

**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. 1033/Ahd/2023
(निर्धारण वर्ष / Assessment Years : 2012-13)

Tulsibhai Kashiram Patel Rampur (KOT), PO-rampur (KOT), Tal-Vijapur, Mehsana, Gujarat 382870	बनाम/ Vs.	The Income Tax Officer Ward - 5, Patan
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ASIPP9850H		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Ms. Kausha, AR
प्रत्यर्थी की ओर से/Respondent by :	None

Date of Hearing	21/03/2024
Date of Pronouncement	22/03/2024

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 18.08.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 26.12.2019 passed by the ITO, Ward 5, Patan (in short ‘AO’) under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2012-13.

2. The appeal is barred by limitation for 55 days. In support of the condonation of delay, the appellant has filed an affidavit. The contents whereof is as follows:

- “2. *I am an agriculturist residing Rampur Kot village of Mahesana and I am do not have proper technical knowledge of taxation laws. Against the order u/s. 143(3) r.w.s. 147 of the Act dated 26.12.2019, my former tax consultant had filed an appeal before CIT(A) vide Form-35. Even the e-mail Id on which the hearing notices were issued belonged to him. He had not informed be about any hearing notices or communications received during the appellate proceedings. Hence, I was under the bonafide impression that all the necessary submissions were handled by him diligently.*
3. *However, at the time of filing return of income for A.Y. 2023-24 on 29.10.2023, my current tax consultant discovered that an ex-parte appeal order had already been passed on 18.08.2023. On coming to know about the same, I promptly started my search for a Chartered Accountant or Tax Advocate situated at Ahmedabad for legal assistance.*
4. *Thereafter, I got reference of Advocate Hardik Vora and on his recommendation, I filed an appeal in Form-36 before Your Honours on 11.12.2023.”*

3. The contention made hereinabove seems to be genuine. Moreso, the Ld. DR has not objected to the same. Hence, the delay is condoned.

4. So far as the merit of the matter is concerned, the order passed by the Ld. CIT(A) impugned before us is found to be an ex parte one. Since, the appellant did not appear before the Ld. CIT(A), in spite of issuance of notices, the appeal stood dismissed ex parte. Needless to mention that the issues were not disposed of on merit in terms of Section 205(6) of the Act which is duty incumbent upon the Ld. CIT(A) as per such statutory provision of

law. Therefore, in order to prevent the miscarriage of justice, we would like to give further opportunity of being heard to the appellant by remitting the issue to the file of the Ld. CIT(A) to dispose of the same upon granting an opportunity of being heard to the appellant and upon considering the evidence on record or any other evidence which the appellant chose to file at the time of hearing of the matter. We also make it clear that in the event the appellant fails to cooperate with the First Appellate Authority, the said authority would be at liberty to dispose of the appeal strictly in accordance with law.

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

This Order pronounced on 22/03/2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 22/03/2024
S. K. SINHA

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

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