

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD ÷SMCö BENCH

**Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1093/Ahd/2018
Assessment Year 2015-16**

Farukbhai Mansurbhai Parmar, Royal Complex, Hajurpagya Road, Navapara, Bhavnagar PAN: AQKPP9381P (Appellant)	Vs	The ITO, Ward-2(3), Bhavnagar (Respondent)
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**Revenue by: Shri N.K. Goyal, Sr. D.R.
Assessee by: Shri P.B. Parmar, A.R.**

Date of hearing : 12-02-2020
Date of pronouncement : 14-02-2020

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2015-16, arises from order of the CIT(A)-6, Ahmedabad dated 26-03-2018, in proceedings under section 143(3) of the Income Tax Act, 1961; in short ÷the Actö.

2. The assessee has raised following grounds of appeal:-

- "1. The learned CIT(A) has erred in not affording an opportunity of hearing to the appellant and in passing an ex parte despite the fact that adjournment application was filed by the appellant which is in violation of the Principles of Natural Justice.*
- 2. The learned CIT(A) has erred in passing the order in limine without providing reasons which is in violation of Section 250(6) of the Act,*

3. *The learned CIT(A) has grossly erred in confirming the disallowance without any application of mind and in not adjudicating the additions independently.*

4. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the disallowance of loss of Rs.20,17,440/- incurred in the business of antique goods.*

5. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

6. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A/B/C of the Act.*

7. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(1)(c) of the Act.”*

3. The fact in brief is that assessee has filed return of income on 29th Sep, 2015 declaring total income at Rs. 2,41,670/-. The case was subject to scrutiny assessment and notice u/s. 143(2) of the act was issued on 19th Sep, 2016. During the course of assessment, the assessing officer noticed that assessee has made purchase and sales in antique goods and claimed loss of Rs. 20,17,440/- which was adjusted against profit of Rs. 27,63,412/- earned from the business of share trading. The assessing officer stated that assessee has failed to furnish supporting evidences i.e. purchase bill and sale bill of antique goods, therefore, the claim of loss of Rs. 20,17,440/- was disallowed.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee for want of non-prosecution as the assessee has failed to make compliance during the course of appellate proceedings.

5. During the course of appellate proceedings before us, the Id. counsel has contended that Id. CIT(A) has not provided adequate opportunity to the assessee and decided the issue ex-parte in violation of section 250(6) of the

act. The ld. counsel has also furnished paper book comprising copy of document and details of information furnished before the lower authorities. The ld. counsel has submitted that notice of hearing dated 19th March, 2018 was issued by the ld. CIT(A) for attending hearing on 23rd March, 2018 and the assessee had applied for adjournment of hearing vide letter dated 22-03-2018 by speed post without any delay. Certified copies of various documents and submissions for making necessary compliance before the ld. CIT(A) were awaited from the assessing officer since the assessee had already applied for the same. The ld. counsel has also contended that on approaching the assessing officer, it was informed that the assessing officer was on training till last week of March, 2018 or first week of April, 2018. However, without considering the fact reported in the adjournment application filed by the assessee ld. CIT(A) has dismissed the appeal of the assessee on 26th March, 2018 and adjournment application of the assessee was delivered on 26th March, 2018 as per the acknowledgment of the postal authorities placed at page no. 46 of the paper book. On the other hand, ld. departmental representative has supported the order of lower authorities.

6. We have heard both the sides and perused the material on record. We have gone through the submission of the assessee placed in the paper book as reported above by the ld. counsel. It is noticed that ld. CIT(A) has issued two notices to the assessee for attending hearing on 8th Feb, 2018 and 19th March, 2018. On receiving of notice dated 19th March, 2018, the assessee has submitted an application for adjournment of hearing because of non-availability of certified copies of various documents from the assessing officer who was on training as reported above in this order. Without

considering the adjournment application of the assessee which was delivered on 26th March, 2018 as per acknowledgement of the postal authority, the Id. CIT(A) has dismissed the appeal of the assessee on the same day on 26th March, 2018 for want of non-prosecution. It is clearly demonstrated from the fact reported above that Id. CIT(A) has not provided adequate opportunity to the assessee before dismissing the appeal for want of prosecution. Sub-section (6) of the section 250 of the Income Tax Act, 1961 contemplates that the Id. CIT(A) would substantiate the points in dispute and assign reasons in support of conclusion. Therefore, we set aside the order and restore the issue in appeal to the file of the Id. CIT(A) for adjudicating them on merit after affording adequate opportunity to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 14-02-2020

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 14/02/2020

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद