

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

**BEFORE DR. ARJUN LAL SAINI,
ACCOUNTANT MEMBER**

**ITA No.151/RJT/2025
Assessment Year: (2019-20)**

Alka Rajen Shah, 59, Silver Sand B/h. Parijat Party Plot Off: 150 Feet Ring Road, Rajkot- 360 005 PAN : AYKPS 4510 K (Appellant)	Vs.	Income Tax Officer, Ward-1(1)(1), Rajkot, Income Tax Officer, M.G. Road, Beside Girnar Cinema, Rajkot-360 001 (Respondent)
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निर्धारिती की ओर से/Assessee by. : Shri Raju Manek, AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/03/2025

घोषणा की तारीख/Date of Pronouncement : 30/04/2025

आदेश / O R D E R

Dr. ARJUNLAL SAINI AM;

Captioned appeal filed by the assessee, pertaining to Assessment Year 2019-20, is directed against the order passed by Learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi, vide order dated 12.11.2024, which in turn arises out of an order passed by the Assessing Officer, dated 26.03.2024, u/s.147 r.w.s 144 r.w.s. 144B of the Income Tax Act, 1961.

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



“1. The learned CIT (Appeals) has erred in dismissing the appeal summarily on the ground of non prosecution which is bad on facts and also in law as it is against the law of natural justice.

2. The learned CIT Appeal has passed order ex parte without adjudicating on merits on the issues raised before him which is bad on facts and also in law and ought to be set aside to learned CIT Appeal.

3. Without prejudice to above grounds

(i) The learned Assessing Officer has erred in issuing notice u/s.148 of I.T. Act 1961 which is had in law and also on the facts.

(ii) The learned Assessing Officer has erred in making addition u/s. 69 r.w.s. 115BBE considering that there was benefits of Long term capital gain/ Long term capital loss by claiming of Rs.28,06,614/-, which is bad on facts and also in law which ought to be deleted.”

3. When the matter was called for hearing, the learned Counsel for the assessee, at the outset submitted that the appeal has been filed by the assessee belatedly for 25 days. The learned Counsel adverted my attention to the affidavit filed in this regard citing reasons for condonation of delay and urged for a benign view and sought condonation of delay of 25 days in filing the appeal before the Tribunal. A perusal of the affidavit gives me an impression of existence of mitigating circumstances to enable me to exercise my discretion in favour of the assessee. Accordingly, the delay is condoned.

4. At the outset itself, the Id. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an *ex-parte* order, stood vitiated on account of violation of principle of natural justice. During the appellate proceedings, the notices of hearing were not served on the assessee. The Id. Counsel for the assessee, therefore, contended that in the interest of justice, one more opportunity should be given to the assessee to contest the appeal before the Assessing Officer, as the assessee needs to file some fresh documents and evidences to prove his claim.



5. On the other hand, the learned Senior DR for the revenue, argued that there is a non-compliance on the part of the assessee, before the Assessing Officer as well as before the Id. CIT(A), during the appellate proceedings, therefore, it is just wasting the time and resources of the lower authorities, if the matter is remitted back to the file of the lower authorities. Therefore, Id. Sr.DR contended that a cost of Rs.500/- may be imposed on the assessee, and then this matter may be restored back to the file of the assessing officer, for fresh adjudication.

6. I have heard both the parties. I note that in the assessee's case under consideration, the assessment was carried out u/s 144 of the Act and the impugned order passed by the Id. CIT(A), is an ex parte order and non-speaking order, therefore, I do not wish to make any comments on the merits of the grounds raised by the assessee. However, on account of non-compliance attitude of the assessee, a cost of Rs.500/- (Rupees five hundred) is imposed on the assessee, which is to be deposited in the Prime Minister Relief Fund.

7. Considering the above facts, I note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the Id. CIT(A). I note that the Id. CIT(A) did not discuss the assessee's case on merits based on the material available before him hence it is a violation of principle of natural justice. I note that it is settled law that principles of natural justice and fair play require that the affected party is 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, I restore the matter back to the file of Assessing Officer for *de novo* adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, I deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing



Officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order pronounced in the open court on 30/04/2025.

Sd/-

(Dr. A.L. SAINI)

लेखा सदस्य/ACCOUNTANT MEMBER

राजकोट /Rajkot

दिनांक/ Date: 30/04/2025

DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

// True Copy //

By order/आदेशसे,

सहायक पंजीकार

आयकर अपीलीय अधिकरण ,राजकोट