

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.243/SRT/2023 (AY 2016-17)

(Hearing in Physical Court)

Gordhanbhai Babubhai Dhaduk, 16, Dharmajivan Society, Opp. New Chaupaty, Varachha Road, Surat-395006 PAN No. AAUPD 7509 H	Vs	Income Tax Officer, Ward- 3(3)(1), Surat, Aayakar Bhavan, Nr. Majura Gate, Opp. New Civil Hospital, Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar Sr-DR
अपील पंजीकरण/Appeal instituted on	13.04.2023
सुनवाई की तारीख/Date of hearing	15.06.2023
उद्घोषणा की तारीख/Date of pronouncement	15.06.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld. CIT(A)”] dated 22.02.2023 for the assessment year 2016-17, which in turn arises out of assessment order passed by Assessing Officer under section 143(3) of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’ for the sake of brevity) on 31.12.2018.
2. At the outset of hearing, Ld. Authorized Representative (Ld. AR) for the assessee submits that NFAC/Ld. CIT(A) passed ex

parte order without giving fair and reasonable opportunity of being heard to assessee. Further, NFAC/Ld. CIT(A) has not adjudicated the appeal on merit as per mandate of Section 250(6) of the Act. The Section 250(6) mandates that order of Commissioner of Income-Tax (Appeals) shall contain the points for determination, decision thereon and reasons for such decision. The Ld. AR for the assessee submits that observation of NFAC/Ld. CIT(A) in para-3 of its impugned order is not correct that assessee has not given any submission or reply in response to various notices of hearing issued by NFAC/Ld. CIT(A). The Ld. AR for the assessee submits that assessee sought adjournment on various occasions and for last date of hearing mentioned by NFAC/Ld. CIT(A) in order on 23.02.2023. The Ld. AR for the assessee submits that vide notice dated 16.02.2023, the assessee was asked to furnish submission on or before 23.02.2023, however, the impugned order was passed on 22.02.2023. The ld. AR for the assessee filed copy of notice issued to assessee along with various applications for adjournment along with acknowledgements in ITBA portal. The Ld. AR for the assessee submits that the assessee has

good case on merit and is likely to succeed if he is given one more opportunity to contest the case on merit. The ld AR for the assessee prayed that matter may be restored back to the file of NFAC/Ld. CIT(A) for adjudication as per grounds of appeal raised by assessee.

3. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue supported the order of lower authorities and submits that assessee was given ample opportunities, however, on confronting the fact that date was fixed and for compliance notice on 23.02.2023 and impugned order was passed prior to date fixed *i.e.* on 22.02.2023. The Ld. Sr-DR for the Revenue submits that matter may be restored back to the file of NFAC/Ld. CIT(A) with a direction that assessee to be more vigilant and to make compliance in time.
4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. Considering the fact that NFAC/Ld. CIT(A) fixed the date of hearing for make compliance on or before 23.02.2023, however, the impugned order passed on 22.02.2023. In our view, the NFAC/Ld. CIT(A) passed the impugned order

without giving sufficient time as recorded in para-4 in the impugned order of NFAC/Ld. CIT(A). We further find that assessee sought adjournment on 07.01.2021, 03.10.2022 and 12.10.2022. Thus, the observation of NFAC/Ld. CIT(A) is that assessee made no compliance / reply contrary to the record. Moreover, the order of ld CIT(A) is not in consonance with the mandate of order 250(6) of Income Tax Act. Section 250(6) mandate that the order of ld CIT(A) must contain the point of determination, decision thereon and reasons of such decisions. Thus, considering the facts and circumstances of the present case, the grounds of appeal raised by assessee are restored back to the file of NFAC/Ld. CIT(A) for adjudication all the issues afresh on merit in accordance with law. Needless to say before passing the order direct the NFAC/Ld. CIT(A) be grant fair and reasonable opportunity of being heard to assessee in accordance with law. The assessee is also directed to be more vigilant and not to seek adjournment with proper reason and to furnish complete details and evidence to substantiate his case before NFAC/Ld. CIT(A).

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

Order pronounced in the open court on 15/06/2023 at the time of hearing.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat, Dated: 15/06/2023

Dkp. Out Sourcing Sr.P.S

Sd/-

(PAWAN SINGH)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

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