

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

आयकर अपील सं./ITA No.616/SRT/2023

Assessment Year: (2017-18)

(Physical Hearing)

Anisa Zuberahmed Mirza, 5, Shalimar Appartment, Salimar Society, Adajan Patia, Surat – 395009.	Vs.	Income Tax Officer, Ward-1(2)(6), Surat, Room No.303, Aaykar Bhawan,Majura Gate, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: CRRPM8862L		
(Appellant)		(Respondent)

Appellant by	Shri Suresh K. Kabra, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	16/10/2023
Date of Pronouncement	30/10/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, 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 17.08.2023, which in turn arises out of an assessment order passed by the Assessing Officer u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 04.12.2019.

2. At the outset itself, the ld. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an *ex-parte* order, stood vitiated on account of violation of principle of natural justice.

The Id Counsel pointed out that due to non-receipt of notices during the appellate proceedings, the assessee could not file the relevant documents and evidences during the appellate proceedings before the Id. CIT(A). The Ld. Counsel also stated that since the assessment order was also passed under section 144 of the Act, as the assessee could not submit the required documents and details due to circumstances beyond his control. Therefore, matter may be set aside and remitted back to the file of the Assessing Officer to adjudicate the issue afresh. The Id Counsel accepts the responsibility to submit the required documents and details before the assessing officer. Therefore, Id. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the assessing officer may be granted to the assessee.

3. On the other hand, Learned Senior Departmental Representative (Id. Sr. DR) for the Revenue opposed the prayer of the Ld. Counsel for the assessee to remit this issue back to the file of the Assessing Officer and stated that negligent assessee should not be given second inning and therefore assessee's appeal may be dismissed.

4. I have heard the rival arguments made by both the sides and perused the material available on record. I note that Id. CIT(A) did not consider the assessment records and the assessment order to adjudicate the issue on merit. I find that assessee filed the written submission before Id CIT(A), however, could not plead his case successfully before the Id. CIT(A), due to non-receipt of notices during appellate proceedings. The assessee could not get proper opportunity to contest his case during appellate proceedings. Since the assessment order was framed by assessing officer under section

144 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.

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

Order is pronounced on 30/10/2023 in the open court.

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

सूरत / Surat

दिनांक/ Date: 30/10/2023

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat