

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 79/SRT/2019 (AY 2014-15)  
(Hearing in Virtual Court)

Shri Rameshbhai K Balar 38, Vanmali Park Society, Nr.Yogi Chowk, Puna Simada Road, Surat-394 010 PAN : AKIPB 2214 R	Vs	Income Tax Officer Ward-3(3)(4), Aaykar Bhavan, Room 419, Majura Gate, Surat- 395001
Assessee / appellant		Revenue /respondent

Assessee by	ShriSuresh K. Kabra, C.A
Revenue by	Shri Sita Ram Meena – Sr-DR
Date of hearing	29.07.2021
Date of pronouncement	29.07.2021

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of ld. Commissioner of Income tax (Appeals)-3, [CIT(A)], Surat dated 04.12.2018 for assessment year (AY) 2014-15. The assessee has raised the following grounds of appeal:-

*“The Ld. CIT(A) had erred ion the facts of the case in upholding the levy of Penalty u/s 271(1)(c) of the Act.”*

2. Brief facts of the case are that the assessee filed his return of income for AY 2014-15 on 29.11.2014 declaring income of Rs.3,74,250/-. The assessment was completed under section 143(3) on 30.12.2016. The Assessing Officer while passing the assessment order made the of commission income of Rs.8,11,468/- and initiated penalty proceedings under section 271(1)(c). On

appeal before the Ld. CIT(A) the penalty was upheld. The Ld. CIT(A) upheld the penalty order in *ex-parte* proceedings. Further aggrieved the assessee filed appeal before the Tribunal.

3. We have heard the submission of Ld. Authorized Representative (AR) of the assessee and the Ld. Senior Departmental Representative (Sr.DR) for the Revenue and have gone through the orders of authorities below. The Ld. AR of the assessee submits that first appellate authority passed *ex-parte* order without giving fair and proper opportunity to the assessee. The hearing of appeal before ld CIT(A), was fixed on three occasions. On two occasions / date of hearing, the assessee sought adjournment. The hearing on third occasion was fixed on 30.11.2018. The last week of November 2018 was Deewali period and the assessee could not inform his representative to attend the hearing. In and around Surat during the Deewali festival most of the establishments are closed to celebration of Gujarati New Year festival. The ld AR for the assessee submits that there was only one default in appearance before ld CIT(A). The default in non-appearance was neither intentional nor deliberate. The Ld. AR of the assessee submits that the assessee has a good case on merit and is likely to succeed, if the assessee given one more opportunity to contest the case on merit. The Ld. AR of the assessee submits that addition of commission payment was made on estimation basis, being

0.5% of total sale shown by the assessee. And it is a settled position under law that no penalty is leviable on the addition made on estimation basis. The Ld. AR for assessee submits that even this case can be disposed of by Tribunal, on merit.

4. On the other hand, Ld. Senior Departmental Representative (Sr-DR) for the Revenue submits that assessee was given fair and sufficient opportunities of hearing. The assessee was seeking adjournment and finally the appeal was fixed on 30.11.2018 neither the assessee nor his representative attended the hearing nor filed any adjournment application. In the circumstances, the Ld. CIT(A) has no option except to decide the case on the basis of material available on record. The assessee does not deserve any further leniency in restoring the case to the file of ld CIT(A).
5. We have considered the rival submission of both the parties and perused the record carefully. We find that date of hearing was fixed by Ld. CIT(A) on three occasions. On first two occasions, the assessee filed adjournment applications and same was allowed. The appeal was finally fixed on 30.11.2018. Due to non compliance on 30.11.2018, no further date was fixed by the Ld. CIT(A) and the appeal of the assessee was dismissed in *limine*. In our view no reasonable and fair opportunity was granted to the assessee. The Ld. CIT(A) dismissed the appeal without adjudicating the above on merit.

We find that Ld. CIT(A) has not passed the order as per the mandate of section 250(6) of the Act. Section 250(6) mandates that order of Ld. CIT(A) must contain the point of determination, decision thereon and reasons of such decision. The Ld. CIT(A) dismissed the appeal of assessee without following the mandates of sec. 250(6) of the Act. Therefore, the appeal of the assessee is restore back to the file of Ld CIT(A) to adjudicate the grounds of appeal with speaking order.

6. Needless to direct the Ld. CIT(A) before passing the order afresh, shall grant fair and reasonable opportunity of hearing to the assessee. The assessee is also directed to be vigilant in future and not to make default in attending hearing before Ld. CIT(A). The Ld.AR of the assessee was also directed to furnish e-mail address either of assessee or the person authorized by him in the office of Ld. CIT(A) to communicate the notice by way of electronic mode to avoid further delay.
7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order announced at the time of hearing of appeal on 29th July 2021

in the Virtual Court hearing.

Sd/-

**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**  
Surat, Dated: 29/07/2021  
*Dkp. Sr.P.S. O.S*

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Copy to:

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

By order

Assistant Registrar, ITAT, Surat