

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 387/Srt/2022 (Assessment Year: 2020-21)
(Virtual hearing)

Krunal Sudhir Mehta, 306, Sunshine Apartment, Maneklal Road, Navsari, Gujarat. PAN No. AAQPM 4684 C	Vs.	I.T.O., Ward-3, Navsari.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Nilesh Patel, CA
Respondent represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	30/01/2023
Date of pronouncement	30/01/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) dated 17/10/2022 for the Assessment year (AY) 2020-21. The assessee has raised following solitary ground of appeal, which reads as under:

“1. On the facts and in law the learned Assessing Officer has erred in not allowing exemption u/s 13(A) House Rent Allowance of the Income Tax Act 1961 Rs. 5,02,550/- and raised demand of Rs. 2,07,250/- for the year under consideration, without giving claim of HRA exemption.”

2. At the outset of hearing, learned Authorized Representative (Ld.AR) for the assessee submits that the Id. CIT(A) dismissed the appeal of assessee without considering the submission of assessee by taking a view that no compliance was made by assessee nor any adjournment

application was filed. The Id. AR submits that he has filed detailed written submissions before the Id. CIT(A) wherein the assessee explained that he is a salaried employee having taxable income of Rs.42,79,113/- and claimed exemption under Section 13(A) of the Act for house rent allowance of Rs. 5,02,550/-. The assessee has paid total tax of Rs. 11,37,449/- by showing by showing taxable income of Rs. 42,70,670/-. The Id. AR submits that the basic salary for the purpose of calculation of HRA was Rs. 11,89,200/- and allowable house rent allowance (HRA) was Rs. 5,31,080/- as per salary detail provided by his employer. As per Rule applicable for HRA, the assessee is eligible for deduction of Rs. 5,31,080/-. The CPC while processing the return, committed mistake and created demand of Rs. 2,07,250/- by not allowing deduction of HRA as per rule. The Id. AR for assessee submits that the assessee has a good case on merit and likely to succeed, if the case of assessee is heard and the appeal is to be decided on merit by Id CIT(A). The Id. AR submits that complete details in the form of statement of fact was filed before the Id. CIT(A), however, the Id. CIT(A) did not think even to refer the basic fact leading to additions. The Id. AR of the assessee prayed that matter may be restored back to the file of Ld. CIT(A) for adjudicating the issue afresh in accordance with law.

3. On the other hand, the Id. Sr. DR for the revenue supported the order of Id. CIT(A) and submitted that the assessing officer as well as Id CIT(A)

granted sufficient opportunity to the assessee. The assessee failed to availed such opportunity and now taking plea that sufficient opportunity was not given to him. The assessee has no regards to the public authorities.

4. I have heard the submissions of both the parties and have gone through the orders of lower authorities carefully. I find that CPC/ Assessing Officer while processing the return created a demand of Rs. 2,07,250/-. The Id. CIT(A)/NFAC dismissed the appeal of assessee by holding that in spite of several opportunities, no one attended the hearing proceedings. On the basis of which, the Id CIT(A) held that assessee is not interested in pursuing the appeal. I further find that the Id. CIT(A) has not adjudicated the grounds of appeal raised by assessee as per mandate of Section 250(6) of the Act. Section 250(6) mandates that order of Id. CIT(A) must contain facts of the case, points of determination and decision thereon and reasons of such decision. Considering the fact that Id. CIT(A) passed the ex parte order, in my view, the assessee was not offered sufficient and reasonable opportunity of hearing, particularly, when the assessee has filed his submissions and the facts relating to the adjudication of ground of appeal was available on record. Therefore, the order of Id. CIT(A) is set aside and all the grounds of appeal raised by the assessee are restored back to the file of Id. CIT(A) to decide all the grounds of appeal afresh and in accordance with law. Needless to direct

that before passing the order, the Id. CIT(A) shall grant reasonable opportunity of hearing to the assessee. The assessee is also directed to be vigilant and not to cause further delay and seek adjournment without any valid reason. The assessee is further directed to file all the relevant evidence in his power and possession, if so desired without any further delay, before the Id. CIT(A). In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 30th January, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 30/01/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat