

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

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &**  
**SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 277/Ahd/2019  
(निर्धारण वर्ष / Assessment Year : 2014-15)

<b>Shri Jigar Navinkumar Shah</b> 4, Sanskarbharti Co.Op. Society, Nr. Jain Derasar, Ankur Road, Ahmedabad - 380013	<b>बनाम/</b> Vs.	<b>The Income Tax Officer</b> Ward – 2(2)(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BFZPS2009N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri A. L. Thakkar, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Vidhyut Trivedi, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	18/10/2019
घोषणा की तारीख /Date of Pronouncement	23/10/2019

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-10, Ahmedabad ('CIT(A)' in short), dated 14.12.2018 arising in the assessment order dated 16.12.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY. 2014-15.

2. The matter was originally fixed for early hearing as per the application of the assessee dated 01.10.2019 in the Registry. The matter was listed for early hearing and considering the grounds raised by the

assessee, it was considered expedient to adjudicate the appeal at this stage itself.

3. The learned AR for the assessee adverted our attention to para no.4 of the order of the CIT(A) showing a tabulated statement whereby an impression was given that the assessee has failed to comply with the notices issued by the first appellate authority. The CIT(A) accordingly decided the order *ex parte* owing to alleged non-compliance of the notice of hearing. In this context, the learned AR for the assessee submitted that the assessee has duly attended before the AO and therefore there was no reason for him to not attend before the first appellate authority for redressal of grievances. The learned AR for the assessee pointed out that it was as per the oral direction of CIT(A), the assessee moved adjournment application again and again and afresh date was given pursuant to such requests. The last application for adjournment was made on 12.12.2018 and the CIT(A) has dismissed the appeal of the assessee *ex parte* abruptly. The learned AR accordingly submitted that such *ex parte* order reiterating the observations of the AO is a futile exercise and has caused serious prejudice to the assessee in violation of principles of natural justice. The learned AR pointed out that various decisions sought to be relied upon by the CIT(A) are clearly distinguishable on facts as the assessee cannot be regarded as non-compliant on the person. The assessee has duly appeared in the assessment proceedings before the AO and has also responded to the hearing dates before the CIT(A) *albeit* in the shape of adjournment letter for the reasons narrated above. The learned AR accordingly submitted that a benign view be taken in the circumstances and *ex parte* order of the CIT(A) be set aside and be restored back to the file of CIT(A) for *de novo* adjudication on merits uninfluenced by observations made in *ex parte* proceedings.

4. The learned DR for the Revenue, on the other hand, relied upon the order of the CIT(A) and submitted that ample opportunities were given to the assessee, which were not availed leaving no recourse with the CIT(A) but to complete the proceedings before him *ex parte*.

5. We have carefully considered the rival submissions. We notice that assessee has duly appeared in the assessment proceedings before AO but however the notice of hearing before the CIT(A) has remained uncomplished. The CIT(A) has disposed of the appeal of the assessee relying on the observations of the AO without any independent inquiry into the facts in the absence of assistance from the assessee. Looking at the totality of circumstances, we find substance in the plea on behalf of the assessee towards violation of natural justice. In the absence of the assessee, it is naturally difficult for the first appellate authority to comprehend the nuances of the issues involved. The assistance from the assessee would, without doubt, bring the measure of intellect in the decision making. We are thus inclined to set aside the *ex parte* order of the CIT(A) passed in a summary manner and which lacks of objectivity, to prevent miscarriage of justice. The appeal is accordingly restored to the file of the CIT(A). All issues are kept open without fetters for consideration of the CIT(A). The CIT(A) shall pass order in accordance with law after giving reasonable opportunity to the assessee. The assessee shall fully cooperate in the proceedings before the CIT(A) without any demur. Subject to above directions, the appeal of the assessee is restored to the file of the CIT(A) for *de novo* adjudication.

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

**This Order pronounced in Open Court on 23/10/2019**

Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER  
Ahmedabad: Dated 23/10/2019

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBE

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /

DR, ITAT, Ahmedabad

6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।