

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD

(Convened through Virtual Court)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 532/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2014-15)

Shri Nisarhusen Amadali Lakhani Sindhi Chawk, At & Post Gadhada (Swamina), Dist. Botad-364710	बनाम/ Vs.	Income Tax Officer Ward – 2(5), Bhavnagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AFCPL8937L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri U. S. Bhati & Shri Abhimanyu Singh Bhati, A.Rs.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. S. Shukla, Sr.DR

सुनवाई की तारीख / Date of Hearing	09/02/2021
घोषणा की तारीख /Date of Pronouncement	15/02/2021

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)-6, Ahmedabad ('CIT(A)' in short), dated 18.12.2017 arising in the assessment order dated 28.12.2016 passed by the

Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

2. The assessee in the captioned appeal has raised several grounds assailing the order of the CIT(A) for dismissal of the appeal of the assessee *in limine*. However, it is noticed that one of the substantive grounds raised by the assessee seeks to impugn the order of the CIT(A) towards dismissal of the appeal of the assessee in contravention of Section 250(6) of the Act.

3. When the matter was called for hearing, the learned AR for the assessee, at the outset, urged for condonation of delay of 16 days in filing appeal before the Tribunal. The learned counsel referred to the affidavit seeking condonation of delay dated 27th March, 2018 and submitted that the assessee does not stand to benefit at all by such delay and the small delay does not involve any culpable negligence or malafide. Having regard to the submissions made, the delay is condoned and the appeal is admitted for effective hearing.

4. At the further outset, the learned counsel pointed out that the CIT(A) has dismissed the appeal of the assessee summarily for want of prosecution. It was contended that while dismissing the appeal of the assessee *in limine*, the CIT(A) has not rendered any decision on the subject matter of appeal on merits as obligated under s.250(6) of the Act. It was thus urged that the order of the CIT(A) suffers from violation of principles of natural justice and hence requires to be set aside for fresh adjudication on merits.

5. The learned DR, on the other hand, relied upon the order of the CIT(A).

6. We straightway refer to Section 250(6) of the Act which enjoins that the CIT(A) shall state the points for determination before it and the decision shall be rendered on such points alongwith reasons for the decision. Thus, it is incumbent upon the CIT(A) to deal with the grounds on merits even in *ex parte* order. In view of Section 250(6) of the Act, the CIT(A) has no power to dismiss an appeal on account of non-prosecution. This view is also taken by the Hon'ble Bombay High Court in case of *CIT vs. Premkumar Arjundas Luthra HUF (2017) 297 CTR 614 (Bom.)*. A bare glance of the order of the CIT(A) shows that CIT(A) has not addressed itself on the various points placed for its determination at all and dismissed the appeal of assessee for default in nonappearance. Needless to say, the CIT(A) plays role of both adjudicating authority as well as appellate authority. Thus, the CIT(A) could not have shunned the appeal for non-compliance without addressing the issue on merits.

7. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the CIT(A) in the larger interest of justice with a view to enable the assessee to avail proper opportunity for disposal of appeal by the CIT(A) on various points. Needless to say, the assessee shall extend full co-operation to the CIT(A) without any *demur*, failing which, the CIT(A) shall at liberty to conclude the appellate proceedings in accordance with law. Hence, the order of the CIT(A) appealed against, is set aside and all the issues raised in the impugned appeal are restored back to the file of the CIT(A) for fresh

adjudication in accordance with law after giving reasonable opportunity of hearing to the assessee.

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

This Order pronounced on 15/02/2021

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Ahmedabad: Dated 15/02/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

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 ।