

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No.583/SRT/2018 (AY 2012-13)  
(Hearing in Virtual Court)

Smt. Devikaben Hasmukhbhai Savani, 14, Radha Krishna Society, Palanpur Patiya, Rander Road, Surat-395009. PAN: CNIPS 9986 A	Vs.	Income Tax Officer, Ward-1(3)(6), Room No. 303, Anavli Business Centre, Adajan Hazira Road, Adajan, Surat-395009.
Applicant		Respondent

Assessee by	Mr. Druvang H. Diwan, AR
Revenue by	Ms. Anupama Singla, Sr-DR
Date of hearing	05/07/2021
Date of pronouncement	05/07/2021

**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 29.06.2018 for the assessment year (AY) 2012-13. The grounds of appeal raised by the assessee are summarized as under:

*1. The Ld. CIT(A) has erred in law and on facts in dismissing the appeal on the ground of noncompliance by the appellant to his notices for hearing. The CIT(A) ought to have decided the appeal on the basis of merits and facts of appellant's case.*

2. Brief facts of the case are that the assessment for the year under consideration was completed on 10.11.2017 under section 143(3) r.w.s. 147. The assessing officer while passing the assessment order made addition of short term capital gain of Rs.3,44,100/- by taking view that

the assessee has sold capital asset, which was required to be taxed as capital gain and that capital asset was not converted into stock in trade. The Assessing Officer rectified the assessment order under section 154 dated 23.01.2018. 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 Counsel/ 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 first notice was not served upon the assessee. With regard to service of second notice the Ld. A.R. submits that due to shortage of time, given in the notice, the assessee could not make compliance. The Ld. A.R. for the assessee submits that the assessee has good case on merit and is likely to succeed if the assessee is heard on merit. The Id counsel for the assessee prayed to restore the appeal to the files of learned CIT(A), with the direction to provide one more opportunity to the assessee and he undertake on behalf of the assessee to be more vigilant in future. The learned Counsel also assured the bench to furnish his email address as well as telephone number for communication of the hearing before Id. CIT(A). In alternative submission the Id. Counsel submits that the order passed by Id CIT(A) is not on merit of the case and the order of Id CIT(A) is liable to be set aside.

4. On the other hand the ld. Sr. DR for the Revenue submits that the assessee was given two 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. The learned Sr DR for the revenue prayed for dismissal of the appeal. In alternative submission, the ld. Sr. DR for the Revenue submits that in case the Hon'ble bench deems it appropriate to restore the grounds of appeal to the file of ld. CIT(A), the assessee be directed to be vigilant and not to default in future in attending the proceedings and to waste the time of public authorities/ld.CIT(A). The assessee should not take the proceeding before the first appellate authority in casual manner.
5. We have considered the rival submission of ld. AR for the assessee and the DR for the revenue and have gone through the orders of lower authorities. We find that the ld. CIT(A) fixed the hearing on two occasions as mentioned in para 5.1.1 of the impugned order. It is recorded by ld. CIT(A) that no compliance was made by the assessee. We find the Ld. CIT(A) has not given fair and proper opportunity to the assessee. The Ld. CIT(A) instead of considering the merit of the case dismissed the appeal in *limine*. Considering the facts and the circumstances of the case, we are of the view that the assessee deserve one more opportunity of hearing at the stage of first appellate stage, accordingly the grounds of appeal raised by the assessee are restored to

the file of learned CIT(A) to decide all the grounds of appeal afresh. We also find one more reason to restore the appeal to the file of ld CIT(A) order passed by him 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. Needless to order that before passing the order the ld. CIT(A) shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the ld.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. The assessee shall file his latest address and e-mail address and his telephone number or of his representative, within fifteen days of receipt of this order in the office of assessing officer as well as before jurisdictional CIT(A). Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

6. In the result, appeal of the assessee is allowed for statistical purpose. No order as to cost.

Order announced on 05<sup>th</sup> July 2021 at the time of hearing in virtual court hearing.

Sd/-  
**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 05/07/2021

*Self*

Copy to:

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

By order

Assistant Registrar, ITAT, Surat