

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

आयकर अपील सं./ITA No.510/SRT/2023

Assessment Year: (2014-15)

(Physical Hearing)

Rakeshbhai Gemabhai Oad, 9, Purshottam Nagar Society, Opp. Jalaram Petrol Pump, Amroli, Surat – 394107, Gujarat	Vs.	The ITO, Ward-2(3)(5), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEP02316D		
(Appellant)		(Respondent)

Appellant by	Shri Bipin Jariwala, Advocate
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	21/09/2023
Date of Pronouncement	29/09/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 27.06.2023, 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 26.12.2016.

2. At the outset, Ld. Counsel for the assessee submits that ld. CIT(A) has passed an *ex parte* order without hearing the assessee. The Ld. Counsel pointed out that assessee has submitted the e-mail address i.e. *cakkshahco@gmail.com* to the lower authorities in Form No.35 which is mentioned in paper book page no.8. However, the ld.

CIT(A) has sent the notices on a different e-mail id, which is reproduced below (vide page no.3 of paper book):

“mstailor_kc@yahoo.com”

3. Therefore, Ld. Counsel contended that notices were issued by the ld. CIT(A) on a different e-mail id, therefore assessee could not get notice of hearing and as a result, the ld. CIT(A) has passed *ex parte* order. The Ld. Counsel also contended that the issue involved in assessee’s case was relating to the Provision of section 56(2)(vii)(b) of the Act wherein the Assessing Officer has made the addition on account of difference between registered value and the value as per section 56(2)(vii)(b) of the Act. The Ld. Counsel contended that Assessing Officer has not made reference to the Departmental Valuation Officer for determining the value of the property afresh, therefore, Ld. Counsel contended that matter may be remitted back to the file the Assessing Officer for fresh adjudication and for making the reference before the Departmental Valuation Officer. For that, Ld. Counsel relied on the judgment of the Co-ordinate Bench of ITAT, Pune in the case of ***Bhausahab Sopanrao Bhoir vs ITO, ITA No.74/PUN/2023***, dated 30.05.2023 wherein it was held as follows:

“13. The ld. AR invited our attention towards the additional ground raised before the ld. CIT(A), as has been reproduced at page 3 of the impugned order, challenging the making of addition u/s. 56(2)(vii)(b) without making a reference to the Department Valuation Officer as required by the proviso after sub-clause (c) of section 56(2)(vii)(b). This shows that the assessee did raise the issue before the ld. CIT(A) about the stamp value of the property at this high level and hence the necessity to make a reference to the DVO. It further goes without saying that first appeal is a continuation of the assessment proceedings. The third proviso to section 56(2)(vii)(b) provides that where the stamp value of the immovable property is disputed by the assessee on the ground mentioned in section 50C(2), the AO may refer the valuation of such property to the Valuation Officer. The word ‘may’ in such provision has been interpreted as ‘shall’ in many cases, making it mandatory on the part of the AO to make a reference to the DVO, where the assessee asserts that the stamp value is excessive. The additional ground raised before the ld. CIT(A) in this

regard has remained undisposed off, which in our considered opinion, is not correct. Going with the mandate of the third proviso to section 56(2)(vii)(b), we are of the considered opinion that it would be in the fitness of things if the impugned order on this score is set aside and the matter is remitted to the file of the AO for making a reference to the Departmental Valuation Officer for determining the value of the property afresh. It is thereafter that the computation of capital gain will be done by the AO after allowing a reasonable opportunity of hearing to the assessee.”

4. On the other hand, Learned Departmental Representative (ld. DR) for the Revenue submitted that assessee did not file any submissions before the ld. CIT(A), therefore assessee’s appeal may be dismissed.

5. Alternatively, ld. DR also argued that if the matter is to be remitted back to the file of the lower authorities, then in that circumstances, it should be remitted back to the file of the Assessing Officer for fresh assessment.

6. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. 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 submission of the assessee, which would have been submitted by him provided ld. CIT(A) had granted the adjournment. Hence, I am of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer and the Assessing Officer should make a reference to the Departmental Valuation Officer a required by the proviso of section 56(2)(vii)(b) of the Act. 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.

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

Order is pronounced on 29/09/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 29/09/2023

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