



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.192/RJT/2024
Assessment Year: (2017-18)
(Hybrid Hearing)

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| Amitbhai Kamleshbhai Chauhan Tirupati Petro Fuels, Morbi Road, Survey No. 99, Tankara, Rajkot – 360007 | Vs. | The ITO Ward-1(2)(2), Rajkot – 360001 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADEPC7426M | | |
| (Appellant) | | (Respondent) |

Appellant by : Shri Sunny Mehta, Ld. A.R.
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Date of Hearing : 20/01/2025
Date of Pronouncement : 23/01/2025

PER DINESH MOHAN SINHA, JM:

1. Captioned appeal filed by the assessee is against the order passed by the Commissioner of Income Tax (Appeals) [in short, “The Ld. CIT(A)”] vide order dated 30.01.2024 which inter arises out of order passed by the Assessing Officer [in short, “The Ld. AO”]
2. Facts of the case are that the return of income of appellant for AY 2017-18 was filed as on 01-11-2017 declaring total income of Rs 5,69,090/- vide acknowledgement no 283079151011117 and paid total tax of Rs 41,483/ Audit Report which certainly includes audited Balance-sheet and Profit and Loss Account has been filed as on 31-10-2017 vide acknowledgement no 278109601311017 under section 44AB(a) Further, appellant runs a petrol pump with the name of Tirupati Petro Fuels at Rajkot- Morbi Road, Tankara, Rajkot



Value Added Tax (VAT) is applicable on Petroleum Products and therefore, appellant files regularly VAT Returns and Audit Report as applicable under VAT Provisions. Moreover, the appellant is required to file monthly statement before the Executive Magistrate of Tankara-Rajkot under the office of Collector, which includes daily stock figures with clear bifurcation of opening, purchase, sale and closing values. The AO has issued several notices and submission to each notices have been duly provided. In the course of proceedings it was informed to AO that data of books of accounts for FY 2016-17 was maintained by the accountant in his computer and the same was crashed due to technical errors. Written demands were made to the technical team of software developer to provide assistance in recovering the crashed data. They were successful to some extent and by and large all the details as demanded by AO were submitted within due time, However, AO demanded copies of all vouchers for all the expenses during the last days before the time barring assessment date. It can clearly be understood that being a petrol pump there are more small expenses and the number of vouchers are hard to compile, copy and submit within 3-4 days time limit. Further, copies of VAT Audit Report, VAT Returns, Income Tax Audit Report, Cash Book, etc. have been submitted. The sales of Rs. 11.21,80,169/- is inclusive of VAT and the same was explained to AO and VAT Audit Report and VAT Returns as evidence against the same were submitted. However, AO failed to consider the same. Also, AO failed to consider that stock figures in case of Petroleum Products cannot be manipulated as the overall capacity of handling the stock remains fixed and cannot be altered. Further, AO also failed to consider that there was abnormal increase in purchase during the said demonetization period as against the abnormal increase in sales and the same is unquestionably



3. The assessee filed an appeal before the CIT(A). Ld. CIT(A) issued notices for hearing u/s.250 of the Income Tax Act, 1961 dated 28.01.2021, 04.11.2022, 24.06.2023, 22.09.2023 and 09.01.2024 to the appellant. In response to the same, the appellant did not file any submission. That Ld. CIT(A) has passed an ex-parte order dated 31.01.2024 as the assessee failed to respond to various notices issued for hearing of the case.

4. Aggrieved by the order passed by the Ld. CIT(A) the assessee is in appeal before us.

5. Ld. Counsel of the assessee prayed that one more opportunity given to the assessee to represent the case before lower authority may kindly be granted to the assessee. Ld. DR relied on the order of the Ld.CIT(A) stating that due opportunities were given to the assessee. However, Ld. Sr. DR has not objected to the prayer of the assessee.

6. We have heard both the parties and perusal the records available, we note that assessee was not given an opportunity of being heard and could not plead his case successfully before the Ld. CIT(A) because notices were only sent not served upon the assessee. We also note that assessee has appeared before the Ld. AO and furnished all the documents. It is settled law that principles of natural justice and fair play require that the affected party is to be 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, we restore the matter back to the file of Ld. CIT(A) for de novo adjudication and pass a speaking order after affording opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we 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 matter afresh on merits.



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

Order is pronounced in the open court on 23/01/2025

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

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot
दिनांक/ Date:23/01/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot