

IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" BENCH, SURAT
BEFORE DR. A. L. SAINI, AM

आयकर अपीलसं./ITA No.368/SRT/2023

(निर्धारण वर्ष / Assessment Year: (2009-10)

(Virtual Court Hearing)

Kamlesh Jethmal Shah Plot No.P-9/1, Everest Garden, Opp. Indian Bank, Naroli Road, Silvassa-396230	Vs.	Income Tax Officer, Ward- Silvassa, First Floor, B.B.Mall, Near Civil Court, Tokarkhada, Silvassa-39230
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: AEQPS 7259 R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	Ms. Kaushali Shah, AR
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख /Date of Hearing	21/08/2023
घोषणा की तारीख /Date of Pronouncement	22/08/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2009-10, is directed against the order passed by the National Faceless Appeal Centre, Delhi (in short "NFAC/Id. CIT(A)"], dated 21.04.2023, which in turn arises out of penalty order passed by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 30.06.2017.

2. Grounds of appeal raised by the assessee are as follows:

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming penalty levied by Assessing Officer u/s 271(1)(c) of the Act.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in passing order without providing enough opportunities to represent the case of the assessee.

3. It is therefore prayed that the above addition/disallowance made by the Assessing Officer may please be deleted.

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*”

3. At the outset itself, the Learned Counsel for the assessee, assailed the impugned order by contending that 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. The Ld. Counsel submitted that in order to submit details and documents, the assessee sought for adjournment during appellate proceedings, however, NFAC/Ld. CIT(A) did not grant the adjournment and passed *ex parte* order dated 21.04.2023, which is against the principle of natural justice. The Ld Counsel also stated that in assessee's case the basic facts have not been examined by the Assessing Officer, therefore, Ld. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the Assessing officer may be granted to the assessee.

4. On the other hand, Ld. Sr.DR for the Revenue supported the order of lower authorities.

5. I have heard both the sides and gone through the relevant material on record. I note that assessee filed adjournment application, however, NFAC/Ld. CIT(A) did not grant the adjournment, therefore assessee could not file documents and evidences before Ld CIT(A) and as a result, NFAC/Ld. CIT(A) has passed the impugned order, as *ex parte*. Considering the above facts, I note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the NFAC/Ld. CIT(A). I note that the NFAC/Ld. CIT(A) did not discuss the assessee's case on merits based on the material available before him hence it is a violation of principle of natural justice. 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 NFAC/ld. 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, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 22/08/2023 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

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

सूरत / Surat दिनांक/ Date: 22/08/2022

DKP (Sr. PS Outsourcing)

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