

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

आयकर अपील सं./ITA Nos.488 & 489/SRT/2023

Assessment Year: (2010-11)

(Physical Court Hearing)

Muhammadsabir Katpicewala H.No. 2092, Opp. Champa Masjid Sindhi Wad, Bhagat Talao, Surat- 395003	Abdulkarim Vs.	Income Tax Officer Ward-2(2)(3) Surat, Aaykar Bhawan, Majura Gate, Opp. New Civil Hospital, Surat- 395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AEUPA 1727 N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Sapnesh R Sheth, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख /Date of Hearing	14/09/2023
घोषणा की तारीख /Date of Pronouncement	18/09/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned two appeals filed by the assessee, pertaining to same Assessment Year (AY) 2010-11, are directed against the separate orders passed by the National Faceless Appeal Centre, Delhi [in short "NFAC/Ld. CIT(A)"] both dated 29.05.2023. The assessee has challenged the addition made in quantum assessment in ITA No.488/SRT/2023, however, in ITA No.489/SRT/2023 the assessee has challenged the penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. Since the facts in both the appeals are common and these appeals, relate to same assessment year *i.e.*, 2010-11, therefore,

both these appeals were clubbed, heard together and a consolidated order is being passed to avoid the conflicting decisions.

3. At the outset Learned Counsel for the assessee submitted before the Bench that during appellate proceedings before NFAC/Ld. CIT(A) assessee took adjournment and participated in appellate proceedings. The assessee was in the processing of collecting information, however, in the meantime, NFAC/Ld. CIT(A) has passed impugned *ex parte* order. Therefore, Ld. Counsel prays the Bench that another opportunity should be granted to the assessee to plead his case before the Assessing Officer. The Ld. Counsel also pointed out that since both these appeals were decided by NFAC/Ld. CIT(A) *ex parte*, therefore both these appeals may be remitted back to the file of the Assessing Officer for fresh adjudication.

4. On the other hand, Learned Senior-DR for the Revenue raised objection that assessee was grossly negligent in his approach. The assessee has not explained reasonable cause for non-appearance before NFAC/Ld CIT(A), therefore both the appeals may be dismissed.

5. We have heard both the parties. We note that order passed by NFAC/Ld. CIT(A) is an *ex parte* order without considering the assessee's submission on merit. We also note that order passed by the Assessing Officer u/s 144 of the Act, therefore, Assessing Officer has not examined the basic facts of the assessee's case, hence we are of the view that matter may be remitted back to the file of the Assessing Officer for de novo assessment. 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. Accordingly, we restore the issue back to the file of the assessing officer for considering of the issue afresh after providing due opportunity of hearing to the assessee in accordance with law. Needless to mention, the assessee shall cooperate in the proceedings before the lower authorities for disposal of these cases. For statistical purposes, the appeal of the assessee is treated as allowed.

6. In the result, assessee's appeal ITA No.488/SRT/2023 is allowed for statistical purposes.

7. Now coming to ITA No.489/SRT/2023, considering the fact that additions made in the quantum assessment has been restored back to the file of Assessing Officer, therefore at this stage, the penalty levied by Assessing Officer u/s 271(1)(c) vide order dated 11.05.2018 will not survive. Hence, the appeal of assessee is allowed, however, the Assessing Officer shall be at liberty to initiate fresh action, if so, require at the time of passing the *de novo* assessment order.

8. In the result, assessee's appeal ITA No.489/SRT/2023 is allowed.

9. In combine result, assessee's appeal ITA No.488/SRT/2023 is allowed for statistical purposes *whereas* assessee's appeal ITA

No.489/SRT/2023 is allowed. A copy of this order be placed in the respective case file(s).

Order is pronounced on 18/09/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 18/09/2023

DKP Outsourcing Sr.P.S

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