

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 791/Ahd/2023  
(निर्धारण वर्ष / Assessment Year : 2017-18)

<b>Haribhai Patel</b> 72, Part-2, At-Nava Babalpura, Sampa, Dehgam, Gandhinagar, Gujarat, 382305	<b>बनाम/</b> Vs.	<b>The Income Tax Officer</b> Ward-2, Gandhinagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BLZPP0968D		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Vivek Chavda, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri B. P. Makwana, Sr. DR

<b>Date of Hearing</b>	05/02/2024
<b>Date of Pronouncement</b>	06/02/2024

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed at the instance of the assessee is directed against the order dated 16.08.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 21.11.2019 passed by the ITO, Ward-2, Gandhinagar, under Section 144 of the Act for Assessment Year 2017-18.

2. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

3. In spite of request not to issue notice and/or communication through e-mail to the assessee as per Form No.35, notices were issued by the authorities below to the assessee only on Income Tax Portal, as a result whereof, the appellant could not appear before the First Appellate Authority in the appeal preferred by the appellant against the order dated 21.11.2019 passed under Section 144 of the Act for A.Y. 2017-18. The Ld. CIT(A), therefore, passed an ex parte order upholding the order passed by the Ld. AO. Hence, the instant appeal before us.

4. Taking into consideration the submissions made by the Ld. AR for not being able to appear before the First Appellate Authority as already narrated by us in the foregoing paragraph, we find that the order has been passed without adherence to the principle of natural justice by affording a proper opportunity of being heard to the appellant by the First Appellate Authority by not issuing notices upon him physically as it was specifically mentioned in the Form No.35 wherein the appellant requested not to issue any notice through e-mail, in order to prevent the miscarriage of justice, we set aside the issue to the file of the Ld. CIT(A) for considering the issue afresh on merit and to pass a reasoned order upon granting an opportunity of being heard to the

assessee and considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. The Ld. CIT(A) is directed to pass order strictly in accordance with law.

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

**This Order pronounced on 06/02/2024**

Sd/-

(WASEEM AHMED)

**ACCOUNTANT MEMBER**

Ahmedabad; Dated 06/02/2024

S. K. SINHA

True Copy

Sd/-

(MADHUMITA ROY)

**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad