

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

आयकर अपील सं./ITA No.374/SRT/2023

Assessment Year: (2015-16)

(Physical Hearing)

Dipak Champaklal Chevli, B. No.13, Vijay Nagar Co. Op. Society, Majura Gate, Surat – 395001.	Vs.	The ITO, Ward – 2(2)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABMPC1808M		
(Appellant)		(Respondent)

Appellant by	Shri Bipin Jariwala, AR
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	06/09/2023
Date of Pronouncement	08/09/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2015-16, 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 17.03.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 29.12.2017.

2. I note that appeal filed by the assessee for assessment year 2015-16 is barred by limitation by nine (9) days. The assessee has moved a petition requesting the Bench to condone the delay. I have heard both the parties on this preliminary issue. The Id Counsel explained the reasons of delay stating that due to medical emergency,

the assessee made delay in delivering the papers and documents to his advocate to file the appeal and to support this, the Id Counsel submitted medical bills/prescription etc before the Bench. Having regard to the reasons given in the petition, I condone this minor delay and admit the appeal for hearing.

3. On merit, Ld. Counsel for the assessee submitted that during the appellate proceedings, the assessee has participated and filed the details and documents against the notice of the Id. CIT(A), dated 13.03.2023. However, Id. CIT(A) did not consider the same for adjudication on merit and passed the *ex parte* order, which is against the principle of natural justice. Therefore, Ld. Counsel contended that one more opportunity should be given to the assessee to plead his case before the Id. CIT(A).

4. On the other hand, Learned Senior Departmental Representative (Id. Sr. DR) for the Revenue opposed the prayer of Ld. Counsel and stated that the appeal of the assessee may be dismissed.

5. I have heard both the sides and gone through the relevant material on record. It is seen that during the appellate proceedings, the assessee submitted details and documents before the Id CIT(A), however, I note that Id CIT(A) did not consider the details and documents submitted by assessee, which is against the principle of natural justice. Therefore, I note that assessee could not plead his case successfully before the Id. CIT(A). I also note that Id. 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 material available on record. Hence, I am of the view that one more

opportunity should be given to the assessee to plead his case before the Id. 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.

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

Order is pronounced on 08/09/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 08/09/2023

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat