

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

आयकर अपील सं./ITA No.495/SRT/2023

Assessment Year: (2015-16)

(Physical Hearing)

Ashwinbhai Labhubhai Jodhani, 201, A. V. R. Complex, Shantivan Society, L. H. Road, Surat – 395006, Gujarat.	Vs.	The ITO, Ward – 3(3)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AEIPJ0907K		
(Appellant)		(Respondent)

Appellant by	Shri Sapnesh Sheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	14/12/2023
Date of Pronouncement	14/12/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2015-16, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 27.05.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 27.12.2017.

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 Id. CIT(A) and the order being an *ex parte*, stood vitiated on account of violation of principle of natural justice. The Ld.

Counsel submitted that during the appellate proceedings, the assessee submitted adjournment application before Id. CIT(A) on 30.11.2018 and 08.11.2019 and participated in appellate proceedings, but the assessee could not file the details and documents due to circumstances beyond his control, therefore Id. CIT(A) passed *ex parte* order. The Ld. Counsel argued that one more opportunity to plead the case before the Assessing Officer may be granted to the assessee and therefore the assessee's lis may be remitted back to the file of the Assessing Officer for making fresh assessment.

3. On the other hand, Learned Departmental Representative (Id. DR) for the Revenue fairly agreed that since in the assessee's case, the Assessing Officer has not examined the basic documents and evidences, therefore it would be better to remit the issue back to the file of the Assessing Officer for fresh assessment.

4. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. I note that assessee could not plead his case successfully before the Id. 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, Id. CIT(A) did not pass order on merit based on the submission of the assessee, which would have been submitted by him provided Id. CIT(A) had granted the adjournment and further opportunity to the assessee. 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 14/12/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 14/12/2023

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