

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

आयकर अपील सं./ITA No.722/SRT/2023

Assessment Year: (2010-11)

(Physical Hearing)

Thakorbhai Dahyabhai Patel, 8 Navo Mohallo, Gam Sarsana, Post – Khajod, Surat – 395007.	Vs.	The ITO, Ward -2(3)(4), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ATHPP2883N		
(Appellant)		(Respondent)

Appellant by	Shri Sapnesh Sheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	28/12/2023
Date of Pronouncement	29/12/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2010-11, 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 21.07.2023, 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 21.07.2023.

2. At the outset, the appeal filed by the assessee for AY.2010-11 is barred by limitation by ten (10) days. The assessee moved a petition, requesting the bench to condone the delay. We have heard both the parties on this preliminary issue and having regard to the reasons given in the petition for condonation of delay, we condone the delay

of ten (10) days and admit the appeal of assessee for adjudication on merit.

3. At the outset itself, Learned Counsel for the assessee assailed the impugned order by contending that 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. Learned Counsel submits that assessee could not receive the notice of hearing. Therefore, ld. Counsel contended that an opportunity to plead his case before the ld. CIT(A), may be granted, to the assessee.

3. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue did not have any objection if the matter is remitted back to the file of the Ld. CIT(A) for fresh adjudication.

5. We have heard both the parties. Considering the above facts, we note that assessee could not plead his case successfully before the ld. CIT(A). The ld. CIT(A) did not pass order on merit based on the entire material available on record. Hence, we are of the view that one more opportunity should be given to the assessee to plead his case before the ld. CIT(A). 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 Ld. CIT(A) 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 ld. CIT(A) and remit the matter

back to the file of the ld. CIT(A) 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 29/12/2023 in the open court.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

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

सूरत /Surat

दिनांक/ Date: 29/12/2023

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