

आयकर अपीलीय अधिकरण सूरत न्यायपीठ, सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT
BENCH, SURAT

श्री सी एम गर्ग, न्यायिक सदस्य एवं श्री ओ पी मीना, लेखा सदस्य के समक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND
SHRI O.P.MEENA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.153/SRT/2017 & 531/SRT/2018
निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

Shri Shyamratan Sitaram Kedia,
7-C, Ravitej Apartment,
Near Indoor Stadium, Athwalines,
Surat.

Vs. Income Tax Officer,
Ward-1(2)(4),
Surat.

[PAN: ABGPK 3825L]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by : Shri Ramesh Kumar Malpani, C.A
प्रत्यर्थी की ओर से /Revenue by : Shri Dileep Kumar, Sr. D.R
सुनवाई की तारीख/Date of Hearing : 11-10-2018
घोषणा की तारीख /Date of Pronouncement : 16-10-2018

आदेश /ORDER

PER C.M.GARG, JUDICIAL MEMBER:

These two appeals have been filed by the Assessee against the separate orders of Commissioner of Income Tax (Appeals)-2, Surat ('CIT(A)' for short) dated 24.08.2017 & 17.05.2018 for the Assessment Years (A.Ys) 2013-14 & 2014-15 respectively.

2. As agreed by both the parties facts and circumstances of both the appeals are identical and similar for the sake of convenience and brevity,

we are taking appeal for AY 2013-14 as lead case. The grounds raised by the Assessee in ITA No.153/SRT/2017 for AY 2013-14 read as follows:

1. *That the ex-parte appeal order passed by Id. C.I.T.(A) is wrong and bad-in-law as the same has been passed without hearing the appellant.*
2. *That the ex-parte appeal order passed by Id. CIT(A) is wrong and bad-in-law as the same has been passed without considering the submission and contentions of the appellant furnished in the form of 'statement of facts' along with the appeal.*
3. *That the ex-parte appeal order passed by Id. CIT(A) dismissing the appeal of the appellant as unadmitted is wrong and bad-in-law as the same has been passed without deciding the various grounds of appeal on merits on the basis of material available on record, statement of facts and grounds of appeal.*
4. *Without prejudice to other grounds of appeal, that the Id. CIT(A) has erred on facts and in law in upholding the addition of Rs. 25,16,723/- u/s. 68 of the Act, by dismissing the appeal of the appellant on ex-parte basis.*
5. *Without prejudice to other grounds of appeal, that the Id. CIT(A) has erred on facts and in law in upholding the addition of Rs. 54,000/- by treating the loans and advances given as unexplained income, by way of dismissing the appeal of the appellant on ex-parte basis.*
6. *That the Id. CIT(A) has erred in upholding the charging interest u/s. 234B of the Act, by way of dismissing the appeal of the appellant on ex-parte basis.*

Grounds No.1 to 3:

3. We have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. The Id. Assessee's Representative (AR) submitted that the Id. CIT(A) was wrong and incorrect in passing ex-parte order and dismissing the appeal of the assessee ex-parte on the allegation of non-prosecution without

adjudicating the grounds raised by the assessee in Form No.35. The Id. AR further submitted that the Id. CIT(A) is wrong and bad-in-law as the same has been passed without considering the submission and contentions of the appellant furnished in the form of 'statement of facts' along with the appeal and the ex-parte appeal order passed by Id. CIT(A) dismissing the appeal of the appellant as un admitted is wrong and bad-in-law as the same has been passed without deciding the various grounds of appeal on merits on the basis of material available on record, statement of facts and grounds of appeal.

4. The Id. AR submitted that the assessee is suffering with severe kidney problem and he was underwent a live donor renal transplantation under our care on 07.06.2015 and two years before and almost two years after he was under medical treatment for this decease. The Id. AR submitted that before and after kidney transplant the assessee was suffering with severe problems for that he was admitted to hospital several times and also undergone diagnosis before the surgery and after transplant he had to stay in a hygienic atmosphere to avoid infections and failure of kidney transplant operation and for this purpose he stayed isolated and confined to his bed room only for one year after the kidney transplant. The Id. AR submitted that these are the reasons which prevented the assessee from pursuing assessment and first appellate

proceedings before the authorities below therefore, the Id. CIT(A) was not justified and correct in passing ex-parte order and dismissing appeal of the assessee ex-parte without adjudicating the grounds of the assessee on merits. The Id. AR submitted that the appeal may kindly be restored either to the file of AO or to the file Id. CIT(A) for a fresh adjudication.

5. Replying to the above, the Id. Departmental Representative (DR) submitted that when the assessee is not cooperating with the proceedings then, the Id. CIT(A) has no option but to dismiss appeal expartily. However, in fairness, he submitted that the AO has passed detailed order after allowing due opportunity of hearing to the assessee. Therefore, if it is found necessary, just and proper then, the case may be resorted to the file of the Id. CIT(A) for adjudication of appeal on merits.

6. On careful consideration of above rival submissions, first of all, we may point out that from the medical documents submitted by the assessee, it is vivid that the assessee underwent kidney transplant operation on 07.06.2015 at Lanka Hospital, Colombo. Obviously, before kidney transplant a patient has to suffer a lot during treatment and dialysis procedure and after transplant he is bound to stay in a hygienic and lonely position for a long time to avoid further infections and failure of operation. In this situation, prior to one or two years from the date of operation i.e., 07.06.2015 and subsequent to operation the assessee had to stay alone

to avoid infections for couple of years. The assessment order for AY 2013-14 has been passed on 22.04.2016 and the Id. CIT(A) dismissed appeal on 24.08.2017, whereas for AY 2014-15 the assessment order was passed on 20.01.2017 and Id. CIT(A) dismissed appeal on 17.05.2018 which is surrounding period of surgery which was held on 07.06.2015. in view of above, we are of the considered opinion that the Id. AO passed impugned assessment orders after allowing due opportunity of hearing to the assessee, whereas the Id. CIT(A) dismissed both the appeals expartily on the allegation of non-prosecution without adjudicating the same on merits. Therefore, keeping in view the medical papers submitted by the assessee, we are satisfied that due to health problems, the assessee could not attend proceedings before Id. CIT(A) due to medical reasons which were beyond control of the assessee hence, we find it appropriate, and necessary to restore the case to the file of the Id. CIT(A) to the first appellate stage for adjudication on merits after allowing due opportunity of hearing to the assessee and without being prejudiced from the impugned first appellate order. Since, facts and circumstances of both the appeals are identical and similar therefore, our conclusion noted for AY 2013-14 would apply *mutatis mutandis* to AY 2014-15 also and ground Nos. 1 to 3 of this appeal are also allowed and this appeal is also restored to the file of the Id. CIT(A) for adjudication on merits. Accordingly, appeals are allowed for statistical purposes on

ground Nos. 1 to 3 and restored to the file of the Id. CIT(A) to first appellate stage.

7. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on this day of 16th October, 2018

Sd/-

(ओ पी मीना)

(O.P.MEENA)

लेखा सदस्य/Accountant Member

सूरत / Surat; दिनांक Dated : 16th October, 2018

EDN

Sd/-

(सी एम गर्ग)

(C.M.GARG)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to :

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