

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.782/SRT/2018

निर्धारण वर्ष/Assessment Year: 2011-12

Azamali K.Mansuri, Ratasamar Falai, Koprali Road, Vapi. [PAN: AGEPM 0193 N]	V s .	The Income Tax Officer(TDS), Valsad.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

Stay Petition No.28/SRT/2019

(Arising out of ITA No.782/SRT/2018)

निर्धारण वर्ष/Assessment Year: 2011-12

Azamali K.Mansuri, Alam Scrap Traders, Samar Faliya, Koarli Road, Gulsan Nagar, Chhiri, Vapi Dist, Valsad. [PAN: AGEPM 0193 N]	V s .	The Income Tax Officer(TDS), Valsad.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Divyesh Dadhaniya –A.R.
राजस्वकीओरसे /Revenue by	Smt.Anupama Singla – Sr.DR

सुनवाईकीतारीख/ Date of hearing:	11.12.2019
उद्घोषणाकीतारीख/Pronouncement on:	13.12.2019

आदेश / O R D E R

PER SANDEEP GOSAIN, JM:

1. This main appeal and Stay Petition filed by the Assessee are directed against the order of Ld.Commissioner of Income Tax(Appeals)-Valsad, dated 12.10.2018 for the assessment year 2011-12.

2. On the grounds mentioned at the very outset, we noticed that the present appeal was decided by the Id.CIT(A) by holding that ample opportunities were given to the assessee to submit its contention regarding appeal filed, but the assessee always neglected the hearing notices and no one turned up for hearing nor filed any written submissions. It is apparent that the negligence of the appellant shows that he has nothing to defend against the addition made by the AO. And also non-compliance to the notices served leads to conclusion that there is not reason to differ with the findings of the AO and hence, appeal of the assessee is dismissed.

3. During the hearing, Id.Counsel for the assessee has submitted that Ld. CIT(A) has treated the appeal petition of the assessee as inadmissible by holding that it was filed beyond prescribed time limit and no cogent reasons for delay in filing appeal was put forth. Therefore, the Id.Counsel requested that the impugned order may be cancelled and the issues in dispute may be set aside to the file of the Ld.CIT(A) to decide the same afresh, after giving adequate opportunity of being heard to the assessee.

4. On the other hand, the learned Sr.DR relied on the orders of the authorities below and contended that the learned CIT(A) has allowed Four Opportunities i.e. 20.04.2018, 23.05.2018, 09.07.2018 & 19.09.2018 which was duly served to the assessee of being heard to the

assessee, but the assessee has failed to appear before him and continuously postponing the hearings fixed. Therefore, the learned CIT(A) was justified in upholding the demand raised by the AO by dismissing the assessee's appeal.

5. We have heard both the parties and perused the records as well as the relevant provisions of law. We find that the learned CIT(A) has simply dismissed the appeal of the assessee for non-appearance by the assessee on various dates. We find that in the instant case, the assessee's not-compliant attitude and negligency of the appellant in compliance regarding additions made by the AO. However, considering the interest of justice, the principle *audi alteram partem* is the basic concept of the natural justice. The expression *audi alteram partem* implies that a person must be given an opportunity to defend himself which is *sin qua non* of every civilized society the right to notice, the right to present case and evidence, right to refer advert evidence, right to examine, right to legal representation, disclosure of evidence to party, report of enquiry be shown to the other party and reasoned decision or speaking order is must. We are of the view that the assessee must be given one more opportunity of being heard and to represent his case. Therefore, in exercise of the powers conferred under Rule 28 of Tribunal Rules. We restore back to the file of the learned CIT(A) to provide one more opportunity and also thereby to consider all the points so raised by the assessee. Nevertheless to mention, that assessee will co-operate

in the appeal proceedings and appear before the learned CIT(A) for the decision afresh subject to a cost of **Rs.3,000/-** to be paid to the **Prime Minister's National Relief Fund** in the interest of justice within 30 days of receipt of this order. We make it clear that non-attendance will of the assessee before CIT(A) will entail confirmation of the impugned addition made by the AO. The assessee will file necessary evidences on which he wants to rely upon, accordingly, appeal of the assessee set-aside to the file of Id.CIT(A) for the decision afresh.

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

S.A.No.28/SRT/2019:

7. Since we have already set-aside the appeal in the above appeal in assessee's own case in ITA No.782/SRT/2018 for A.Y.2011-12, consequently, the Stay Petition by Assessee becomes infructuous.

8. In the result, Stay Petition filed by the assessee is dismissed as infructuous.

9. Order pronounced in the open court on 13-12-2019.

Sd/-
(O.P.MEENA)

(लेखा सदस्यतथा/ACCOUNTANT MEMBER)

Sd/-
(SANDEEP GOSAIN)

(न्यायिक सदस्यकेसमक्ष /JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 13th December, 2019 / S.Gangadhara Rao, Sr.PS

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

By order

/ / TRUE COPY / /

Assistant Registrar, Surat

