

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.54/SRT/2018 (AY 2013-14)
(Hearing in Virtual Court)

Shri Rajesh K. Tharwani L/h of Khemchand K.Tharwani, 154-155, GIDC, Kabilpore, Navsari, Gujarat. PAN : AALPT 1806 G	Vs	The Income Tax Officer, Ward-3, Navsari.
Applicant		Respondent

Assessee by	Shri Mehul Shah –CA
Revenue by	Shri S.T.Bidari – CIT(DR)
Date of hearing	20.05.2021
Date of pronouncement	20.05.2021

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)-Valsad, dated 22.11.2017 for the assessment year (AY) 2013-14. The assessee raised the following grounds of appeal:

- “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 confirming the action of the assessing officer in passing the assessment order u/s. 143(3) in the name of dead person.*
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 passing ex-parte order.*
3. *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 not adjudicating grounds of appeal, ought to have passed the speaking order after giving the reason for his decision.*
4. *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 the assessing officer in making disallowance of Rs. 7,79,918 on account of expenditure incurred for residential bungalow, even though the same expenditure was not claimed in the Profit & Loss Account.

- 5. 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 the assessing officer in making disallowance of Rs. 29,49,824/- on account of Building Construction Expenditure incurred for K.K. Plaza Building.*
 - 6. 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 the assessing officer in making addition of Rs. 24,48,000/- on account of Deemed Rent for vacant unsold shops and flats. Further, assessing officer has erred in wrongly calculating the deemed rent for 24 unsold shops instead of 20 unsold shops.*
 - 7. 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 the assessing officer in not giving set off of Rs. 1,15,418/- of current year business loss shown in t original return of Income.*
 - 8. It is therefore prayed that the additions/disallowance made by Assessing Officer and confirmed by CIT (Appeals) may please be deleted.*
 - 9. 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 assessee is an individual and claimed to be engaged in the business of manufacturing and sale of bakery products. The assessee filed his Return of Income for assessment year 2013-14 on 17.09.2013 declaring loss of Rs.1,15,418/-. The case was selected for scrutiny. The Assessing Officer(AO) after granting opportunity to the assessee made various additions, including addition of Rs.7,79,918/- on account of various expenses as the assessee failed to furnish the documentary evidence of expenses, addition of Rs. 2949,824/-

expenditure on construction of building namely K.K. Plaza and the addition of Rs.24,48,000/- on account of deemed rental income of unsold units.

3. On appeal before the Id.CIT(A), all the additions were upheld. The Id.CIT(A) upheld all the additions in an *ex-parte* order. Thus, further aggrieved, the assessee has filed appeal before this Tribunal.
4. We have heard the submission of Id.Authorised Representative (AR) of the assessee and Id.Departmental Representative [CIT-DR] for the Revenue and perused the material available on record. The Id.AR of the assessee submits that he has raised specific grounds of appeal that the Id.CIT(A) erred in passing *ex-parte* order and not adjudicated the grounds of appeal on merit. The Id.AR for the assessee further submits that the representative of the assessee attended the proceedings on 22.02.017 and asked for adjournment. The assessee received further notice for hearing on 09.08.2017 for which the assessee further sought adjournments on vide application dated 08.08.2017, however, no date was fixed or informed and ultimately, the order was passed by the Id.CIT(A) on 22.11.2017. The Id.CIT(A) passed the non-speaking order. The Id.AR for the assessee submits that without going into the controversy for bonafide adjournment, the assessee seeks one more opportunity for filing all evidences and explanation against the grounds of appeal raised by the assessee before the Id.CIT(A). The Id.AR submits that he has a good case on merit and will succeed for one more opportunity is given and the appeal is decided on merit by the Id.CIT(A). The Id.AR further submits

that he undertakes on behalf of assessee to co-operate and not to default and attending proceedings before the ld.CIT(A).

5. On the other hand, the CIT(DR) for the Revenue submits that the assessee was given ample opportunity as recorded in para 3.3 of the order passed by the ld.CIT(A). The assessee failed to comply with the notices 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.
6. In alternative submission, the ld Sr DR) for the Revenue submits that in case the Hon'ble Tribunal is deem appropriate to restore the appeal to the file of ld. CIT(A) , the assessee be directed file all the evidences and the submissions and be vigilant in attending the hearing and not to default in attending the proceedings and to waste the time of public authorities/ld.CIT(A).
7. We have considered the rival submission of both the parties and have gone through the order of ld.CIT(A). We have noted that in para 3.3 of the impugned order, the ld.CIT(A) recorded that last adjournment application was received the ld.CIT(A) vide letter dated 08.08.2017 for the hearing fixed on 09.08.2017. The ld.CIT(A) has not recorded that any further date was fixed for further hearing or the date of hearing so fixed was acknowledged by the representative of the assessee or not or it was intimated to the representative of the assessee. The ld.CIT(A) confirmed all three additions made by assessing officer, by taking view that there is

non-compliance on the part of the assessee, he has no reason to differ with the findings of the AO.

8. We, instead of going into controversy, whether the assessee defaulted in attending the proceedings before the Id.CIT(A), find that the 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. 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. The assessee is 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 Id.CIT(A) is also directed to dispose the appeal as early as possible, accordingly grounds of appeal by assessee are allowed for statistical purpose.
9. In the result, appeal of the assessee is allowed for statistical purpose.

Order announced on 20th May 2021 at the time of hearing in virtual court.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 20/05/2021 / SGR

Copy to:

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

By order

Assistant Registrar, ITAT, Surat