

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH  
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.251/SRT/2023**

**Assessment Year: (2015-16)**

**(Virtual Hearing)**

Dipesh Sureshbhai Patel, 834/2, Next to Dr. Gulab Clinic, Silvassa	<b>Vs.</b>	The ITO, Ward-1, Surat
--	------------	---------------------------

**स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AYYPP9552E**

<b>(Appellant)</b>	<b>(Respondent)</b>
--------------------	---------------------

<b>Appellant by</b>	Shri Hardik Vora, Advocate
<b>Respondent by</b>	Shri Vinod Kumar, Sr. DR
<b>Date of Hearing</b>	08/08/2023
<b>Date of Pronouncement</b>	08/08/2023

**आदेश / O R D E R**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2015-16, 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 15.02.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 147 r.w.s. 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 12.12.2019.

2. At the outset itself, Learned Counsel for the assessee assailed the impugned order passed by ld. CIT(A), contending that assessee filed adjournment letter before the ld. CIT(A), however the ld. CIT(A) did not grant adjournment. Therefore, the 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. Had the Id. CIT(A) granted an adjournment, the assessee would have filed documents, evidences and written submission before Id. CIT(A) for adjudication on merits. Since, the order of Assessing Officer is also an *ex parte* order, therefore, Id. Counsel contended that an another opportunity to plead his case before the Assessing Officer may be granted, to the assessee.

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

4. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. I note that assessee could not plead his case successfully before the Id. CIT(A). I 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, Id. CIT(A) did not pass order on merit based on the submission of the assessee, which would have been submitted by him provided Id. CIT(A) had granted the adjournment. Hence, I am of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer. I 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, I 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 his stand forthwith. Therefore, I deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer 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 08/08/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 08/08/2023

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat