

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA Nos.78 to 80/SRT/2022

(AYs 2011-12, 2012-13 & 2016-17)

(Hearing in Physical Court)

Nisha Vrateen Vaish A-101, Shukan Residency Near Nandini Apartment, Vesu, Surat-395007 PAN : AAQPV 0441 E	Vs	Income Tax Officer, Ward-2(3)(3), Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	16.09.2022
उद्घोषणा की तारीख/Date of pronouncement	16.09.2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This set of three appeals by assessee are directed against separate orders of National Faceless Appeal Centre [for short to as "Ld. NFAC"]/Ld. CIT(A) all dated 15.12.2021 for the assessment years 2011-12, 2012-13 & 2016-17, which in turn arise out of separate assessment order passed under section 144 r.w.s. 147 of Income-Tax Act (Act). In all appeals the assessee has raised certain common grounds of appeals,

therefore, all the appeals were clubbed, heard together and are decided by common order to avoid the conflicting decisions. For appreciation of fact the fact in appeal in ITA No. 78/SRT/2022 are treated as “**lead**” case. The assessee has raised the following grounds of appeal: -

- “1. On the facts and in the circumstances of the case as well as on the subject, the learned Assessing Officer has erred in reopening the assessment u/s 147 by issuing notice u/s 148.*
- 2. On the facts and in the circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in passing ex-parte order u/s 144 without giving proper opportunity of being heard.*
- 3. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred passing in ex-parte order without giving proper opportunity of being heard.*
- 4. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing office in making addition of Rs.6,58,520/- u/s 68 of the Act on account of bogus long term capital gain.*
- 5. It is prayed that the assessment may please be quashed and/or addition made by the assessing officer and confirmed by CIT(A) may please be deleted.”*

2. Perusal of record shows that the impugned order was passed by the NFAC/ld.CIT(A) on 15.12.2021 and the assessee was

required to file appeal on or before 14.02.2022. However, these appeals were filed on 07.04.2022, the Registry of this Tribunal worked out (calculated) the delay of 53 days of delay in filing in the respective appeals.

3. The 1d. Authorised Representative (1d. AR) of the assessee submits that the delay in filing all three appeals were occurred due to the Covid-19 pandemic period prevailing at the relevant time and the assessee was prevented by sufficient cause, in filing appeals before the Tribunal. There is no intentional delay in filing the appeals, rather it occurred due to the pandemic situation, which was out of control of the assessee. The 1d AR for the assessee submits that the Hon'ble Supreme Court in Suo Moto Writ Petition No. (C) No. 3 of 2022 has directed to condone the delay between the period of 15.03.2020 to 28.02.2022 and further allowed 90 days' time from 01.03.2022 in filing appeal before various forums. The assessee has filed her three appeals within the grace period allowed by Hon'ble Apex Court. The 1d AR for the assessee prayed to condone the delay.

4. On the other hand, the ld. Senior departmental representative (Sr-DR) for the Revenue submits that the Bench may take decision in accordance with law.
5. We have considered the rival submissions of both the parties on the plea of condonation of delay and find that the assessee has filed her three appeals within the grace period allowed by Hon'ble Apex Court in *suo motu* Writ Petition No. (C) No. 3 of 2022, vide order dated 10.01.2022. Therefore, respectfully following the directions of the Hon'ble Apex Court, the delay in filing the present three appeals are condoned and these appeals are accepted for adjudication on merit.
6. At the outset of hearing, Ld. AR for the assessee submits that in all three cases NFAC/ Ld. CIT(A) passed all the orders in *ex parte* proceedings and dismissed all the appeals without adjudicating the grounds of appeals on merit. The assessee was not given fair and proper opportunities of hearing to the assessee. The ld. AR for the assessee submits that assessee has a good case on merit and is likely to succeed, if one more opportunity is allowed to hear the cases on merits and the

assessee be allowed to file necessary evidence in support of her claims. The ld. AR for the assessee submits that assessee was not well versed with the electronic gadgets raised and could not find out the notices issued to her. The assessee notices were allegedly issued only through ITBA portal. The ld. AR for the assessee submits that he undertakes on behalf of the assessee to be vigilant in future and to make the proper compliance of the notices and will not default in future for the purpose of service of notice(es) through ITBA portal, the notice may either be served through e-mail of assessee or ITBA portal given in Form-36 of Appeal Form at the new address given in Form-36.

7. On the other hand, Ld. Sr-DR for the Revenue opposed the contentions of Ld. AR for the assessee and would submit that assessee was given sufficient and reasonable opportunities of hearing, however, the assessee failed to make any compliance despite the service of three consecutive days and now assessee does not deserve further opportunity.

8. We have considered the rival submissions of both the parties and have gone through the orders of the authorities below. We find that Assessing Officer passed assessment order under section 144 r.w.s. 147 30.10.2018. In the assessment order, the Assessing Officer made treated the long term capital gains (LTCG for short) on sale of script of Vax Housing Finance Corporation Limited of Rs.6,45,597/- as bogus LTCG entry. The Assessing Officer also added commission paid to the operator @ 2% of the LTCG. The NFAC/Ld. CIT(A) upheld the addition in *ex parte* order by taking view that three notices were served through ITBA portal but none of the notices were compiled by the assessee. Before us, the ld. AR for the assessee made submission that assessee was not well verse with the electronic gadgets and could not made compliance in time and that in future he undertakes on behalf of assessee to make proper compliance. We instead of going into the controversy, if the notices sent by the assessee was not properly complied or not, we find that the order of NFAC/Ld. CIT(A) is not in accordance with mandate of Section 250(6) of the Act. Section 250(6) of the Act mandates that the Ld. CIT(A)

while deciding the appeal is required to pass order on points of determination (grounds of appeals), decision therein on and reasons for such decision. So far as objection of 1d DR is concerned, that the assessee was given sufficient opportunity and that she is not eligible for further opportunity. We find that for non-compliance of the notices of lower authorities, the assessee has to bear the cost of appeal fees. Moreover, the 1d AR for the assessee has not disputed the service of notice and fairly conceded that the assessee was unable to use electronic gadgets. Considering the facts and circumstances of the present case that NFAC/Ld. CIT(A) passed *ex parte* order without adjudicating the grounds of appeal raised by the assessee and the assessee was not afforded fit and proper opportunity, thus, we are of the view that assessee deserves hearing on merit. Therefore, the grounds of appeal raised by assessee are restored back to the file of NFAC/Ld. CIT(A) to adjudicate all the grounds of appeal on merit. Needless to say that before passing the order, NFAC/ 1d. CIT(A) shall grant fair and proper opportunity of hearing to the assessee. The assessee is also directed to appear before NFAC/Ld. CIT(A) as

and when the date of hearing and to provide all necessary evidence & information without any further delay and not to seek adjournment without any valid reasons. In the result, appeal of assessee is allowed for statistical purposes in above terms.

ITA No.79 & 80/SRT/2022 for A.Ys. 12-13 & 16-17

9. Considering the fact that we have already restored back assessee's appeal ITA No.78/SRT/2022 (supra) to the file of NFAC/Ld. CIT(A) for afresh adjudication, therefore remaining two appeals (ITA No.(s) 79 & 80/SRT/2022) are also restored back to the file of NFAC/Ld. CIT(A) for afresh adjudication in accordance with law. Both the appeals of assessee are also allowed for statistical purposes.
10. A copy of the instant common order be placed in the respective case file(s).

Order pronounced in the open court on 16/09/2022 at the time of hearing.

Sd/-
(Dr ARJUN LAL SAINI)
[लेखा सदस्य/ACCOUNTANT MEMBER]
Surat, Dated: 16/09/2022
Dkp. Out Sourcing Sr.P.S

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

Sr. P.S./Assistant Registrar, ITAT, Surat