

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

आयकर अपील सं./ITA Nos.533 & 534/SRT/2023

Assessment Years: (2008-09)

(Virtual Hearing)

Chandanben Rajeshbhai Dadhalwala, 1, Mullawad, Nr. Modi Sheri, Ankleshwar, Bharuch – 393001.	Vs.	The ITO, Ward-2(4), Bharuch
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AHMPD0714H		
(Appellant)		(Respondent)

Appellant by	Shri Mehul Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	19/09/2023
Date of Pronouncement	19/09/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned two appeals filed by the assessee, pertaining to Assessment Year (AY) 2008-09, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 06.06.2023, which in turn arises out of an assessment order passed by the Assessing Officer u/s 144/147 of the Income Tax Act, 1961 and penalty order passed by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Since, both the appeals relate to the same assessee and identical facts are involved; therefore both these appeals have been clubbed and

heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. First, I shall take assessee's quantum appeal for assessment year 2008-09, in ITA No.533/SRT/2023 wherein ld. counsel contended that in quantum proceedings, the ld. CIT(A) has passed the order on 06.06.2023. However, the ld. CIT(A) did not grant the adjournment and pass the order before uploading the submissions by the assessee, that is, the assessee was supposed to upload his submission on 06.06.2023, however ld. CIT(A) has passed the order on the same day i.e. on 06.06.2023, therefore it is against the principle of natural justice. Apart from this, ld. counsel stated that in the appellate proceedings, the assessee has participated, therefore it cannot be said that assessee was gross negligent. The ld. counsel further stated that since the assessment order passed by the Assessing Officer is under section 144 of the Act, therefore Assessing Officer has not examined the basic facts of the assessee's case, hence, ld. counsel contended that the matter may be remitted back to the file of the Assessing Officer for *de novo* assessment.

4. On the other hand, learned Departmental Representative (ld. Sr. DR) for the Revenue submitted that assessee was gross negligent and did not appear before the ld. CIT(A) and did not file written submission before the ld.CIT(A), therefore both these appeals of the assessee may be dismissed.

5. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. I note that during the appellate proceedings, the assessee has participated and sought adjournment. The assessee was supposed to submit the submissions

before ld. CIT(A) on 06.06.2023, however on the same day the ld. CIT(A) has passed the *ex parte* order. Hence, it is against the principle of natural justice.

6. 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 and submission of assessee. Hence, I am of the view that 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 ld. 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.

7. In the result, appeal of the assessee in ITA No.533/SRT/2023 is allowed for statistical purposes.

8. Now coming to ITA No.534/SRT/2023, I note 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 15.09.2016 will not survive. Hence, the appeal of assessee is allowed, however, the Assessing Officer shall be at liberty to initiate fresh penalty action, if so require at the time of passing the *de novo* assessment order.

9. In the result, appeal of the assessee in ITA No.534/SRT/2023 is allowed.

10. In combine result, appeal filed by the assessee in ITA No. 533/SRT/2023 is allowed for statistical purposes, whereas appeal filed by the assessee in ITA No.534/SRT/2023 is allowed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced on 19/09/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 19/09/2023

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