

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
**ITA No. 851/AHD/2013** (AY 2003-04)  
(Hearing in Virtual Court)

Shri Narendra Ramanlal Deasi (HUF), At Palsana Post, Udwada, Dist. Valsad-396180 Email:gbladda@gmail.com <b>PAN : AAFHN 4661 D</b>	Vs	Income Tax Officer, Ward-2, Vapi
Appellant / assessee		Respondent / Revenue

Assessee by	Shri Hardik Vora, Advocate
Revenue by	Ms. Anupama Singla, Sr-DR
Date of hearing	30.03.2022
Date of pronouncement	30.03.2022

**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 Id. Commissioner of Income-tax-(Appeals), Valsad [‘CIT(A)’ for short] dated 30.10.2012 for assessment year (AY) 2003-04. Earlier, this appeal was dismissed in ex parte order dated 18.11.2016, however, the order dated 18.11.2016 was re-called in MA No.45/SRT/2020 vide order dated 06.01.2022. Therefore, this appeal came up for hearing afresh. The assessee has raised the following grounds of appeal:-

*“(1)ITO has erred in law and on facts to estimate agriculture income of Rs.10,01,422/- as against Rs.7,69,232/- shown by the appellant on the basis of sales bills of agricultural produce and those shown by as*

*and expenses supported by bills/cash memos. Appellant maintained necessary record of search income.*

*(2) Provisions under IT act or under IT Rules does not specify books of account to be maintained by agriculturists. Consequently ITO has erred to overlook evidences of agricultural income shown by the appellant.*

*(3) Learned ITO has erred in law and on facts to issue notice u/s 147 of IT act without making any assessment either u/s 143(3) or 144 of IT Act 1961.”*

2. At the outset of hearing, Ld. Authorized Representative (AR) for the assessee submits that the Ld. CIT(A) dismissed the appeal of assessee in *ex parte* order. The Ld. AR for the assessee further submits that on similar set of facts on identical grounds of appeals, the appeals for AYs 2004-05 and 2005-06 dismissed in *ex parte* proceedings by Ld. CIT(A) in order dated 17.01.2013. Against that order, the assessee filed appeals before Tribunal for AYs 2004-05 and 2005-06 vide ITA No.1451/AHD/2013 & 1450/AHD/2013 respectively. The appeals for AYs 2004-05 & 2005-06 have been restored back to the file of Ld. CIT(A) by Tribunal in order dated 14.02.2020. The Ld. AR for the assessee submits that the facts in AYs 2003-04 to 2005-06 are similar and common grounds of appeals in all the assessment years was raised by the assessee. Therefore, present appeal may also be restored back to the file of Ld. CIT(A) with similar direction to

maintain consistency in all years. The Ld. AR for the assessee further submits that he has already placed on record the copy of order of Tribunal dated 14.02.2020 for AYs 2004-05 & 2005-06.

3. On the other hand, Ld. Senior Departmental Representative (Sr.DR) for the Revenue submits that the assessee was given ample opportunity to substantiate its claim but the assessee failed to appear before the Ld. CIT(A). The assessee does not deserve any further leniency for hearing before Ld. CIT(A). The appeal of the assessee may be dismissed. In alternative submissions, the Ld. DR for the revenue submits that in case the Hon'ble Tribunal deemed it appropriate that the assessee deserve opportunity at the stage of first appellate stage, they may be directed to be more vigilant and not to make default in attending the proceedings and to waste the time of public authorities/Ld. CIT(A) and to furnish all necessary information / evidences to substantiate his case, in time.

4. We have considered the rival submission of both the parties and perused the records. We find that on similar set of facts, the appeals (ITA No.1451 & 1450/AHD/2013 for AYs 2004-05 & 2005-06) were restored by our predecessors to the file of Ld. CIT(A) with the following directions:-

*“6. We have heard both the parties and perused the records as well as the relevant provisions of law. We are of the view that considering the difficulty explained for non-attendance of the Counsel, we allow the*

*assessee one more opportunity of being heard before the learned CIT(A). The principle audi alteram partem is the basic concept of the natural justice. The expression and audi alteram partem implies that a person must be given an opportunity to defend himself which is sine qua non of every civilized society the right to notice, the right to present case and evidence, right to refer advert evidence, right to examine, right to legal representation, disclosure of evidence to party, report of enquiry be shown to the other party and reasoned decision or speaking order is must. We find that in the instant case, though hearings were fixed on various dates but the assessee could not avail the proper hearing, therefore, we are of the view that the assessee must be given one more opportunity of being heard and to represent his case. Therefore, in exercise of the powers conferred under Rule 28 of Tribunal Rules, we restore back to the file of the learned CIT(A) to provide one more opportunity and also thereby to consider all the points so raised by the assessee. Nevertheless to mention, that assessee will co-operate in the appeal proceedings and appear before the learned CIT(A) as and when the hearings fixed by the learned CIT(A). We make it clear that non-attendance will of the assessee before CIT(A) will entail confirmation of the impugned addition made by the AO. The assessee will file necessary evidences on which he wants to rely upon.”*

5. Considering the decision of our predecessor, in ITA No.1451 & 1450/AHD/2013 for AYs 2004-05 & 2005-06, the present appeal for the year under consideration is also restored back to the file of Ld. CIT(A), who adjudicate the issue afresh as per the direction contained in order dated 14.02.2020 (supra).
6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30/03/2022 at the closing of hearing  
by placing the result on the Notice Board.

Sd/-

**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**  
Surat, Dated: 30/03/2022  
*Dkp. Out Sourcing P.S*

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 //

Assistant Registrar, ITAT, Surat