

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

आयकर अपील सं./ITA No.11/SRT/2020

Assessment Year: (2008-09)

(Physical Court Hearing)

Shree Khubchandbhai Bhanvarlal Khatri Bansidhar Traders, 542/453 Avadh Vice-Roy Sarthana Jakatnaka, Surat-395006	Vs.	The ITO, Ward-1, Bardoli
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADDPK 4094 L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri P.M. Jagasheth, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख /Date of Hearing	02/08/2023
घोषणा की तारीख /Date of Pronouncement	10/08/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2008-09, is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-1, Surat [in short "Ld. CIT(A)"] dated 14.11.2019, which in turn arises out of an assessment order passed by Assessing Officer u/s 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 15.12.2015.

2. Learned Counsel for the assessee, at the outset, submitted before the Bench that Assessing Officer had passed assessment order u/s 144 read with section 147 of the Act, as the assessee did not submit relevant documents and evidence, required by the

assessing officer, during the assessment proceedings. The documents and evidences, which were supposed to be submitted before the assessing officer, were not readily available with the assessee, therefore assessee was prevented by sufficient cause, not to file these documents and evidences. On appeal, the assessee submitted these documents and evidences, as an additional documents and evidences, which were not admitted by Ld. CIT(A). Thus, Ld. Counsel contended that assessee has participated in appellate proceedings and submitted the additional evidences and documents, as stated above, which were not available during the assessment stage. However, the Ld. CIT(A) refused to accept these additional evidences and documents, during the appellate stage. Therefore, Ld. Counsel prays the Bench another opportunity should be granted to the assessee to plead his case before assessing officer and hence the entire lis may be remitted back to the file of Assessing Officer for afresh adjudication.

3. On the other hand, Learned Senior-DR for the Revenue did not raise any objection, if the matter is remitted back to the file of Assessing Officer.

4. We have heard both the parties. Considering the above facts, we note that the assessee has submitted additional evidences before ld CIT(A) which were not admitted by ld CIT(A). We have gone through these additional evidences and documents. We have also heard ld Counsel for the assessee, on the issue that why the assessee was prevented not to submit these evidences and documents before the assessing officer. The ld Counsel explained

the sufficient reasons, therefore we note that ld CIT(A) ought to have admitted these additional evidences and documents, to adjudicate the issue on merit, however, ld CIT(A) has failed to do so.

5. Before us, Ld. Counsel submitted the paper book containing additional evidences. We are of the view that since these additional evidences have neither been examined by the Assessing Officer nor by Ld. CIT(A). The ld Counsel's plea that assessee's matter was not properly argued before the assessing officer, on account of assessee having been unable to avail opportunity of hearing before the assessing officer for bonafide reasons, as noted above, therefore in the interest of justice, we agree with the ld. Counsel that the assessee must be granted further opportunity of hearing before assessing officer, so that assessee can plead his case with evidences. Hence, we are of the view that one more opportunity should be given to the assessee to plead his 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. Accordingly, we restore the issue back to the file of the assessing officer for considering of the issue afresh after providing due opportunity of hearing to the assessee in accordance with law. Needless to mention, the assessee shall cooperate in the proceedings before the lower authorities for disposal of his case. 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 10/08/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 10/08/2023

DKP Outsourcing Sr.P.S

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