

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.114/SRT/2023

Assessment Year: (2016-17)

(Physical Hearing)

M/s. M. D. Infra Developers, Block No.128, Mamta Park Society, Near Shivani Show Room, Varachha Road, Kapodara, Surat – 39506.	Vs.	The ITO, Ward-3(3)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AASFM7357A		
(Appellant)		(Respondent)

Appellant by	Shri Akshay M. Modi, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	12/07/2023
Date of Pronouncement	12/07/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 13.12.2022, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 27.12.2018.

2. At the outset itself, Learned Counsel for the assessee assailed the impugned order by contending that assessee could not represent his case before Ld. CIT(A) and the order being an *ex parte* order, stood vitiated on account of violation of principle of natural justice.

Learned Counsel for the assessee submits that during the appellate proceedings, the assessee filed adjournment application before the Ld. CIT(A), however, Ld.CIT(A) ignored the same and passed an *ex parte* order. Therefore, ld. Counsel contended that another opportunity to plead his case before the ld. CIT(A), may be granted, to the assessee.

3. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue did not have any objection if the matter is remitted back to the file of the Ld. CIT(A) for fresh adjudication.

4. Considering the above facts, we note that assessee could not plead his case successfully before the ld. CIT(A). We also note that Ld. CIT(A) has not passed the order as per the mandate of provisions of section 250(6) of the Act. That is, ld. CIT(A) did not consider assessee's submission, which would be filed by assessee, provided the Ld. CIT(A) granted adjournment to the assessee. Hence, we are of the view that one more opportunity should be given to the assessee to plead his case before the ld. CIT(A). 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 Ld. CIT(A) 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 his stand forthwith. 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 ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 12/07/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 12/07/2023

SAMANTA

Copy of the Order forwarded to

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat