

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA Nos.783 to 787/SRT/2018  
(A.Ys: 2010-11, 2010-11, 2011-12, 2012-13 & 2015-16)  
(Hearing in Virtual Court)

Shri Bharat P. Malde, 208, 2 <sup>nd</sup> Floor, Palak Arcade, Aayakar Bhavan, Tithal Road, Valsad. PAN: ABAPM 1579 K	Vs.	The Assistant Commissioner of Income Tax, Valsad Circle, Valsad.
Applicant		Respondent

Assessee by	Shri S.D.Chheda – CA
Revenue by	Ms. Anupama Singla – Sr.DR
Date of hearing	07.09.2021
Date of pronouncement	07.09.2021

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

**PER BENCH:**

1. These five appeals filed by the assessee are directed against the separate orders of Id.CIT(A) all dated 30.10.2010 for different assessment years. In all appeals, the Id.CIT(A) confirmed the order of Id.Assessing Officer(Id.AO) either on penalty levied under section 271(1)(c) of the Act or in quantum assessment which is summarised as under:

S.No	ITA No.	A.Y.	Sections under which AO passed order
1	783/SRT/2018	2010-11	143(3) r.w.s 147 of the I.T.Act, 1961.
2	784/SRT/2018	2010-11	271(1)(c) of the I.T.Act, 1961.

3	785/SRT/2018	2011-12	271(1)(c) of the I.T.Act, 1961.
4	786/SRT/2018	2012-13	271(1)(c) of the I.T.Act, 1961.
5	787/SRT/2018	2015-16	143(3) of the I.T.Act, 1961.

2. As noted above, in all appeals, the ld.CIT(A) passed the *ex-parte* order without discussing the merit of the case, therefore, all the appeals were clubbed, heard and are decided by a consolidated order.
3. We have heard submissions of ld. Authorised Representative (AR) of the assessee and ld. Sr. Departmental Representative (Sr.DR) for the Revenue and have gone through the orders of the Lower Authorities carefully. In all cases the ld.AR of the assessee made common submissions and would submit that the assessee during the hearing before the ld.CIT(A) made an application for adjournment on two occasions only. On the last time the hearing of appeal(s) were fixed on 25.10.2018. On 25.10.2018, the assessee again requested some more time, however, no further time was granted and the ld.CIT(A) dismissed the appeal in a non-speaking order. The ld.AR submits that he has good case on merit and is likely to succeed if he is given opportunity either before the Tribunal or before the ld. CIT(A) . The ld.AR submits that his appeal may be disposed of by the Tribunal by considering the merits of the cases.

4. On the other hand, the Id.Sr.DR for the Revenue submits that assessee was given ample opportunity by the Id.CIT(A), assessee neither furnished any written submissions nor any documentary evidence to substantiate the ground of appeal raised before the First Appellate Authority. The First Appellate Authority left with no option except to decide the appeal on merit. Since the assessee failed to substantiate the various grounds of appeal, therefore, the Id.CIT(A) dismissed all the appeals. It was submitted that if the prayer of the assessee that the appeals may be adjudicated by the Tribunal, then it would be a wrong precedent and every appellant would make such request to adjudicate appeal without appearing before Id CIT(A)/ first appellate stage.
5. In alternative submissions the Id. Sr. DR for the Revenue submits that in case, the Hon'ble Tribunal deem it appropriate to restore the appeal before the Id.CIT(A) for adjudication afresh, the assessee be directed to be vigilant and to make documentary compliance of the notices. The assessee should not waste the precious time of judicial authorities.
6. We have considered the contention of both the parties. We find that before Id CIT(A), all the appeals were fixed on 10.10.2018, the assessee in all cases made prayer for adjournment on 10.10.2018. The application for adjournment allowed and the cases were again fixed for hearing on

25.10.2018. On 25.10.2018, the assessee again requested for some more time, however, no further time was granted. The ld.CIT(A) dismissed the appeal due to non-compliance by assessee.

7. We further find that the ld.CIT(A) has not passed the order as per mandate of section 250(6) of the 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 ld.CIT(A) to decide all the grounds of appeal in all appeals on merit in accordance with law. The assessee is also directed to appear before the ld.CIT(A) as and when the date of hearing is fixed and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. Accordingly the ground of appeal by assessee is allowed for statistical purpose.

8. In the result, five appeals filed by the assessee are allowed for statistical purpose.

Order announced on 07<sup>th</sup> September, 2021 at the time of hearing in virtual court hearing.

Sd/-  
**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**  
Surat, Dated: 07 /09/2021 / SGR\*

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

Copy to:

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

By order

// TRUE COPY //

Sr. Pvt. Secretary, ITAT Surat