

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

(Conducted Through Virtual Court)

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.310/RJT/2023
Asstt.Year : 2012-13**

Terapanth Foods Ld. Maitri Bhawan, Plot No.18 Sector 08, Gandhidham Dist. Kutch-370 201 PAN : AA ACT 7787 N	Vs	ACIT, Cir.1 Gandhidham.
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(Applicant)		(Responent)
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Assessee by :	Shri K.C. Thacker, AR
Revenue by :	Shri Shramdeep Sinha, Ld.CIT-DR

सुनवाई की तारीख/Date of Hearing : 17/10/2022
घोषणा की तारीख /Date of Pronouncement: 31/10/2023

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short referred to as ld.CIT(A)] under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 12.7.2023 pertaining to Asst.Year 2012-13.

2. Before the matter was taken up for a substantive hearing, the ld.counsel representing the assessee brought to our attention that the present appeal by the assessee was erroneously dismissed by the ld.CIT(A) on the ground that the assessee has not uploaded reply

with evidence/documents during the appeal proceedings in support of its case.

3. The fact of the matter is that in response to notice dated 4.7.2023 during the appellate proceedings, assessee prepared written submission running over 7 pages requesting to consider the same while deciding the appeal of the assessee, and the WS kept in PDF format which was uploaded on 10.7.2023. This fact was evidenced in e-proceedings response acknowledgement issued by the department wherein it was specifically notified the details of submissions prepared by its counsel, was being attached separately. But unfortunately, AR of the assessee omitted to attach the PDF file in the e-portal. Within two days, thereafter, i.e. on 12.7.2023, the NFAC, Delhi issued order dismissing the appeal of the assessee with specific remark in para 4.1 of the order that "On 10.7.2023 the appellant has filed the written submission on ITBA portal which is without any attachment." The ld.counsel for the assessee submitted while admitting the lapse on the part of the assessee's AR not attaching the file in the e-portal, that the concerned authority ought to have intimated the assessee about not uploading necessary attachment. The ld.CIT(A) ought not to have hurriedly decided the appeal without pointing out to the assessee about the omission of attaching the PDF files. Therefore, primary grievance of the assessee is that the ld.CIT(A) ought to have granted an opportunity to submit written submissions before finalizing the matter. The ld.counsel for the assessee sought for a fresh opportunity to submit written submissions and direction to the Revenue authorities to decide the case of the assessee accordingly.

In response to the assessee's submission, the ld.DR did not contest, but supported orders of the Revenue authorities.

4. We have considered submissions of both the parties; gone through orders of the Revenue authorities in the light of material available on record. We see that the main reason for the ld.CIT(A) to dismiss the appeal of the assessee was the non-uploading of the assessee's in the e-portal. This is evident from para 4.1 where the ld.CIT(A) noted that "*Since then no reply has been uploaded by the appellant. Hence the case of the assessee is being decided on merits. On 0.07.2023 the appellant has filed the written submission on ITBA portal, which is without any attachment*".

The inadvertent mistake in uploading submission in PDF format has been admitted by the assessee with full justification and it was confirmed in the e-Proceedings Response Acknowledgement issued by the Department wherein the particulars "Remarks" the assessee had given concise form of written submissions to be uploaded. The same read as under:

"WE ARE SUBMITTING WRITTEN SUBMISSION PREPARED AND SIGNED BY OUR AUTHORIZED REPRESENTATIVE SHRI K. C. THAKER. ADVOCATE, WHICH MAY KINDLY BE CONSIDERED. WE SUBMIT THAT THE AO HAS REOPENED THE ASSESSMENT WITHOUT JUSTIFICATION AS WOULD BE SEEN FROM THE REASONS RECORDED UNDER SECTION 147 OF THE ACT, AND AS EXPLAINED IN THIS SUBMISSION. ADDITION OF A HUGE AMOUNT IS MADE WITHOUT ANY MATERIAL BROUGHT ON RECORD BY THE AO AS EXPLAINED IN THIS SUBMISSION. WE ALSO SUBMIT THAT WE SHALL BE MAKING ANY FURTHER CLARIFICATION IF ASKED FOR."

5. Considering the facts on record, it is evident that the assessee genuinely pursued its appeal before the ld.CIT(A) on merit, despite the inadvertent failure to attach the written submissions on the e-portal. This genuine mistake warrants leniency. It is pertinent to note that when a huge addition to the extent of Rs.3,36,70,904/- with its consequent tax liability is being imposed on the assessee, it is unlikely that any assessee would prefer not to contest it by abstaining from submitting support submissions/reply. Therefore,

in the light of the material available on record, we are satisfied with the assessee's explanation that a genuine lapse was committed in missing to attach written submissions in PDF forms in the e-portal, which, we are of the view, deserves to be seen leniently.

Therefore, in all fairness and justice, the matter requires to be sent back to the file of the Id.CIT(A)/NFAC, Delhi for re-adjudication on merits. We do so, and allow the appeal of the assessee on this very preliminary issue, without touching the merits of the case, for statistical purpose.

6. In the result, the appeal of the assessee is allowed for statistical purpose, as indicated above.

Order pronounced in the Court on 31st October, 2023 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 31/10/2023