

आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"D" BENCH, AHMEDABAD
BEFORE, SHRI A.D. JAIN, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.2371 & 2372/AHD/2018
जधाण वष/Asstt. Years: (2009-2010 & 2012-13)

Hemantkumar M Patel, 3, Raj Nagar Socieity, O.P. Road, Vadodara-390020. PAN: BMWPP4775N	Vs.	DCIT (Int. Taxn), International Taxation, Vadodara.
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(Applicant)		(Respondent)
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Assessee by :	Ms. Urvashi Shodhan, A.R
Revenue by :	Smt. Smiti Samant, Sr.DR

सुनवाई क तारख/Date of Hearing : 08/04/2019

घोषणा क तारख /Date of Pronouncement: 08/04/2019

आदेश/O R D E R

PER BENCH

The captioned appeals have been filed at the instance of the Assessee against the orders of the Commissioner of Income Tax (Appeals)-13, Ahmedabad [Ld.CIT(A) in short], dated 28/12/2016 and 23/10/2018 arising in the matter of assessment order passed under s. 144 r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 10/11/2016 and 27/12/2017 relevant to Assessment Years (AYs) 2009-10 and 2012-13 respectively.

2. First, we take ITA bearing no. 2372/Ahd/2018 for A.Y. 2012-13. The assessee has raised the following grounds of appeal:

1. *The Learned CIT(Appeals) erred in holding that in the order passed on 23.10.2018 by stating that nobody attending the hearing. In this regard I have to submit that no notice of hearing was received by me of the following dates namely:*

- i) 09.08.2018
- ii) 14.08.2018

The address on which the notices have been sent by the Learned CIT(A)-13, Ahmedabad is presumably incorrect and the appeal was filed with the address as under:

*3, Raj Nagar Society,
Beh: GEB Colony
O.P. Road, Vadodara-390 020.*

2. *The Learned CIT(Appeals) erred in dismissing the appeal on account of non attendance despite the fact that the notices sent by him on various dates stated that the appellant order has not been received by the appellant.*

2. *The notices have been presumably sent to an address where the appellant does not reside and hence the non attendance was committed in respect of the said notices.*

3. *The Learned CIT(A) erred in not adjudicating the Ground no.6 of the Ground of Appeal wherein it was categorically stated that the Learned Assessing Officer did not have any authority to substitute the value of the property without referring to the Valuation Officer and the Valuation Report was already filed during the course of original assessment proceedings.*

4. *Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal... ”*

3. The learned counsel for the assessee at the outset submitted before us that the learned CIT (A) has passed the ex parte order without providing the opportunity of being heard to the assessee. As per the learned AR, the learned CIT (A) has not served the notice for hearing at the correct of the assessee. As per the learned AR the correct address of the assessee is as under:

3, Raj Nagar Society,
Beh: GEB Colony,
O.P. Road, Vadodara- 390020

In view of the above, the learned AR requested us to restore the matter to the file of learned CIT (A) for fresh adjudication as per the provisions of law.

4. On the contrary, the learned DR submitted that the assessee was afforded sufficient opportunities for hearing by the learned CIT (A) and therefore he opposed to the restore the matter to the file of learned CIT (A).

5. Heard both the parties and perused the materials available on record. On perusal of appeal form 35 before the Id. CIT-A, we find that the assessee has mentioned the address for the service of the notice as detailed below:

Lal Darwajaat Bhaili,
Vadodara, Gujarat
Pincode: 390015

5.1 We further find that the order passed by the learned CIT (A) was containing the same address as mentioned above. Therefore we are not convinced with the argument of the learned counsel for the assessee that the notices fixing the case for hearing were issued by the learned CIT (A) at the wrong address.

5.2 However, on further perusal of the statement of facts filed along with form 35 before the learned CIT (A) by the assessee, it was revealed that the assessee had mentioned his address at 3, Raj Nagar Society, Beh: GEB Colony, O.P. Road, Vadodara- 390020 which is also available in PAN database and IT records. Therefore, we are of the view that the learned CIT

(A) before adjudicating the appeal ex parte should have also issued notice for hearing at the said address.

5.3 It is an undisputed fact that the assessee could not raise his points of contentions before the learned CIT (A) as required under the provisions of section 250(2) of the Act. Therefore, in the interest of justice and fair play we are of the considered opinion that the assessee deserves one more opportunity of being heard. Hence we are inclined to restore this issue to the file of the learned CIT (A) for fresh adjudication as per the provisions of law after affording the reasonable opportunity of being heard to the assessee.

5.4 The granting of an opportunity of hearing aligns with the age-old principle that the Justice is not only to be done but manifestly seen to be done.

5.5 It is needless to mention that, the assessee should cooperate and attend the hearing time to time as to be fixed by the learned CIT (A). In view of the above, we are setting aside the issue to the file of learned CIT (A) for fresh adjudication. Hence the ground of appeal of the assessee is allowed for statistical purposes.

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

7. **Now coming to the ITA bearing No. 2371/Ahd/2018 for A.Y.2009-10.**

8. The facts of the case are identical to the facts of the case as discussed above in ITA 2372/Ahd/ 2017, which we have adjudicated by restoring the issue to the file of the learned CIT-A. Therefore respectfully following the

same, we restore the impugned issue to the file of the learned CIT (A) for fresh adjudication as per the provisions of law. Hence the ground of appeal of the assessee is allowed for statistical purposes.

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

10. In the combined result both the appeals of the assessee are allowed for statistical purposes

Order pronounced in the Court on 08/04/2019 at Ahmedabad.

-Sd-

(A.D. JAIN)

VICE PRESIDENT

Ahmedabad; Dated

Manish

(True Copy)

08/04/2019

-Sd-

(WASEEM AHMED)

ACCOUNTANT MEMBER