

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER,
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 389/Rjt/2017
निर्धारण वर्ष/Asstt. Years: 2012-2013

Abdulkadri Adambhai Kureshi, "Maa Manzil", Nilkamal Park, Opp. Green Park, Sheri No.1, Near Nilkanth Park, Devpara, Kothariya Main Road, Rajkot. PAN: ACYPK3981E	Vs.	I.T.O., Ward-2(3)(3), Rajkot.
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Assessee by :	Written Submission
Revenue by :	Shri B.D. Gupta, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **29/06/2022**
घोषणा की तारीख/**Date of Pronouncement**: **16/09/2022**

आदेश/ORDER

PER BENCH:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income tax (Appeals)-2, Rajkot, dated 01/09/2017 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-13.

2. At the outset, it was perceived from the order of Ld. CIT(A) that the several notices were issued and served upon the assessee for fixing the date of the hearing and last date of hearing of the appeal was fixed on 29.09.2017 but in none of the occasion anybody appeared on behalf of assessee except one time seeking for adjournment. Therefore, the Ld. CIT(A) passed an *ex parte* order due to non-appearance of the assessee by confirming the order of the AO. Against the impugned *ex parte* order of Ld. CIT(A), the assessee filed an appeal before us and pleaded that the impugned order has been passed without giving opportunity to the assessee. The Id. AR filed written submission wherein was prayed before us to set aside the appeal to the learned CIT (A) for fresh adjudication as per the law. The Id. AR also assured that the assessee shall extend the full co-operation during the appellate proceedings.

3. On perusal of appellate order, we find that Ld. CIT(A) affirmed the action of Assessing Officer *ex parte* without mentioning any reason for confirming the same on merits. The provisions of Section 250(6) of the Act require the Commissioner (Appeal) to dispose of the appeal in writing with reasoning. But we find from the impugned order of Ld. CIT(A), who confirmed the order of AO, that the appeal was dismissed without deciding the same on merit.

4. We also find that the assessee appeared/ co-operated before the AO and filed the necessary submission during the proceedings before him. Thus the Ld. CIT-A should have called for the assessment records for considering the submission made by the assessee before the AO before upholding the order of the AO. But the Ld. CIT-A failed to do so.

5. We further find that the principle of *audi alteram partem* is the basic concept of natural justice. The expression "*audi alteram partem*" implies that a person must be given an opportunity to defend himself. This principle is *sine qua non* of every civilized society.

6. Indeed, the assessee after filing the appeal should be vigilant enough for pursuing it before the authorities but for this, if the assessee fails to pursue the appeal, the

assessee cannot be penalized by confirming such huge addition without hearing his points of contentions. The mistake committed by the assessee and punishment given to it (the assessee) by sustaining the addition is not commensurate to each other in the given facts and circumstances. But the negligent/dilly-dally approach of the assessee before the Ld.CIT(A) cannot be neglected/ignored. Therefore, we are inclined to levy a cost of Rs. 5,000/- upon the assessee for adopting the negligent approach in the appeal proceedings before the Ld.CIT(A). Accordingly, we direct the assessee to deposit a sum of Rs. 5,000/- to the Income Tax Department prior to the commencement of hearing before the Ld. CIT(A).

7. In view of the above, we are of the opinion that the assessee must be given one more opportunity of hearing to represent his case. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this appeal to the file of Ld. CIT (A) for reconsideration all grounds of appeal after allowing proper opportunity of being heard in accordance with law.

8. Nevertheless, the assessee is aware of the case set up against it, accordingly it is directed to prepare submission and cooperate in the appeal proceedings and its failure will entail confirmation of the impugned addition made by the AO. Hence, this ground of assessee's appeal stands allowed for statistical purpose.

9. In the result, for statistical purpose, the appeal of assessee is treated as allowed.

Order pronounced in the Court on 16/09/2022 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

(True Copy)

Ahmedabad; Dated

16/09/2022

Manish

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**