

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1930/Ahd/2019
Assessment Year 2012-13**

Shri Jayendra N. Shah Janod 4, Amrakunj Society Old Ellorapark Opp. Vegetable Market, Ellorapark, Vadodara- 390007 PAN No: AJKPS6643Q (Appellant)	Vs	The DCIT, Circle-1(3), Vadodara (Respondent)
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**Appellant by : Shri Manish J. Shah, Advocate
Respondent by : Ms. Sudhiksha Rani, Sr.D.R.**

Date of hearing : 08-07-2022
Date of pronouncement : 13-07-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Assessee against the order dated 10.10.2019 passed by the Commissioner of Income Tax (Appeals)-1, Vadodara, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2012-13.

2. The Brief facts of the case is that the assessee is individual and engaged in trading of petrol, diesel, lubricants and manufacturing and trading of bitumen. The assessee is also the proprietor of Brij Chemicals, Ami Roop Road lines, Vivek Petrol Pump and Vivek Roadways. For the Assessment year 2012-13, the assessee filed its return of income on 30.09.2012 declaring total income of Rs. 1,59,759/-. The return was processed u/s. 143(1) of the Act and then selected for scrutiny assessment and notices u/s. 143(2) and 142(1) were issued from time to time. After considering the submissions of the assessee, the assessing officer completed the assessment u/s. 143(3) on 17.03.2015 after making additions and disallowances as follows:

<i>Repairing charges</i>	<i>Rs.90,176/-</i>
<i>Trip expenses</i>	<i>Rs. 1,86,902/-</i>
<i>Travelling expenses</i>	<i>Rs.25,532/-</i>
<i>Disallowance u/s 14A</i>	<i>Rs.7,02,186/-</i>
<i>Interest on interest free advances</i>	<i>Rs. 1,88,882/-</i>
<i>Interest on capital expenditure</i>	<i>Rs.5,90,515/-</i>
<i>Low household withdrawals</i>	<i>Rs.4,61,250/-.</i>

3. Aggrieved against the additions, the assessee filed an appeal before the Ld CIT(A)-1, Vadodara. During the course of appellate proceedings, various letters/notices for submissions/ hearing were issued to the assessee to file written submission/attend the hearing. However, nobody attended the hearing nor filed any submission. The above notices were sent on-line as well as by Speed Post. However no one appeared the details of such hearing are as follows:

<i>Sr. No.</i>	<i>Letter dated</i>	<i>Particulars</i>	<i>Remarks</i>
1.	30.06.2016	To file written submission before 19.07.2016	Sought 15 days to file written submission
2.	03.04.2017	To file written submission before 18.04.2017	Sought 15 days to file written submission
3.	14.05.2019	To file written submission before 29.05.2019	No reply received
4.	11.09.2019	To file written submission before 23.09.2019	No reply received
5.	23.09.2019	To file written submission before 30.09.2019	No reply received

4. As the assessee has not responded to the above hearing notices and also not filed written submission as undertaken, the Ld CIT(A) following the ruling of the Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharjee & Others (10 CTR 354) dismissed the appeal filed by the assessee for non-prosecution.

5. Aggrieved against the same, the assessee before us raising detailed grounds which are argumentative in nature. The ld. Counsel Mr. Manish J. Shah also undertaken before the Tribunal that one more opportunity be given to the assessee before the ld. CIT(A) to prove his case with necessary records and evidences.

6. The Ld. D.R. appearing for the Revenue has no serious objection in setting aside the case however pleaded that enough opportunities already been given to the assessee by the ld. CIT(A). Therefore the assessee should co-operate for the appellate proceedings on that conditions only the matter may be remanded back to the Ld. CIT(A).

7. Heard the rival submissions and perused the orders of the lower authorities. The assessee was given more than five opportunities by the ld. CIT(A) before passing this ex parte order. Though the assessee has undertaken to file the written submissions before the ld. CIT(A) on various dates, the assessee has not filed any written submission. Therefore with the available material on records and without there being new evidences on record, the ld. CIT(A) confirmed the addition made by the Assessing Officer. Now, taking on record, the undertaking made the ld. Counsel for the assessee and in the interest of justice, we thought it fit to set aside the case back to the Ld. CIT(A) and direct him to pass a speaking order after giving one more opportunity to the assessee. However, taking into account the non-cooperation attitude of the assessee and to meet the ends of justice, we impose a cost of Rs.5,000/- payable to the Prime Minister Relief Fund within 3 weeks on receipt of this order copy. Needless to state as undertaken by the Ld. Counsel for the assessee, the assessee should make use of this final opportunity given to it, by filing appropriate records, evidences before the Ld. CIT(A) and should co-operate for disposal of the appeal on merits.

8. With this observation, the above appeal is allowed for statistical purposes.

Order pronounced in the open court on 13 -07-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 13/07/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद