

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

आयकर अपील सं./ITA No.650/SRT/2023

Assessment Year: (2010-11)

(Physical Hearing)

Bhanuben Rajeshbhai Rathod, Block No.8, Shree Darshan Society, Nr. Dhabholi Jahangirpura Bridge, Jahangirpura, Surat - 395005	Vs.	The ITO, Ward – 1(3)(6), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ATKPR4904P		
(Appellant)		(Respondent)

Appellant by	Ms. Chaitali Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	15/12/2023
Date of Pronouncement	29/12/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 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 29.05.2023, 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 31.10.2017.

2. The appeal filed by the assessee is barred by limitation by sixty three (63) days. The Ld. Counsel for the assessee submitted the petition, requesting the Bench to condone the delay. The Ld. Counsel explained the reasons for delay that the e-mail address belongs to assessee’s nephew who was not a techno savvy in handing the e-mail, therefore notice of hearing could not reach to assessee. Besides, the

matter of the assessee and other co-owners were assigned to Chartered Accountant/Advocate, who made delay in filing the appeal. Hence, such minor delay may be condoned. Learned Senior Departmental Representative (ld. Sr. DR) for the Revenue argued that assessee has not explained the sufficient cause /reasons, hence delay should not be condoned. I have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, I condone the delay and admit the appeal for hearing.

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 for the assessee submits that during the appellate proceedings, the assessee could not appear before the Ld. CIT(A), as no notice of hearing was served on him. Therefore, ld. Counsel contended that an opportunity to plead his case before the ld. CIT(A), may be granted, to the assessee.

4. On the other hand, ld. Sr. DR for the Revenue did not have any objection, if the matter is remitted back to the file of ld. CIT(A) for fresh adjudication.

5. I have heard both the sides and gone through the relevant material on record. It is seen that during the appellate proceedings, the assessee could not plead his case successfully before the ld CIT(A). However, I note that ld CIT(A) did not consider the details and documents referred by the Assessing Officer, which is against the principle of natural justice. Therefore, I note that assessee could not plead his case successfully 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. That is, ld. CIT(A) did not pass order on merit based on the material available on record. Hence, I am of the view that one more opportunity should be given to the assessee to plead his case before the ld. CIT(A). 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 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, I 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.

6. 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/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सुरत /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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat