

आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"A" BENCH, AHMEDABAD
BEFORE, SHRI A.D. JAIN, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.357/AHD/2015
ढथाण वष/Asstt. Year: 2009-2010

Radhakrishna Gold Jewellery Pvt. Ltd., 1, C.P. Chambers, Shethni Pole, Ratan Pole, Ahmedabad-380001. PAN: AACCR4091F	Vs.	J.C.I.T(OSD), Circle-5, Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N. Divatia, A.R
Revenue by :	Shri B.P. Shrivastava, Sr.DR

सुनवाई क ताराख/Date of Hearing : 19/06/2019

घोषणा क ताराख /Date of Pronouncement: 19/06/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-9, Vadodara [Ld.CIT(A) in short], dated 31/12/2014 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 22/12/2011 relevant to Assessment Year (A.Y) 2009-10.

The assessee has raised the following grounds of appeal:

- 1.1 *The order passed u/s.250 on 31/12/2014 for A.Y.2009-10 by CIT, (A)-9, Abad levying penalty of Rs.10 lakh in respect of excess stock found during survey is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 *The Ld. CIT(A) has grievously erred in law and or on facts in holding that the appellant was not interested in pursuing the appeal and thereby disposing of the same ex-parte.*
- 1.3 *The Ld CIT(A) has failed to appreciate that the hearing of the appeal used to adjourn for one or the other reason such as details not ready or the concerned CIT(A) was not available after recess etc. The AR of the appellant Shri Vivek Chavda Advocate had attended the office of CIT(A) in afternoon on 11-12-2014, though the notice dt 2-12-2014 fixing hearing on 11-12-2014 was received by his office on or about 1-00 pm but the CIT(A) was not available and clerk had stated that a fresh notice would be issued. Thus there was no deliberate "non-attendance" as alleged by CIT(A)*
- 2.1 *The Ld.CIT(A) has grievously erred in law and or on facts in upholding the penalty of Rs.10 lakh as suppression of stock of Rs.27,18,000 though the appellant had fully explained with evidence the difference between the physically inventory and book stock.*
- 2.2 *That in the facts and circumstances of the case as well as in law, the Id. CIT(A) ought not to have confirmed penalty of Rs.10 lakh u/s.271(l)(c).*
- 3.1 *With prejudice to above and in the alternative, the penalty of Rs.10 lakh levied by AO and confirmed by CIT(A) is highly excessive and calls for reduction.*

It is therefore prayed that the penalty of Rs.10 lakh levied by the AO and confirmed by CIT(A) should be deleted

2. At the outset, it was observed that the Ld. CIT(A) decided the appeal *ex parte* vide order dated 31.12.2014 due to non-appearance of the assessee and its authorized representative. Against the impugned *ex parte* order of Ld. CIT(A) assessee filed an appeal before us and pleaded in the ground of appeal that the AR appeared before the ld. CIT-A on the last date of hearing, i.e., 11-12-2014 but the ld. CIT-A was not available. The clerk of the Ld. CIT-A stated that the fresh notice for the hearing would be issued. As such the assessee

claimed that non-appearance before the Id. CIT-A was not deliberate. Accordingly, the Id. AR before us prayed to restore the matter to the file of Id. CIT(A) for fresh adjudication by the law.

3. On the other hand, the Id. DR agreed to remand the matter to the Id. CIT(A) for fresh adjudication as per the provision of law.

4. Heard both the parties and perused the materials available on record. Considering the facts and the circumstances as discussed above, we are of the view that Ld. CIT(A) should have given another opportunity to the assessee to appear before him in the interest of justice and fair play to explain his points of contentions. Therefore, in this view of the matter, we are inclined to remit the matter back to the file of Ld. CIT(A) with the direction to decide the issue raised by the assessee after giving a reasonable opportunity of being heard to it. It is needless to say that the assessee should co-operate in the appellate proceeding and attend the hearing as and when required by Ld. CIT(A). Hence, this ground of assessee's appeal stands allowed for statistical purpose.

5. In the result, for statistical purpose, the appeal of the assessee is treated as allowed.

Order pronounced in the Court on 19/06/2019 at Ahmedabad.

-Sd-

(A.D. JAIN)

VICE PRESIDENT

(True Copy)

Ahmedabad; Dated 19/06/2019

Manish

-Sd-

(WASEEM AHMED)

ACCOUNTANT MEMBER