

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी" अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD KUMAR, HON'BLE VICE-PRESIDENT AND
SHRI RAJPAL YADAV, HON'BLE JUDICIAL MEMBER

ITA No. 260/Ahd/2019
Assessment Year : 2015-16

Shri Sugnesh Harshvadan Shah, 201, Nirja Flats, Mithakhali Six Roads, Navrangpura, Ahmedabad-380009 PAN : ANKPS 8508 C	V/s.	The Income Tax Officer, Ward 2(2)(3), Ahmedabad
अपीलार्थी/(Appellant)	..	प्रत्यर्थी/ (Respondent)
Assessee by :		Shri AL Thakkar, AR
Revenue by :		Shri LK Jain, Sr DR

सुनवाई की तारीख/Date of Hearing : 14/06/2019

घोषणा की तारीख /Date of Pronouncement : 08/07/2019

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

The assessee is in appeal before the Tribunal against the order of learned CIT(A)-5, Ahmedabad dated 28.12.2018 passed for Assessment Year 2015-16. The assessee has filed an application for early hearing of the appeal. During the course of hearing of application for early hearing, it came to our notice that the impugned order passed by the learned CIT(A) is an *ex-parte* order whereby learned First Appellate Authority has just concurred with the stand of Assessing Officer without following the procedures contemplated under sub-section (6) of Section 250 of the Income-tax Act, 1961. Therefore, we put it to the parties as to why the appeal itself be not taken up for hearing. Learned Departmental Representative did not object to this and, accordingly, we proceed to decide the appeal itself.

2. With the assistance of the learned representatives, we have gone through the record carefully. It emerges out from the record that the assessee has filed his return of income on 29.08.2015 declaring total income at Rs.8,42,370/-. The case of the assessee was selected for scrutiny assessment and notice under Section

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143(2) of the Act was issued on 29.07.2016 which was duly served upon the assessee. The learned Assessing Officer has observed that, in response to the notices issued, Shri Piyush Agarwal, CA/the Authorized Representative of the assessee has attended on behalf of the assessee from time to time and furnished the details and documents, which learned Assessing Officer has verified and placed on record. Thereafter, learned Assessing Officer has rejected the book results and passed the assessment order under Section 144 of the Act according to his best judgment. He determined the taxable income of the assessee at Rs.55,35,020/-. He has made an addition of Rs.46,92,651/-.

3. Dissatisfied with the assessment order, the assessee carried the matter in appeal before the learned First Appellate Authority. A perusal of paragraph no.4 of the impugned order would indicate that learned First Appellate Authority has listed the appeal on eight occasions; and out of these, it appears that, on first three occasions, even a notice was not served upon the assessee. On the remaining dates, the assessee has filed applications for adjournment which were allowed. According to the assessee, he has filed an application on 18.12.2018, however, this application was not rejected but learned CIT(A) concluded the hearing and passed an *ex-parte* order on 28.12.2018.

4. On due consideration of the above details, we are of the view that the impugned order is not sustainable for the following reasons namely:-

- a) Sub-clause (6) of Section 250 contemplates that learned CIT(A) would state the points in dispute and thereafter record reasons in support of his conclusion on those points. A perusal of the order would indicate that learned CIT(A), though reproduced the grounds and findings of the Assessing Officer, failed to analyze the details submitted by the assessee and the details available in the assessment record. On all the issues, almost similar finding is being recorded.
- b) The assessee has filed an application for adjournment that has not been specifically rejected and intimated to the assessee.
- c) Even for the sake of arguments, it is assumed that there was a little negligence on the part of the assessee in conducting his appeal before the First Appellate Authority, then the punishment in the shape of tax liability on the addition of Rs.46,92,651/- is disproportionate to the negligence.

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Therefore, in the interests of justice, we deem it proper to grant one more opportunity to the assessee to submit details in support of his contentions.

5. In view of the above discussions, we allow this appeal of the assessee and set aside the order of the learned CIT(A). We restore all the issues raised by the assessee to the file of the learned CIT(A) for fresh adjudication. The assessee will be at liberty to file the necessary details in support of his defense. It is needless to say that the observations made by us will not impair or injure the case of the Revenue and will not cause any prejudice to the defense or explanations of the assessee.

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

Order pronounced in the Court on 8th July, 2019 at Ahmedabad.

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Ahmedabad, Dated 08/07/2019

Bt

Sd/-

(RAJPAL YADAV)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad