

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**  
**श्रीमती दिवा सिंह, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष**  
**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A. No.449/SRT/2018**  
**निर्धारण वर्ष /Assessment Year : 2014-15**

Nitesh Bhagchand Jain, Lower Ground, M.R.House, Kohinoor Textile Market, Ring Road, Surat.	<b>Vs.</b>	The Assistant Commissioner of Income Tax, Circle-1(2), Surat.
<b>[PAN: AAXPJ 5234 G]</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>
निर्धारिती की ओर से /Assessee by		Shri Ramesh Malpani - CA
राजस्व की ओर से /Revenue by		Shri P.S.Choudhary - Sr.DR

<b>सुनवाई की तारीख/ Date of hearing:</b>	09.01.2019
<b>उद्घोषणा की तारीख/Pronouncement on</b>	11.01.2019

**आदेश /ORDER**

**PER DIVA SINGH, JM:**

1. The present appeal has been filed by the assessee assailing the correctness of the order dated 17.05.2018 of CIT(A)-2, Surat pertaining to 2014-15 assessment year on various ground on merit including Ground No.1 to 3 which read as under :

“ 1) That the ex-parte appeal order passed by Id. Commissioner of Income Tax (Appeals) [CIT(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) dismissing the appeal of the appellant 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 also by way of arguments raised during the assessment proceedings as re-produced in the Assessment Order.

3) That the ex-parte order passed by Id. CIT(A) dismissing the appeal of the appellant 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.”

2. The parties were heard only in respect of the above grounds in the light of the facts that the impugned order has been passed dismissing the assessee's appeal for non-representation relying upon B.N.Bhattacharjee

and Another (118 ITR 461); Estate of Late Tukoji Rao Holkar Vs. CWT (223 ITR 480) (MP); The Hon'ble Bombay High Court in the case of M/s.Chemipol V/s. Union of India in Excise Appeal No.62 of 2009; Late Tukoji Rao Holkar (MP), 223 ITR 480. and CIT Vs. Multiplan India (P) Ltd. (38 ITD 320) (Del)etc., dismissed the appeal holding as under :

*5.1.5. Respectfully, following these judicial pronouncements (supra), the appeal filed by the appellant is treated as dismissed for non-prosecution. On merit also, the appellant has failed to furnish any corroborative evidence of his claim. In view of the above, on merits also appeal deserves to be dismissed. Hence, appeal is dismissed for non-prosecution as well as on merits too. which is not in conformity with this statutory mandate, accordingly.*

**3.** The Id.AR inviting attention the application for early hearing placed on record submitted that due to the continuous sickness of his father the assessee was not in a position to compile the necessary documents on account of which fact adjournments had been sought. The hearing fixed on the last date of hearing i.e. 30.04.2018 was a public holiday on account of Buddha Pournima as such no hearing took place on such date, accordingly in these peculiar facts and circumstances the Id.AR giving his oral undertaking that the assessee shall participate in the proceedings before the CIT(A) in the eventuality remand is directed made a prayer that the impugned order be set-aside in order to afford the assessee a reasonable opportunity of being heard.

**4.** The said prayer of the assessee was not object to by the Id.Sr.DR.

**5.** We have heard submissions and perused the material available on record.

**6.** In the light of the submissions of the parties before the Bench, we set-aside the impugned order. We find that notwithstanding the fact that on the last date the hearing was fixed on a public holiday on account of which reasons the appeal could not be heard even otherwise it is seen that the disposal of the assessee's appeal in the facts of the present case is not in terms of the statutory requirements. Sub-Section (6) of Section 250 of the Income Tax Act, 1961 mandates that the Commissioner (Appeals) while deciding the

appeal is required to dispose the appeal stating the points for determination; the decision thereon and the reasons for the decision. We find that the CIT(A) has not followed the said statutory mandate. Accordingly, accepting the oral undertaking given by the Id. AR, the impugned order is set aside back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law. Needless to say that assessee shall be afforded a reasonable opportunity of being heard. It is also made clear that in the eventuality, the assessee abuses the trust reposed, the Id.CIT(A) would be at liberty to pass an order on the basis of the material available on record. Said order was pronounced in the Open Court at the time of hearing itself.

7. In the result, appeal of the assessee allowed for statistical purpose.
8. The order pronounced in the open court on 11-01-2019.

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत/ Surat, दिनांक Dated: 11<sup>th</sup> January, 2019/S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

Sd/-

(श्रीमती दिवा सिंह /DIVA SINGH)

(न्यायिकसदस्यतथा/JUDICIAL MEMBER)

**By order**

/ / TRUE COPY / /

**Assistant Registrar, Surat**