

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

आयकर अपील सं./ITA Nos.388 & 389/SRT/2022

Assessment Year: (2015-16)

(Physical Hearing)

Dineshkumar Ujabhai Patel, At-Surajpura, PO.Songra, Tal: Palanpur, Banaskantha, Gujarat, India <b>Residential Address:</b> B-303, Saroj Park, Opp. Gali Tower, Anand Mahal Road, Adajan, Surat – 395009.	<b>Vs.</b>	The ITO, TDS-3, Ahmedabad
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJBPP4111H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Bipin Jariwala, 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 two appeals filed by the same assessee, pertaining to same Assessment Year (AY) 2015-16, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the ld. CIT(A)”], both dated 20.09.2022, which in turn arise out of separate orders passed by Assessing Officer u/s 271C and u/s 201(1)/201(1A) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Both these appeals filed by the assessee for assessment year (AY).2015-16, are barred by limitation by eighteen (18) days. The Ld.

Counsel for the assessee moved a petition for condonation of delay. The Ld. Counsel for the assessee argued with these minor delays have occurred due to non-receipt of order of Id CIT(A) on time, therefore these minor delay in both these appeals may be condoned.

3. On the other hand, Learned Senior Departmental Representative (Id. Sr. DR) for the Revenue opposed the prayer of the assessee for condonation of delay and stated that assessee has not explained the sufficient reasons to condone the delay, therefore the delay should not be condoned in both these appeals.

4. I have heard both the parties on this preliminary issue and I note that delay has occurred due to non-receipt order of Id. CIT(A). As soon as, the assessee received the order of Ld CIT(A), the assessee immediately consulted his advocate to file these appeals and I note that in this process, the eighteen (18) days delay have occurred. I have gone through the affidavit filed by the assessee for condonation of delay and having regard to the reasons given in the petition for condonation of delay, I condone the delay in both these appeals and admit these appeals for hearing.

5. On merits, Id Counsel for the assessee begins by pointing out that assessee did not receive the notices of hearings (in case of both these appeals) from the Id CIT(A), on the email id, provided by the assessee to the Revenue Authorities, therefore assessee could not appear before Id CIT(A) and as a result, the Id CIT(A) passed an ex-parte order without hearing the assessee. Therefore, Id. Counsel for the assessee assailed the impugned order of Id CIT(A), 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 for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the Ld. first appellate authority may be granted to the assessee.

6. On the other hand, ld DR for the Revenue submitted that assessee was negligent in his approach, during the appellate proceedings, hence both appeals of the assessee may be dismissed.

7. I have heard both the parties and perused the material available on record. 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. 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 ld. 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 ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeals of the assessee are treated as allowed.

8. In the result, both appeals filed by the assessee are 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