

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.134/Ahd/2024
Assessment Year : 2017-18

Meghdhanush Enterprise LLP 7, Shri Vidhyanagar Co-op. Hou. Soc. Opp. Municipal Garden Usmanpura - 380 015 (Gujarat) PAN: AAUFM 8363 Q	Vs	The CIT(Appeals)/ NFAC, Delhi
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Mukesh Patel, AR
Revenue by :		Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 03/06/2024
घोषणा की तारीख /Date of Pronouncement: 10/06/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

This appeal is directed by the Assessee against the order of the Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre (NFAC) (hereinafter referred as "the Ld.CIT(A)"), dated 05-01-2024, for the Assessment Year Assessment Year (AY) 2017-18 which was passed against the order of the Assessing Officer (hereinafter referred as " the AO") passed under section 147 r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred as "the Act")

Facts of the case:

2. The assessee filed his return of income on 30-7-2017 declaring total income of Rs.24,63,000/-. The same was processed u/s.143(1) of the Act and subsequently order u/s.143(3) of the Act was passed on 28/12/2019 determining total income at Rs.12,72,80,090/-. In the said order, the AO treated Rs. 12,48,17,090/- as “short-term capital gains” as against the same was claimed by the assessee as “long-term capital gains”. The assessee preferred an appeal against the order u/s 143(3) of the Act. The said appeal filed on 8-12-2020 vide acknowledgement number 793954141081220 is pending as on date.

2.1. Subsequently, proceedings u/s.147 of the Act were initiated and the assessment was completed without any addition to the income which was determined by the AO as per the order u/s 143(3) of the Act i.e. Rs.12,72,80,090/-. The assessee once again preferred an appeal against the order of the AO u/s. 147 r.w.s 143(3) of the Act.

3. The Ld.CIT(A) dismissed the appeal of the assessee stating that –

“Hence, considering the above facts and discussions above from point no.-(i) to (ix), it is clear that there is NIL addition made by the AO in its said re-assessment Order dated 30.03.2022 reassessing the income at Rs.12,72,80,090/- itself. It appears that, no appeal has been preferred by the Appellant assessee against the original assessment order of the AO dated 28.12.2019 (passed u/s 143(3) of Income-tax Act 1961). Which means that, the Appellant has accepted the said original assessment order of the AO (dated 28.12.2019 u/s. 143(3) of the Act) and thus no relief can be given by this authority, as there is nothing new in this re-assessment order of the AO dated 30.03.2022 and thus there is no addition made by AO other than what is already accepted by the Appellant assessee. Further, in view of the grossly

negligent behavior of the appellant assessee bank, this Appellate authority dismisses this appeal of the Appellant assessee."

4. Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before us with solitary ground –

"That the learned CIT(Appeals) erred in law and on facts in outrightly dismissing the appeal of the appellant, without even granting an opportunity for video conferencing as requested and on his own wild presumptions and surmises, without even ascertaining the correct facts of the case. The appellant wishes to take strong exception to the remarks of the learned CIT(Appeals) alleging without any basis or justification grossly negligent behaviour of the appellant."

5. During the course of hearing before us, the Ld.Authorised Representative (AR) for the assessee stated that the Ld.CIT(A) committed a factual error by stating that no appeal was preferred against the order under section 143(3) of the Act, as the appeal was indeed pending. He also pointed out that this fact that the appeal against the order of AO u/s.143(3) of the Act was specifically mentioned in Form 35 under serial number 4 with pending appeal number. In support of this fact, he furnished the copy of Form 35. It was further contended that the Ld.CIT(A) was failed to consider the request for a hearing through video conferencing which amounted to a denial of a fair hearing, thereby violating the principles of natural justice. In support of this fact, he submitted E-proceedings Response Acknowledgement (No. 609507251010124 dated 01-01-2024) with a remark that he is seeking an opportunity for video conferencing. The assessee once again filed a reply on 04-01-2024 to the notice from NFAC of the same date i.e. 04-01-2024.

5.1. The Ld.AR also requested to restore the matter back to the file of Ld.CIT(A) to decide the issue on merit. The Ld.Departmental Representative agreeing to the fact that no hearing by video conferencing was given and did not object to the request of the Ld.AR to restore the matter back to the file of Ld.CIT(A).

6. We have considered the contentions of both the parties. We are of the view that the principles of natural justice require no person should be condemned unheard. This principles mandate that an opportunity of being heard must be given to the assessee before any adverse order is passed, especially under the faceless appeal regime.

6.1. In the present case, the Ld.CIT(A) has failed in offering such an opportunity even after request by the assessee twice and passed the order u/s.250 of the Act in a hurried manner. While passing the order, he has completely ignored that the assessee has already preferred an appeal against the order u/s.143(3) of the Act. the Ld.CIT(A) has also ignored the facts available on records and failed in deciding the case on merits. He also has passed remarks on the negligent behaviour of the assessee, which are far from reality. In fact, the assessee has promptly replied to all the notices. Considering the facts of the case, we express the concerns over the functioning of the NFAC and set aside the order of Ld.CIT(A) restoring the matter back to the file of Ld.CIT(A) to decide the matter on merits.

6.2. In the interest of judicial efficiency and to avoid multiplicity of proceedings, we hereby direct the Ld.CIT(A) to consolidate the present appeal with the pending appeal filed by the assessee on 08-12-2020 vide

acknowledgement number 793954141081220 against the order of AO u/s 143(3) of the Act and adjudicate the matters on merits in a comprehensive manner.

7. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 10 June, 2024 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad, Dated 10/06/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, SK. PS

आदेश की प्रतिलिपि अग्रेषित/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) / NFAC, Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad