

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH
BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM
ITA No.297/SRT/2018
(A.Y: 2013-14)

M/s. C. Girdharlal Gheewala, T.P. 5, F.P.150, Sakaar Signeture, Opp. Kakadiya Complex, Behind City Bank, Ghod Dod Road, Surat-395007.	Vs.	The ITO, Ward-3(1)(5), Surat.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AABFC7076K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri Niranjana Desai, CA
Revenue by : Ms Anupama Singla, Sr. DR
Date of Hearing : 03/09/2021
Date of Pronouncement :03/09/2021

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2013-14, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-3, Surat, in Appeal No. CAS/211/2016-17, dated 12.02.2018, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. At the outset itself, Id. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an *ex-parte* order, stood vitiated on account of violation of principle of natural justice. The Id Counsel stated that during the appellate proceedings, the assessee has requested for short adjournment to file the reply of remand report, (vide assessee's letter in paper book page No.13), however, Id CIT(A) has ignored the request of the assessee and passed an *ex-parte* order. Therefore, Id. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the Ld. first appellate authority may be granted to the assessee.

3. On the other hand, Ld. DR did not have any objection if the matter is remitted before the Ld. CIT(A).

4. We have heard both the parties. We note that no doubt order passed by the Id.CIT(A) is an *ex parte* order and ld. CIT(A) has adjudicated the issue on merits also. However, we note that during the appellate proceedings assessee has prayed by way of a written letter that reply of the Remand Report (which was to be furnished on 30.01.2018) would be furnished on 31.01.2018, but the ld CIT(A), without waiting for reply of the Remand Report from the assessee, has passed *ex-parte* order, which is against the principle of natural justice. It is evident from assessee's paper book page no.13, wherein the request was made by the assessee during the appellate proceedings, which is reproduced below:

"To,

*The Commissioner of Income Tax (Appeal) - III
CIT (A), Surat-3,
Room No. 534,
Aaykar Bhavan,
Majura Gate,
Surat*

Dear Sir,

Ref: Appeal No. CAS/3/211/16-17 for AY 2013-14 in the case of M/s. C. Girdharlal Gheewala

In the above case reply to remand report is to be furnished On 30.01.2018. In this connection, I would like to inform that I am out of Surat and will be returning on 31.01.2018. I request you honor to kindly grant short adjournment and oblige.

*Thanking you,
Yours faithfully.*

*(Niranjan Desai)
Authorised representative*

Date: 24/01/2018"

Thus, it is abundantly clear that assessee wanted to furnish the reply of the remand report, but ld CIT(A) did not wait for reply and passed an *ex-parte* order. Considering the contents of the request made by the assessee during the appellate proceedings, we note that ld. CIT(A) ought to have given opportunity

to the assessee to furnish reply of the remand report, which he has failed to do so, therefore it is against the principle of natural justice. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced at the time of hearing of appeal on 03/09/2021 in the Virtual Court of hearing.

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

**Sd/-
(DR. A. L. SAINI)
ACCOUNTANT MEMBER**

Surat, Dated: 03/09/2021 ****SAMANTA****

Copy to:

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

// TRUE COPY //

By order

Assistant Registrar/Sr. PS/PS
ITAT, Surat