

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

**आयकर अपील सं./ITA No.473/SRT/2023**

**Assessment Year: (2011-12)**

**(Physical Hearing)**

Kishorbhai Bhaylalbhai Mistry, 1- Vishvakarma Nivas, Vijaynagar Society, Near Yogeshwar Complex, UDVADA; R.S. Vapi – 396185.	<b>Vs.</b>	The ITO, Ward – 5, Vapi
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIDPM5679C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Rajesh Upadhyay, AR
<b>Respondent by</b>	Shri Vinod Kumar, Sr. DR
<b>Date of Hearing</b>	06/09/2023
<b>Date of Pronouncement</b>	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) 2011-12, 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 15.06.2023, 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 30.11.2018.

2. Shri Rajesh Upadhyay, Counsel for the assessee, at the outset, argued that during appellate proceedings, the assessee submitted details in response to first notice issued by the Id. CIT(A). However, in respect of second and third notices issued by the Id. CIT(A), dated 11.09.2020 and 01.01.2021 respectively, the severe Covid -19 disease was going on, therefore assessee could not furnish the details and

documents. In response to the last notice of the ld. CIT(A), dated 18.05.2023, the assessee filed the adjournment application to submit further documents and details, however the ld. CIT(A) did not consider the same and passed the *ex parte* order on merit also, without hearing the assessee, which is against the principle of natural justice. Therefore, Ld. Counsel contended that an another opportunity should be given to the assessee, to plead his case before the assessing officer, so that, assessee can explain the facts and plead his case before assessing officer.

3. On the other hand, Learned Departmental Representative (ld. DR) for the Revenue submitted that order passed by the Assessing Officer is an *ex parte* order, as the assessee did not appear before the Assessing Officer and assessee also not appeared before the ld. CIT(A), therefore assessee is gross negligent on his part and hence the appeal of the assessee may be dismissed.

4. I have heard both the sides and gone through the relevant material on record. It is seen that assessment order is passed under section 144 of the Act. However, I note that before the ld. CIT(A) the assessee has submitted details and documents, but the same were not considered by the ld. CIT(A), therefore it is a violation of principle of natural justice. That is, the assessee has participated in appellate proceedings, however, ld. CIT(A) did not hear the assessee, therefore it is against the principle of natural justice. However, I note that since the order passed by the Assessing Officer is under section 144 r.w.s. 147 of the Act, therefore, I note that the Assessing Officer has not examined the basic facts, and documents of the assessee`s case, hence, I am of the view that assessee`s matter should be remitted back to the file of the Assessing Officer for fresh adjudication. Hence, one more

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

5. 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