

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**  
**AND**  
**SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

I.T.A. No.3350/M/2013  
(Assessment Year: **2008-2009**)

Ms. Ramlah Idris Ghadialy, 20/24, Asgar Manzil, Flat No.3A, Pavwala Lane, Mumbai – 400 004.	बनाम/ Vs.	ITO-16 (3)(2), Aayakar Bhavan, M.K. Road, Mumbai.
स्थायी लेखा सं./PAN : ABWPC4710G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Nishit Gandhi
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Sujit Bangar, DR

सुनवाई की तारीख /Date of Hearing : 07.01.2016

घोषणा की तारीख /Date of Pronouncement : 14.01.2016

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 30.4.2013 is against the order of the CIT (A)-27, Mumbai dated 25.2.2013 for the assessment year 2008-2009. In this appeal, assessee raised two grounds and the same read as under:

**"1. Natural justice**

- 1.1 *The Ld CIT (A) erred in not granting proper, sufficient and adequate opportunity of being heard to the assessee while framing the appellant order.*
- 1.2 *It is submitted that in the facts and in the circumstances of the case and in law, the appellate order so framed be held as bad and illegal, as*
  - (i) *The same is framed in breach of the principles of natural justice; and*
  - (ii) *The same is passed without application of mind to the facts and the submissions brought on record by the assessee.*

**Without prejudice to the above**

- 2.1 *The Ld CIT (A) erred in confirming the action of the AO in making addition of Rs. 16,47,766/- being credit entries in the bank account without Bombay Mercantile Co-operative Bank Ltd by treating the same as alleged unexplained cash deposits u/s 68 of the Income Tax Act, 1961.*
- 2.2 *It is submitted that in the facts and the circumstances of the case and in law, no such addition was called for.*
- 2.3 *without prejudice to the above, assuming – but not admitting – that any disallowance was called for, it is submitted that the computation of addition made by the AO is arbitrary, excessive and not in accordance with the law."*

2. At the outset, Ld Counsel for the assessee brought our attention to Ground no.1 and submitted that the said ground needs to be remanded to the file of the AO

as the assessment and the and the first appellate authority proceedings were completed without granting reasonable opportunity of being heard to the assessee. While pleading for remanding, Ld Counsel for the assessee brought our attention to the bank statements and submitted that the AO made addition of Rs. 16,47,766/- on account of deposits in the bank account with Bombay Mercantile Co-operative Bank Ltd bearing the Account No.50015. Narrating the deposits in the said bank account, Ld Counsel for the assessee brought our attention to the withdrawals of cash as well as the expenditure, credits and deposits and the facts and circumstances of this case and submitted that it is a case for making 'peak credits additions' and not the entire addition of Rs. 16,47,766/- as 'unexplained cash deposits' u/s 68 of the Act.

3. On the other hand, Ld DR for the Revenue relied on the orders of the Revenue Authorities.

4. We have heard both the parties and perused the orders of the Revenue Authorities as well as the relevant material placed before us. After hearing both the parties and considering the above submissions of the Ld Counsel for the assessee, we find it relevant to remand this issue to the file of the AO on the ground of 'natural justice'. We have also noticed that assessee made submissions to the Authorities below for considering the 'peak credit additions'. But, without assigning any reasons or without passing any speaking order, CIT (A) confirmed the additions, which in our opinion is unsustainable in law. Therefore, we order the Assessing Officer to examine the issue afresh after attending to all the submissions of the assessee including the requirement of considering the attendance of the brother of the assessee and also attending to the approved manner of adding 'peak credits' only in matters where the assessee discharged his own and in matters of end utilization of the cash withdrawals from the bank account. AO shall grant a reasonable opportunity of being heard to the assessee as per the set principles of natural justice. Accordingly, the Grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 14<sup>th</sup> January, 2016.

**Sd/-**  
**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 14.1.2016

**Sd/-**  
**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

व.नि.स./ OKK, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**