal of assessee by upholding the findings of the AO, CPC. The ex parte order passed by the CIT(A) is clearly violative of the express provisions of section 250(6) of the Act. 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 intimation u/s 143(1) of the Act was confirmed by CIT(A) by way of an ex parte order, we are of the considered view that the assessee deserves one more opportunity to plead his case on merit. In the interests of justice, we set aside the order of Addl./JCIT(A) and remit the matter to his file to verify the option of new tax regime u/s 115BAC after giving adequate and reasonable opportunity of hearing to the assessee. The assessee is directed to be vigilant and to furnish all details and explanation as needed by the Addl./JCIT(A) by not seeking adjournment without valid reason.

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
21/11/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 21/11/2025

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

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat