

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 685/SRT/2018 (AY 2012-13)
(Hearing in Virtual Court)

Shri Yashwant H. More Shop No.1 Plot No.70, Ramnagar Housing Society, Ashwani Kumar Road, Varachha Road, Surat-395003 PAN : AULPM 66361 R	Vs	Income Tax Officer Ward-21(3)(5), Aaykar Bhavan, Majura Gate Surat-395003
Assessee / appellant		Revenue /respondent

Assessee by	None
Revenue by	Ms. Anupama Singla – Sr-DR
Date of hearing	22.09.2021
Date of pronouncement	22.09.2021

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, Surat dated 12.07.2018 for assessment year (AY) 2012-13. The assessee has raised the following grounds of appeal:-

“1. The learned CIT(A) has erred in law and on facts in by confirming the penalty on disallowance of creditors and expenses, without considering the facts and circumstances of the case that penalty levied by AO is incorrect.

2.The order passed by the learned CIT(A) is bad in law and is in violation of the principles of natural justice.”

2. Brief facts of the case are that the assessment for the year under consideration was completed on 31.03.2015 under section 144 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’). The assessing officer

while passing the assessment made addition of Rs.2,05,94,742/-, which consist of addition of Rs. 2,01,59,680/- on account of disallowance of 10% of sundry creditors and disallowance of expenses of Rs. 4,35,062/-. The assessing office initiated penalty under section 271(1)(c). The A.O. after serving the notice under section 274 read with section 271(1)(c) levied penalty of Rs.1,86,24,117/ being 100% of tax sought to be evaded. On appeal before Id.CIT(A)the action of the assessing officer in levying penalty was upheld. The Id CIT(A) confirmed the order of assessing officer in *ex-party* order by taking view that despite granting a number of opportunity the assessee failed to comply the notices. Further aggrieved, the assessee has filed present appeal before this Tribunal.

3. None appeared on behalf of the assessee when the appeal was taken up for hearing. On further perusal of record shows that the A.O. passed ex-party assessment order. Further penalty was also levied in ex-party proceedings. The assessee filed appeal before Ld. CIT(A), but not compliance was made therefore, the Ld. CIT(A) also confirmed the order of penalty in ex-party order.
4. The Id. Senior Departmental representative (DR) for the revenue submits that the assessee was given three opportunity as recorded in page-2 of the order passed by the Id. CIT(A). The assessee failed to comply with the

notice 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.

5. In alternative submission, the ld. Sr. DR for the Revenue submits that in case the Hon'ble Tribunal is deem appropriate, the assessee be directed to be vigilant and not to default in attending the proceedings before ld.CIT(A).
6. We have considered the submission of ld. DR for the revenue and have gone through the orders of Lower Authorities. We find that the ld. CIT(A) fixed the hearing on three occasions as mentioned in para-3 of the impugned order. It is recorded by ld. CIT(A) that no compliance was made by the assessee. we find that the Ld. CIT(A) has not recorded his satisfaction whether the notice issued by him is served or not. There is no satisfaction of Ld. CIT(A) about the proper service of the notices of hearing fixed before him. Further, we find that the order of the ld. 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 ld.CIT(A) to decide the grounds of appeal on merit in

accordance with law. Needless to order that before passing the order the Id. CIT(A) shall grant fair opportunity of hearing to the assessee. The assessee is also 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 assessee is further directed to provide his e-mail address and telephone number to make communication with him or his representative. The assessee shall file his latest address and e-mail address and his telephone number or of his representative, within fifteen days of receipt of this notice in the office of assessing officer as well as before jurisdictional CIT(A). Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose. No order as to cost.

Order announced at the time of hearing of appeal on Wednesday 22nd September 2021 in the Virtual Court hearing.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 22/09/2021
Dkp. Out Sourcing Sr.P.S

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Copy to:

1. Appellant-Shri Yashwant H More, Shop No.1 Plot No.70, Ramnagar Housing Society
Ashwani Kumar Road, Varachha Road, Surat-395003
2. Respondent- ITO, Wd-21(3)(5) Aayakar Bhawan, Majura Gate, Surat-395003
3. CIT(A)-3 Surat
4. CIT
5. DR
6. Guard File

By order

//True Copy//

Assistant Registrar, ITAT, Surat