

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.24/SRT/2017

(निर्धारणवर्ष / Assessment Year: (2012-13)

(Physical Court Hearing)

M/s Mega Aims B-1, Gokuldham Complex, Dahej Bypass Road, Bharuch- 392001	Vs.	Assistant Commissioner of Income-tax, Circle-1, Bharuch
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAQFM 1615 F		
(Appellant)		(Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.M. Jagasheth, C.A

राजस्व की ओर से /Respondent by : Shri Ravinder Sindhu– CIT-DR

सुनवाई की तारीख/ **Date of Hearing** : 25/01/2023

घोषणा की तारीख/**Date of Pronouncement** : 30/01/2023

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to assessment year 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-2, Vadodara [‘Ld. CIT(A) for short] dated 19.05.2017, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961, dated 30.03.2015.

2. At the outset itself, Learned Counsel for the assessee, assailed the impugned order passed by Ld. CIT(A) contending that Ld. CIT(A) did not adjudicate the issue raised by assessee on merit. The ld. Counsel also argued that assessee could not appear during the appellate proceedings as the main partner of M/s Mega Aims who used to handle the taxation matter has gone to America for medical treatment of his father. The main partner, Shri Manish M Patel himself frequently visited to America to take care of his father’s health and therefore he

could not appear before the Ld. CIT(A) during appellate proceedings. Consequently, Ld. CIT(A) passed *ex parte* order. The Ld. counsel to substantiate his arguments submitted copy of passport and medical bills / documents showing treatment related matter of his father. Based on this fact, Ld. counsel for the assessee submitted that assessee has a good case on merit and is likely to succeed, if one more opportunity is allowed to hear the case on merits and the assessee be allowed to file necessary evidence in support of its claim. Therefore, matter may be remitted back to the file of the Ld. CIT(A) for afresh adjudication.

3. On the other hand, ld. Sr.DR for the Revenue submits that assessee has been given twelve opportunities by Ld. CIT(A) to plead its case. The Ld. DR has fairly agreed that since the order passed by Ld. CIT(A) is *ex parte* order as basic facts were not examined by Assessing Officer therefore matter may be remitted back to the file of Assessing Officer for afresh adjudication in accordance with law.

4. We have heard both the parties and we note that in the assessee's case under consideration, the assessment was carried out u/s 143(3) of the Act and the impugned order passed by the ld. CIT(A), is an *ex parte* order and non-speaking order, therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee. We note that ld. CIT(A) has not decided various issues ground-wise in respect of the grounds raised by the assessee in memo of appeal as per the mandate of provisions of section 250(6) of the Act. The ld. CIT(A) has not examined assessment records and relevant documents, and has not passed speaking order. Besides, Assessing Officer has not examined the basic facts Considering the above facts, we note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the

Assessing Officer to adjudicate the issue afresh on merits after giving reasonable opportunity of hearing to assessee. The assessee is directed to appear before the Assessing Officer as and when the date of hearing and to provide with all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. The Assessing Officer is also directed to dispose the appeal as early as possible in accordance with law. Thus, appeal of the assessee is allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced on 30/01/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 30/01/2023

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Senior Private Secretary/Private
Secretary /Assistant Registrar,
ITAT, Surat