

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT
[Conducted through Virtual Court at Ahmedabad]**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

Stay Application No.05/SRT/2020

WITH

ITA No.419/SRT/2019

निर्धारण वर्ष/Asstt. Year: 2014-15

Ashokkumar Kalubhai Nakrani 1, Vandana Society Shyam Dham Road Opp: Amardeep Society Nana Varachha, Varachha Road Surat.PAN : AEIPN 8731 K	Vs.	ITO, Ward-3(1)(2) Surat.
---	-----	-----------------------------

(Applicant)		(Respondent)
-------------	--	--------------

Assessee by	:	Shri Viresh I. Rudalal, AR
Revenue by	:	Smt.Anupama Singhla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 24/08/2020

घोषणा की तारीख/Date of Pronouncement: 24/08/2020

आदेश/ORDER

PER RAJPAL YADAV, VICE-PRESIDENT

Present stay application is directed at the instance of the assessee for grant of ad-interim stay of outstanding demand of Rs.62,26,284/-.

2. With the assistance of Id.representatives, we have gone through the record carefully. It emerges out from the record that the present appeal is filed by the assessee against order of the Id.CIT(A)-3, Surat dated 22.5.2019 passed for the Asstt.Year 2014-15. The Id.CIT(A) has confirmed addition of Rs.1,69,16,325/-. A perusal of the Id.CIT(A)'s order would reveal that the Id.CIT(A) has not adjudicated the appeal on merit, rather

dismissed it for want of prosecution. Therefore, we put to both the parties as to why the appeal itself be not taken for hearing. The Id.representatives did not raise objection *qua* this proposition, and therefore, we took the appeal for hearing.

3. A perusal of order of the Id.First appellate Authority would indicate that the appeal was listed on 12 occasions, but according to the Id.CIT(A), the assessee did not comply with the summons issued to him and did not appear before the Id.first appellate authority.

4. Sub-section (6) of section 250 has a direct bearing on the controversy. Therefore, it is pertinent to take note of this clause which reads as under:

"6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."

5. On perusal of section would indicate that the Id.CIT(A) was required to formulate points in dispute, and thereafter record reasons on such points. No doubt the assessee failed to appear before the Id.CIT(A) in spite of notices issued on eleven occasions, but in that cases also the Id.CIT(A) ought to have decided the appeal on merit instead of dismissing it *limine* for want of prosecution. The Id.CIT(A) failed to adhere the mandatory procedure contemplated in section 250(6) of the Act, hence his order is not sustainable. We allow this appeal of the assessee and set aside the order of the Id.CIT(A). The issue is remitted back to the file of the Id.CIT(A) for fresh adjudication. Needless to say, during the set aside proceedings, the assessee shall not indulge in

dilatory tactics as a strategy to prolong the proceedings and shall cooperate for adjudication of the issue before the Id.CIT(A) in accordance with law.

6. In the result, Stay application of the assessee is dismissed as infructuous and appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 24th August, 2020.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT