

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

आयकर अपील सं./ITA No.528/SRT/2023

Assessment Year: (2016-17)

(Physical Hearing)

Shaishav Mukeshbhai Mehta, 151-Kasturba Soceity, Rander Road, palanpur Patiya, Surat - 395009	Vs.	The ITO, Ward – 1(3)(6), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ARDPM3611P		
(Appellant)		(Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	04/10/2023
Date of Pronouncement	04/10/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2016-17, 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 21.06.2023, 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 24.12.2018.

2. At the outset, Ld. Counsel for the assessee submitted that during the course of physical hearing before ld. CIT(A), the assessee has submitted written submissions before the ld. CIT(A). However, later on, the assessee’s case was migrated to the NFAC appeals and the assessee has not received any notice from the Faceless Appeal Centre. After that the Faceless (Appeals) has passed the *ex parte*

order. The Ld. Counsel also argued that during the assessment proceedings, the show- cause notice was issued by the Assessing Officer on 21.12.2018 and in the show cause notice, the Assessing Officer had mentioned that assessee should submit the reply on 21.12.2018 itself (on same day), however it was not possible for the assessee to submit the reply before the Assessing Officer on the same day. Hence, the Ld. Counsel, contended that at assessment stage, the assessee did not get enough opportunity of being heard, therefore ld Counsel stated that the matter may be remitted back to the file of the Assessing Officer for *de novo* adjudication.

3. On the other hand, Learned Departmental Representative (Ld. DR) fairly agreed that the Assessing Officer has issued show- cause notice on 21.12.2018 and asked the assessee to file submission on the same day i.e. 21.12.2018. Therefore, it is against the principle of natural justice, hence ld. DR stated that since the basic facts have not been examined by the Assessing Officer, therefore matter may be remitted back to the file of the Assessing Officer for *de novo* adjudication.

4. We have heard both the parties and perused the material available on record. Considering the above facts, we note that assessee could not plead his case successfully before the ld. CIT(A). We 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. Besides, the basic facts have not been examined by the assessing officer. Hence, we are of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer, as the basic facts have not been examined by Assessing Officer. 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. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we 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, we 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 04/10/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 04/10/2023

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