

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

आयकर अपील सं./ITA No.17/SRT/2023

Assessment Year: (2017-18)

(Physical Hearing)

Rajeev Kailash Chhabra (HUF), 8/7, 1 st Floor, Khatodara Ind. Estate, Behind Sub Jail, Khatodara, Surat – 395002.	Vs.	The ITO, Ward-1(2)(5), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAQHR3140C		
(Appellant)		(Respondent)

Appellant by	Shri Sapnesh Sheth, CA
Respondent by	Shri Ashok B. Koli, CIT(DR)
Date of Hearing	20/07/2023
Date of Pronouncement	04/09/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 31.10.2022, which in turn arises out of an assessment order passed by Assessing Officer u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 19.12.2019.

2. The appeal filed by the assessee for Assessment Year 2017-18, is barred by limitation by 10 days. The assessee has moved a petition, requesting the Bench to condone the delay. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

3. At the outset itself, Learned Counsel for the assessee submits that the order passed the Assessing Officer is an *ex parte* order under section 144 of the Act, however, the assessee has submitted part reply during the assessment proceedings. On appeal, before the Id. CIT(A), the assessee could not submit the relevant details and documents because of the circumstances beyond his control and the therefore the Id. CIT(A) has confirmed the addition made by the Assessing Officer. The Id. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal either before the Ld. first appellate authority or before assessing officer may be granted to the assessee.

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

5. We have heard both the parties. Considering the above facts, we note that assessee could not plead his case successfully neither, before the Id. CIT(A) nor before assessing officer. Before the assessing officer, the assessee submitted only part details and documents. We note that assessee's facts, documents and evidences are to be examined by the assessing officer, therefore we are of the view that matter may be remitted back to the file of the assessing officer. Hence, we are of the view that one more opportunity should be given to the assessee to plead his case before 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. 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 the 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, we 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 04/09/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 04/09/2023

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