

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

**BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.582/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2014-2015

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| Mansi Mukesh Bari, 51, Bansari Industrial Estate, Near Odhav Police Station, GIDC Odhav, Ahmedabad-382415 PAN: AHXPB9469L | Vs. | Income Tax Officer, Ward-5(3)(1), Ahmedabad. Now Income Tax Officer, Ward-3(3)(5), Ahmedabad. |
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| (Applicant) | | (Respondent) |
|-------------|--|--------------|

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| Assessee by : | Shri Hardik Mehta, AR |
| Revenue by : | Shri C.S Sharma, Sr.DR |

सुनवाई की तारीख/**Date of Hearing** : **16/04/2024**

घोषणा की तारीख /**Date of Pronouncement**: **19/04/2024**

आदेश/ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals), Ahmedabad, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-2015.

2. The assessee has raised the following grounds of appeal:

1. The Learned CIT(A) grossly erred in law and on facts by contending that the appeal filed by the Appellant is already disposed by the erstwhile CIT(A) vide appeal no. CT(A)-5/ITO.Wd5(3)(1)/269/2016-17 and Order dated 21.11.2017. The Learned CIT(A) grossly erred in law by ignoring the facts that the appeal before him is arising out of the Order of the Hon'ble ITAT dated 20.06.2018 in ITA No. 240/Ahd/2018 wherein the Hon'ble ITAT has set aside the Order of the erstwhile CIT(A) dated 21.11.2017 and restored back the matter to the file of the CII(Lambda)

2. The Learned CTT(A) grossly erred in law by not appreciating the facts that the present appeal before him is restored back to the file of CTI(A) by the Hon'ble IHAT vide order dated 20.06.2018 and thus, the Learned CTT(A) ought to have considered the matter and issues involved on merits. Your Appellant requests to kindly direct the Learned CIT(A) to provide an opportunity to the Appellant to represent the facts of the case.

3. The Assessing Officer u/s.143(3) of the Act, made addition of Rs.18,88,473/- in respect of unaccounted income of the assessee relating to Sundry Creditors. Thereafter, the assessee filed appeal before the Ld.CIT(A), which was decided ex-parte vide order dated 21/11/2017, by the Ld.CIT(A). The assessee approached the Tribunal and the Hon'ble Tribunal set-aside the matter to the file of Ld.CIT(A), vide order dated 20/06/2018.

4. The Ld.AR submitted that the Ld.CIT(A), has not decided the issues on merit and therefore the matter may be again restored back to the file of the Ld.CIT(A), as the assessee's tax consultant has not co-operated with the hearing before the Ld.CIT(A), in second round.

5. The Ld.DR vehemently opposed the restoring the matter to the file of the Ld.CIT(A), as the assessee deliberately not appeared before the Ld.CIT(A).

6. We have heard both the parties and perused all the relevant materials available on record. The assessee has contended that the tax consultant has not represented the assessee's case properly when the first appeal was decided by the Ld.CIT(A), vide order dated 21/11/2017. The assessee after restoring back the appeal by the Tribunal has again failed to take precaution and therefore we are

restoring the matter on the condition that assessee will pay amount of Rs.2000/- to the Prime Minister Relief Fund within the period of two weeks from this order. The matter is restored back to file of the Ld.CIT(A), for proper adjudication of the issues on merit.

7. The Ld.AR has also come up with the application for admission of additional evidences which is taken on record and the Ld.CIT(A), is directed to take cognizance of the same by calling upon the remand report from the concerned AO and decide the same as per the Income-tax statute. Needless to say, assessee be given opportunity of hearing by following Principle of Natural Justice. It is further directed to the assessee that if the assessee fails to pay the amount as directed herein above within the stipulated time, this direction will not be applicable in respect of restoration of appeal to the file of the Ld.CIT(A). Further, if the assessee fails to appear before the Ld.CIT(A), or deliberately not attending the hearings before the Ld.CIT(A), then the Ld.CIT(A), based on the conduct of the assessee will pass the appropriate order ex-parte within the parameter of Income-tax provision after taking cognizance of the details filed by the assessee on merit. Hence, the appeal filed by the assessee is partly allowed for the statistical purposes.

8. In the result, the appeal filed by the assessee is partly allowed for the statistical purposes.

Order pronounced in the Court on 19/04/2024 at Ahmedabad.

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated
Manish

(True Copy)
19/04/2024