

आयकर अपीलिय अधिकरण, "जे" न्यायपीठ, मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI  
श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष  
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1219/M/15  
(निर्धारण वर्ष / Assessment Year: 2005-06)

Smt. Anuradha K. Kamath 3 <sup>rd</sup> Floor, Shankar Seth Mansion, 296-A, Tardeo Road, Mumbai - 400007	<b>बनाम/</b> Vs.	Income Tax Officer Ward 19(1)(1) [Earlier ITO 16(2)(2)] Room No.223, 2 <sup>nd</sup> Floor, Matru Mandir, Mumbai - 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGPK2660Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri G. P. Mehta
Department by:	Shri Vishwas Jadhav

सुनवाई की तारीख / Date of Hearing: 13.05.2016  
घोषणा की तारीख /Date of Pronouncement: 25.05.2016

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

This is an appeal filed by the assessee against the order dated 15.12.2014 passed by the learned Commissioner of Income Tax (Appeals) 30, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2005-06.

2. The assessee has raised the following ground of appeal:-

*"1. The Learned Assessing Officer {The Income Tax Officer, Ward 19(1)(1), Mumbai} has erred in adding an amount of Rs.7,38,575/-as a undisclosed income of the IT Act, 1961 and the learned Commissioner of Income Tax (Appeals) – 30 has further erred in upholding the order of the Assessing Officer.*

*2. The Learned Assessing Officer [The Income Tax Officer, Ward – 19(1)(1), Mumbai] has erred in disallowing the rebate/s 88 of the Act, 1961 and the learned Commissioner of Income Tax (Appeals) 30 has further erred in upholding the order of the Assessing Officer.*

*3. The Learned Assessing Officer {The Income Tax Officer, Ward – 19(1)(1), Mumbai}has erred in disallowing an amount of Rs.76,229/- as Municipal Taxes paid on House Property Income and the learned Commissioner of Income Tax (Appeals) – 30 has further erred in upholding the order of the Assessing Officer."*

3. We have heard the arguments advanced by the learned representative of the parties and perused the record carefully. Infact the assessee did not argue the case on merits but moved an application under rule 11 of the Income Tax Rules, 1963 seeking the permission to raise additional ground. The assessee has raised the following two additional grounds:-

*"1. The assessment order passed is ab-intio void, in as much as material including statement of Shri Mukesh Choksey, based on which, belief of escapement of income was*

*formed, was never provided to the appellant and no opportunity of being heard on the said material was granted prior to making addition to the returned income at Rs.7,38,575/-.*

*2. The assessment order passed is an-initio void, in as much as, no opportunity was granted to cross examine Shri Mukesh Choksey, on the basis of whose testimony additions to the returned income has been made.*

4. We have gone through the assessment order as well as the order passed by the learned CIT(A) on record. Infact the addition of undisclosed income was made on the basis of the material available from Shri Mukesh Choksey as well as in view of the statement made by the Shri. Mukesh Choksey. There is nothing on record to which it can be assumed that the material which was recovered from Shri. Mukesh Choksey was handed over to the assessee and the statement of Shri. Mukesh Choksey recorded by the authority was also handed over to the assessee. Even there is nothing on record to which it can be assumed that an opportunity of cross examination if any was given to the assessee before consideration the statement of Shri. Mukesh Choksey while concluding the assessment of the assessee on record. Anyhow, the application seems justifiable on record and this Tribunal is of the view that before passing an order of assessment the material whatever was recovered from Shri. Mukesh Choksey is required to be provided to the assessee and if the assessee desired to cross examine

Shri. Mukesh Choksey then in these circumstances this opportunity was required to be given to the assessee before concluding assessment. In this regard we also placed reliance upon the judgement dated 2<sup>nd</sup> September, 2015, [2015] 127 DTR (SC) 241 in the case of Andaman Timber Industries Vs. Commissioner of Central Excise. In view of the above said circumstances and without commenting upon the merits of the case, we are of the view that the assessment is required to be concluded after giving an opportunity of being heard to the assessee and to provide him the necessary documents recovered from the Shri. Mukesh Choksey. Hence, we admit the additional ground raised u/s.11 of the Income Tax Rules 1963 and set aside the assessment order in the interest of justice and remand the case to the Assessing Officer to decide the matter afresh after giving the material demanded by the assessee in view of an application raised u/s.11 of the Income Tax Rules 1963 and providing him an opportunity of being heard in accordance with law. Therefore, the order of the learned CIT(A) is hereby ordered to be set aside and the case is remanded back before Assessing Officer to adjudicate the matter afresh in view of the above mentioned observations.

5. Accordingly the appeal filed by the **assessee is hereby allowed for statistical purposes.**

Order pronounced in the open court on 25<sup>th</sup> May, 2016.

Sd/-  
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated :25<sup>th</sup> May, 2016

*MP*

**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**