

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.533/SRT/2018 (AY 2014-15)
(Hearing in Virtual Court)

M/s R.K. Shah Project Pvt. Ltd., 1 st floor, Aditya Complex, Near Kapadia Health Club, Bhatar Road, Surat-395007. PAN : AABCR 8584 Q	Vs	Income Tax Officer, Ward- 2(1)(1), Aayakar Bhawan, Majura Gate, Surat.
Applicant		Respondent

Assessee by	Mr Sapnesh Sheth, CA
Revenue by	Ms Anupama Singla, Sr-DR
Date of hearing	02/07/2021
Date of pronouncement	02/07/2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the orders of Id. Commissioner of Income tax (Appeals)-2, Surat dated 28.05.2018 for the assessment year (AY) 2014-15. The grounds of appeal raised by the assessee are summarized as under:

1. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in passing ex-party order without providing reasonable opportunity of hearing to assessee.*
2. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming the action of assessing officer in disallowing interest expense of Rs. 14,26,558 u/s. 40(a)(ia) of the IT. Act on account of non-deduction of TDS.*
3. *It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*
2. Brief facts of the case are that the assessment for the year under consideration was completed on 21/09/2016 under section 143(3). The assessing officer while passing the assessment order made addition of Rs. 14,26,558/- under section 40(a) (ia) by taking view that no tax was deducted at source (TDS) while making interest payment to Kotak Mahindra Bank or non-banking finance company (NBFC). On appeal before Id. CIT(A) the action of the assessing officer was affirmed. The Id CIT(A) confirmed the order of assessing officer in *ex-parte* order by taking view that despite granting a number of opportunity the assessee failed to comply the notices. Further aggrieved, the assessee has filed present appeal before this Tribunal.
3. We have heard the learned authorised representative (AR/ counsel) for the assessee and the learned senior departmental representative (Sr DR) for the revenue. The Id counsel for the assessee submits that the non-appearance before the Id CIT(A) was not intentional but due to the miscommunication between the assessee and his consultant. The assessee has good case on merit and is likely to succeed if the assessee is given one more opportunity of hearing on merit at the level of Id. CIT(A). The assessee paid interest either to Bank or to non-banking financial companies only. The learned counsel for the assessee undertake on behalf of the assessee to be more vigilant in future in attending the hearing before Id. CIT(A).

4. In alternative submission the ld. Counsel for the assessee submits that the order passed by ld CIT(A) is not on merit of the case and if the assessee is given liberty to make his submissions the assessee may succeed on merit.
5. On the other hand the ld. Sr. DR for the Revenue submits that the assessee was given two r opportunity as recorded in para 5.1.1 of the order passed by the ld. CIT(A). The assessee failed to comply with the notice issued by the ld.CIT(A). The ld. CIT(A) left with no option, except to proceed to decide the issue and in absence of any evidence or explanation affirm the action of AO. Once the assessee failed to supply the necessary evidence and explanation on the ground of appeal raised by the assessee, the assessee is bound to fail. In alternative submission, the ld. Sr. DR for the Revenue submits that in case the Hon'ble Tribunal deem it appropriate that the assessee deserve one more opportunity, the assessee be directed to be vigilant and not to default in attending the proceedings and to waste the time of public authorities/ld.CIT(A).
6. We have considered the rival submission of ld. Representative of the parties and have gone through the orders of lower authorities carefully. We find that the ld. CIT(A) fixed the hearing on two occasions as mentioned in para 5.1.1 4 of the impugned order. It is recorded by ld. CIT(A) that no compliance was made by the assessee. However, find that the ld. CIT(A) has not recorded his satisfaction that the notice sent through speed post was duly served on the assessee or not. We instead of going into controversy, whether

the assessee defaulted in attending the proceedings despite service of notice or not, before the Id.CIT(A). We find that the assessee has prima facia case that in case the NBFC or Bank have included the interest income in their respective income and have paid the tax, the assessee may be exonerated from the liability. We further find order of the Id. CIT(A) is not in accordance with mandate of section 250(6) of the Income Tax Act. Section 250(6) of the Act mandates that the Ld. CIT(A) while deciding the appeal is required to pass order on points of determination (grounds of appeals), decision therein on and reasons for such decision.

7. Therefore, considering the facts and circumstances of the case, the appeal of the assessee is restored back to the file of the Id. CIT(A) to decide all the grounds of appeal on merit in accordance with law, without being influence of our prima facia observation made hereinabove. Needless to order that before passing the order the Id. CIT(A) shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the Id. CIT(A) as and when the date of hearing and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. The assessee is further directed to provide his e-mail address and telephone number to make communication with him or his representative. Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

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

Order announced on 02nd July 2021 at the time of hearing in virtual court hearing.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 02/07/2021

Self

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

Assistant Registrar, ITAT, Surat