

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

आयकर अपील सं./ITA No.425/SRT/2023

Assessment Year: (2012-13)

(Physical Hearing)

Binaben Jayeshbhai Gor, Plot No.1501, III Phase GIDC, Valsad – 396171	Vs.	The ITO, Ward-1, Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADYPG3045Q		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	04/10/2023
Date of Pronouncement	05/10/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2012-13, 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 09.05.2023, which in turn arises out of an assessment order passed by the Assessing Officer u/s 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 26.11.2018.

2. Notice of hearing of this appeal was sent to the assessee at the address given by the assessee in Form No.36. The said notice has not been returned unserved. Today when the case was called for hearing none appeared on behalf of the assessee nor any request for

adjournment was made. It means that assessee is not interested in prosecuting this appeal. This appeal has been listed for hearing two times; however, assessee did not appear despite of issuance of notices. Learned DR for the Revenue argued that in assessee's case, the orders passed by the assessing officer and Commissioner of Income Tax (Appeals), both are *ex-parte* orders, as the assessee did not appear before both the authorities.

3. I have heard ld DR for the Revenue. I also note that order passed by the Assessing Officer, is under section 144 r.w.s 147 of the Act, and the order passed by the ld. CIT(A) is also an *ex parte* order. These types of cases have been remitted back to the file of the lower authorities by this Bench for fresh adjudication. Since, the order of the Assessing Officer is also an *ex parte* order, therefore, I note that basic documents and evidences have not been examined by the Assessing Officer, hence matter should be remitted back to the file of the Assessing Officer for *de novo* adjudication.

4. Learned Departmental Representative (ld. DR) for the Revenue does not have any objection, if the matter is remitted back to the file of Assessing Officer, since the assessment order and appellate order both are *ex parte* orders and basic facts have not been examined by the lower authorities.

5. Considering above facts, I note that assessee could not plead his case successfully neither before the assessing officer nor 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. 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 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.

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

Order is pronounced on 05/10/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 05/10/2023

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