

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'सी' मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.2017/M/13  
(निर्धारण वर्ष / Assessment Year: 2006-07)

Shri Prakash S. Madia 4C/12, Bazgeegay Co-op Hsg Soc. Saibaba Nagar, Borivali (W) Mumbai 400 092	<b>बनाम/</b> Vs.	ITO 25(3)(3) Bandra (East) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAOPM7998R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Kashyap Padia	
Department by:	Shri Shiddaramappa Kappatta Narvar	

सुनवाई की तारीख / Date of Hearing: 02.12.2015  
घोषणा की तारीख /Date of Pronouncement: 16.12.2015

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 20.03.2012 passed by the learned Commissioner of Income Tax (Appeals)-35, Mumbai [hereinafter referred to as the learned "CIT(A)"] relevant to the assessment year 2006-07.

2. The assessee has raised the following points:

1. *That the order of the learned CIT(A) is wrong against the law and facts with regard to confirming the net*

*profit @ 12% on the sales of Rs.49,51,44,527/- amounting to Rs.5,94,17,343/- u/s 144 r.w.s 145(3).*

*2. That the learned CIT(A) has erred with regard to confirming the addition of a sum of Rs.7,50,000/- as undisclosed sources of income.*

*3. That the learned CIT(A) has erred in confirming the addition of a sum of Rs.18,91,274/- as unexplained loans.*

*The other issues are general in nature nowhere raised any specific point to be decided.*

3. The facts of the case are that the assessee filed the return of income declaring the total income to the tune of Rs.5,70,971/- on 30.10.2006. The return was accompanied by Audit Report in Form No. 3CB & 3CD as required u/s.44AB of the of the Income Tax Act, 1961( in short “the Act”) along with audited copy of P&L A/c., Balance Sheet, statement of accounts etc. Subsequently, the case was selected for scrutiny. The case was finally assessed at Rs.6,20,81,650/-. The assessment was finalized in view of the section 144 r.w.s 145(3) of the Act. The assessee failed to appear before the Assessing Officer despite receipt of the notice u/s. 143(2) of the Act at eleven occasions on number of dates. List of dates are tabulated.

<b>Sr. No</b>	<b>Section under which notice is issued</b>	<b>Date of notice</b>	<b>Date of compliance</b>	<b>Remarks</b>
1	Notice u/s 142(1) of the I.T.Act 1961 along with a detailed questionnaire	07.02.2008	19.02.2008	Neither any body has attended nor any adjournment was sought.
2	This office letter / notice u/s 142(1) of the I.T.Act 1961	10.03.2008	14.03.2008	-do-

3	Penalty notice u/s 271(1)(b) of the I.T.Act 1961	10.03.2008	14.03.2008	-do-
4	Summons u/s 131 of the I.T.Act 1961	10.03.2008	14.03.2008	-do-
5 (sic)	Penalty of Rs.10000/- was levied by an order u/s 271(1)(b) of the I.T.Act 1961	27.03.2008	--	--
6	Summons u/s 131 of the I.T.Act 1961	16.04.2008	29.04.2008	-do-
7	Penalty notice u/s 271(1)(b) of the I.T.Act 1961	16.04.2008	29.04.2008	-do-
8	This office letter / notice u/s 142(1) of the I.T.Act 1961	26.09.2008	08.10.2008	-do-
9	This office letter / notice u/s of the I.T.Act 1961	17.10.2008	24.10.2008	-do-
10	This office letter / notice u/s of the I.T.Act 1961	04.11.2008	12.11.2008	-do-
11	Summons u/s 131 of the I.T.Act 1961	17.11.2008	24.11.2008	-do-

4. In the assessment, Assessing Officer invoked the provisions of section 145(3) of the Act and made ex-parte assessment. Assessing Officer made addition estimating the Net Profit @ 12% on the sales of Rs.49,52,00,000/- (Rounded off). Assessing Officer made many other additions and determined the assessed income at Rs.6,20,81,650/- against the Return income of Rs.5,70,917/-. The order is passed u/s 144 r.w.s 145(3) of the Act.

5. Aggrieved with the said order of the Assessing Officer, assessee preferred an appeal before the learned CIT(A) against all additions made in the assessment. Assessee also appeared before the learned CIT(A) along with the AR as per discussion in para 3 of the impugned order. Learned CIT(A) remanded the matter to the Assessing Officer para 3 & 4 describes the details in this regard. Subsequently, none appeared for the assessee before the learned CIT(A). Eventually, learned CIT(A) extracted the Assessing Officer's order and also the remand report in his order and upheld the Assessing Officer's addition vide para 7. The same reads as under:

*“On going through the Balance Sheet of the assessee for the year under consideration, it is noticed that assessee has shown loans advanced to the tune of Rs.24,12,432/- as against a sum of Rs.5,21,158/- shown for the earlier A.Y.2005-06. From this, it is quite apparent that during the period under consideration assessee has advanced new loans to the tune of Rs.18,91,274/- (Rs.24,12,432 - Rs.5,21,158). In the absence of any details / documentary evidences with regard to the source of these advances, the same are also treated as advanced out of undisclosed sources of the assessee and accordingly, the above said sum of Rs.18,91,274/- is added back to his total income. Penalty proceedings u/s 271(1)(c) of the I.T.Act are initiated separately.”*

From the perusal of the order of the learned CIT(A), we find the same is not passed as per provision of 250(6) of the Act. He merely extracted the order and remand report of the Assessing Officer. We cannot consider the impugned order as a speaking order.

6. Therefore, we are of the opinion, it is in the interest of justice the learned CIT(A) need to pass a speaking order and in accordance with the law. Learned CIT(A) shall grant reasonable opportunity to the assessee as per the set principles.

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

Order pronounced in the open court on 16<sup>th</sup> December, 2015.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 16<sup>th</sup> December, 2015

*MP*

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार** (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**