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**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**Before Shri C.M.GARG, Judicial Member, and
Shri O.P. MEENA, Accountant Member**

**ITA No.3385/AHD/2016
Assessment Year: 2008-09**

Ektaben Rinakumar Shah, B/1, Arpan Apartment, Opp. Manmandir, Tamliyawad, Nanpura, Surat 395001.	बनाम/ Vs.	ITO, Ward - 1(2)(5), Surat
(Appellant)		(Respondent)
P.A. No. ARJPS3974R		

Assessee by	Shri Rashesh Shah - CA
Revenue by	Shri B. P. K. Panda - Sr. DR
Final Date of Hearing:	10/01/2018
Date of Order:	22/01/2018

आदेश / ORDER

Per Shri C.M. Garg, J.M:

This appeal is filed by the assessee against the order of the learned CIT (Appeals)-I, Surat, dated 10.05.2013 passed under section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 2008-09.

2. In this appeal the assessee has raised the following grounds of appeal:-

"(i) On the facts and circumstance of the case as well as law on the subject, the Ld. CIT(A) has erred in passing ex-party order without giving sufficient opportunity of being heard.



(ii) On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of Assessing Officer in making assessment u/s 144 of the I.T. Act 1961.

(iii) On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs. 36,26,500/- on account of unexplained deposits in undisclosed bank account.

(iv) On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of Assessing Officer in disallowing expenditure of Rs 8,63,920/- being 50% of the total expenditure claimed by assessee.

(v) On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of Assessing Officer in disallowing the deduction claimed under chapter VI-A of Rs 38,461/-

(vi) It is therefore prayed that the above additions/disallowances made by the Assessing Officer and confirmed by the Ld. Commissioner of Income Tax (Appeals) may please be deleted.



3. Application of assessee for condonation of delay in filing appeal: -

We have heard arguments from both the sides. The Ld. Assessee's Representative (AR) drawing our attention towards application, filed in the Affidavit form, submitted that the Assessing Officer passed ex-party order and therefore, delay was caused in filing appeal before CIT (A). The Ld. AR further submitted that the first appellate authority passed ex-party order on 10/05/2013 on the ground that the assessee did not filed application for condonation of delay. The Ld. AR further

submitted that all affairs of assessee are managed by her husband who was suffering from nervous brake down and therefore the case could not be represented properly before the authorities below. The Ld. AR also submitted that copy of first appellate order dated 10/05/2013 was received by the assessee on 23/09/2016 after regular follow up by the Ld. AR and there is a delay of 23 days in filing appeal before the Tribunal, therefore, delay may kindly be condone and appeal may kindly be admitted for hearing.

4. Replying to the above, the Ld. Departmental Representative (DR) strongly opposed to the condonation of delay. However, he could not controvert the fact that after regular follow up the copy of first appellate order was received by the assessee on 23/09/2016 and there is a delay of only 23 days in filing appeal after receipt of copy of said order. We may also point out that the assessee is a lady and her husband was looking after tax litigation on her behalf and his ill state of health is a good cause for justifying the delay. On consideration of entire facts and circumstances in which delay has been caused, we are of the view that the delay has been caused due to bonafide reason which is a valid cause for condoning the delay caused due to the situation beyond control of the assessee, therefore, delay is condone and appeal is admitted for hearing. Finally application for condonation of delay is allowed.



5. Ground No. 1

Apropos ground No. 1 we have heard arguments from both the sides and carefully perused the record before us and impugned assessment and first appellate order. The Ld. AR submitted that the authorities below did not provide due opportunity of hearing to the assessee. The Ld. AR further submitted that the Assessing Officer as well as the LD. CIT (A) passed ex-party order and the Assessing Officer passed assessment order u/s 144 of the Act by simply pointing out some notices allegedly issued to the assessee but these notices were not served upon the assessee and due to this reason the assessee filed appeal before Ld. CIT (A) by delay of two and half months. The Ld. AR further submitted that the CIT (A) also decided the appeal ex-party without allowing opportunity to file application for condonation of delay which resulted into dismissal of appeal.

6. The Ld. AR lastly submitted that the case may kindly be restored to the file of Assessing Officer for a fresh adjudication after allowing opportunity of being heard to the assessee that would meet the requirement of principles of natural justice and also justice to the assessee.

7. Replying to the above, the Ld. DR strongly supported the action of the authorities below and contended that when the assessee is not complying with the notices and directions then



they had no alternate but to pass an ex-party order. However, in all fairness under his command, the Ld. DR submitted that if it is found just proper and necessary to allow opportunity of being heard to the assessee by the Assessing Officer then the department has no serious objection in this regard.

8. On careful consideration of above submissions, we are of the view that the Assessing Officer has noted that notices were issued to the assessee but from the table given in the assessment order, we observe that there is no specific mentioning of service of notices upon the assessee and the Assessing Officer has also given very short date for hearing in the said notices. So far as first appellate is concerned the CIT (A) also dismissed appeal ex-party on two counts viz delay in filing appeal and on merits by upholding the ex-party assessment order. Delay in filling appeal was, as per Ld. AR, due to ex-party proceedings before the Assessing Officer and the copy of assessment order was received by the assessee after lapse of statutory period for filing appeal therefore delay was caused. On this contention the Ld. DR could not place any fact showing voluntary and deliberate omission on part of assessee in filing first appeal before the Ld. CIT (A). In this situation we are satisfied that the assessee was not provided due opportunity of hearing by the authorities below. In the backdrop of above facts, we are inclined to hold that the authorities below have passed orders in violation of principles of natural justice hence, the same are set aside and the case is restored to the file of Assessing Officer to the assessment




stage. The Assessing Officer is directed to reframe assessment order after allowing due opportunity of being heard to the assessee and without being prejudice from the earlier assessment and first appellate order. Accordingly ground no. 1 of the assessee is allowed.

9. Since, we have restored the case to the file of Assessing Officer therefore other grounds of assessee becomes in-fructuous and hence, we are not adjudicating them as having become in-fructuous.

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

Order pronounced in the open court on 22/01/2018


Sd/-
(O.P. Meena)
ACCOUNTANT MEMBER

Sd/-
(C.M. Garg)
JUDICIAL MEMBER

दिनांक /Dated : 22nd January, 2018

Nhanu/LDC

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Sr. Private Secretary

ITAT, Surat Bench, Surat

सहायक पंजीकार
आयकर अपीलीय अधिकरण
सुरत न्यायपीठ, सुरत.