

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM
ITA No.270/SRT/2017
(A.Y: 2013-14)

Shri Somchand R. Bariya (HUF), 1 st Floor, Darunala Building, Bhandariwad, Bhandariwad, Adajan, Surat-395009.	Vs.	The ITO, Ward-1(3)(9), Surat
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AASHS0439R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri Shaunak Zaveri, CA
Revenue by : Shri Sreenivas T. Bidari, CIT(DR)

सुनवाई की तारीख / **Date of Hearing** : 06/09/2021
घोषणा की तारीख/**Date of Pronouncement**: 06/09/2021

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The 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)-2, Surat in Appeal No. CAS/2/172/2016-17, dated 29.08.2017, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s. 144 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. At the outset we note that appeal filled by the assessee is barred by limitation by three days. The assessee has requested the Bench to condone the delay. We have heard both the parties on this preliminary issue. Having regard to the reasons given by the Learned Counsel, in the petition, we condone the delay and admit the appeal for hearing.

3. Learned Counsel begins by pointing out that during the appellate proceedings, the assessee did not receive the notice for hearing, therefore he could not represent his case before the Id. CIT(A), hence Learned Counsel

prayed that another opportunity should be given to assessee to plead his case before the ld. CIT(A).

4. Learned Departmental Representative (ld. DR) for the Revenue did not have any objection if the matter is remitted back to the file of the ld. CIT(A).

5. We have heard both the parties. We note that in the assessee's case under consideration, the assessment was carried out u/s 143(3) r.w.s 144 of the Act and the impugned order passed by the ld. CIT(A), is an *ex parte* order and non-speaking order, therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee. The Ld. CIT(A) did not pass the order as per the mandate of the provisions of section 250(6) of the Act.

6. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the ld. CIT(A). We note that the ld. CIT(A) did not discuss the assessee's case on merits based on the material available before him hence it is a violation of principle of natural justice. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. CIT(A) for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced at the time of hearing of appeal on 06/09/2021 in the Virtual Court of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Surat, Dated: 06/09/2021 ****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