

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

आयकर अपील सं./ITA No.467/SRT/2023

Assessment Year: (2009-10)

(Virtual Hearing)

Yakub Musa Patel, 72, Capital Business Centre, Panch Batti, Bharuch - 392001	Vs.	The ITO, Ward – 1(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AKMPP8976A		
(Appellant)		(Respondent)

Appellant by	Shri Tansim A. Kaviwala, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	05/09/2023
Date of Pronouncement	05/09/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2009-10, 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 12.05.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 16.12.2016.

2. At the outset itself, Learned Counsel for the assessee submitted that order passed by the Id. CIT(A) is an *ex parte* order, however the assessee has submitted written submission in a physical mode before the Id. CIT(A) during appellate proceedings. The Id. CIT(A) did not take into consideration the written submission of assessee, and passed the *ex parte* order, which is against the principles of natural justice.

The ld. Counsel also submitted that since the assessee has submitted entire details and documents before the ld. CIT(A), therefore the Tribunal has to adjudicate the assessee's appeal on merit, in spite of the facts, that the impugned order passed by the ld. CIT(A) is an *ex parte* order, without expressing the opinion on merit.

3. On the other hand, Learned Senior Departmental Representative (ld. Sr. DR) for the Revenue submitted that in Form Nos. 35 and 36, same address has stated and after filing the written submissions, the assessee did not approach to the ld. CIT(A), therefore it is a mistake on the part of the assessee, not to do the follow up with the ld. CIT(A) to adjudicate his appeal on merits. Therefore, since the assessee was not actively participated in the appellate proceedings and hence ld. CIT(A) has passed the *ex parte* order. Therefore, ld. DR contended that order of ld CIT(A) may be upheld and appeal of the assessee may be dismissed.

4. I have heard both the parties. Considering the above facts, I note that assessee could not plead his case successfully before the ld. 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, ld. CIT(A) did not pass order on merit based on the material available on record. There is also mistake on the part of the assessee that after filing the written submission before ld CIT(A), the assessee did not appear before ld CIT(A) and did not submit further submission. Hence, I am of the view that one more opportunity should be given to the assessee to plead his case before the ld. CIT(A). 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 Id. 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, 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 Id. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 05/09/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 05/09/2023

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