

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

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

**आयकर अपील सं./ITA No.208/SRT/2022**

**(निर्धारणवर्ष / Assessment Years: (2016-17)**

**(Virtual Court Hearing)**

Lalitaben Rameshchandra Kamli Mukesh Bar & Restaurant, Patalia, Nani Daman, Daman- 396210	<b>Vs.</b>	Income Tax Officer, Ward- Daman, Income Tax Office, Hotel Diwanji Building, Devkanand, Daman-396210
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AHUPK 1833 G</b>		
<b>(अपीलार्थी /Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

निर्धारिती की ओर से /Assessee by : Shri Hardik V. Vora, Advocate

राजस्व की ओर से/Revenue by : Shri Vinod Kumar, Sr- DR

सुनवाई की तारीख/ **Date of Hearing** : **15/05/2023**

घोषणा की तारीख/**Date of Pronouncement** : **16/05/2023**

**आदेश / O R D E R**

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

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2016-17, is directed against the order passed by the National Faceless Appeal Centre, Delhi (in short, NFAC/Ld. CIT(A) dated 27.05.2022, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the "Act"] dated 20.12.2018.

2. At the outset itself, the ld. Counsel for the assessee assailed the impugned order by contending that assessee could not represent his case before NFAC/Ld. CIT(A) and the order being an *ex parte* order, stood vitiated on account of violation of principle of natural justice. The Ld. Counsel for the assessee submitted that before NFAC/Ld. CIT(A) assessee could not appear as she did not receive notice of hearing, and as a result the assessee could not

plead her case before NFAC/Ld. CIT(A). Therefore, Ld. Counsel prays the Bench that an another opportunity to represent the case either before first appellate authority or before assessing officer may be granted to the assessee.

3. On the other hand, Learned Senior-Departmental Representative for the Revenue argued that assessing officer did not submit the details and documents before the assessing officer, in response to notice issued by assessing officer under section 142(1) of the Act, therefore, even basic facts have not been examined by the assessing officer. Hence matter may be remitted back to the file of the assessing officer for fresh adjudication.

4. We have heard both the parties and perused the materials available on record. Considering the above facts, we note that assessee could not plead her case successfully before the NFAC/Ld. CIT(A). We also note that NFAC/Ld. CIT(A) has not passed the order as per the mandate of provisions of section 250(6) of the Act. That is, NFAC/Ld. CIT(A) did not pass order on merit based on the material available on record. We note that before assessing officer, the assessee has not submitted entire details and documents therefore assessing officer could not get opportunity to verify the basic details and documents, hence we are of the view that one more opportunity should be given to the assessee to plead her case before the assessing officer. 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, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of assessing officer for *de novo* adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest her stand forthwith. Therefore, we deem it fit and proper to set aside the order of the NFAC/Ld. CIT(A) and remit the matter back to the file of the assessing officer to adjudicate the issue afresh on merits in accordance with law. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 16/05/2023 by placing result on notice board.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

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

सूरत /Surat / दिनांक/ Date: 16/05/2023

*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 //

By Order

Sr. Private Secretary/Private  
Secretary/ Assistant Registrar,  
ITAT, Surat