

**आयकर अपीलीय अधिकरण, 'एक-सदस्य' न्यायपीठ, मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष  
Before Shri Joginder Singh, Judicial Member,**

**ITA No.4651/Mum/2015  
Assessment Year: 2009-10**

Rajesh Amarshi Khandor, 15, Amin Chawl, Khed Gali, Gokhale Road, Dadar (W), Mumbai-400255	<b><u>बनाम/</u></b> Vs.	Income Tax Officer-25(2)(4), Mumbai
निर्धारिती / Assessee		राजस्व / Revenue
P.A. No. <b>ANMPK1402H</b>		

निर्धारिती की ओर से / Assessee by	Shri Suresh Manilal Pooj
राजस्व की ओर से / Revenue by	Shri Sumit Kumar-DR

सुनवाई की तारीख / <b>Date of Hearing</b>	<b>08/09/2016</b>
<b>आदेश की तारीख / Date of Order:</b>	<b>08/09/2016</b>

**आदेश / O R D E R**

The assessee is aggrieved by the ex-parte impugned order dated 13/03/2014 of the Ld. First Appellate Authority, Mumbai.

2. During hearing, Shri Suresh Manilal Pooj, ld. counsel for the assessee, contended that no notice of hearing was ever received by the assessee from the office of the Ld. Commissioner of Income Tax (Appeal), therefore, there was no question of appearance by the assessee. It was pleaded that the assessee may be provided opportunity to substantiate his case. On the other hand, the ld. DR, Shri Sumit Kumar, contended that the assessee did not appear before the Ld. Commissioner of Income Tax (Appeal) on the appointed date, therefore, ex-parte order was passed.

2.1. I have considered the submissions of the ld. DR and perused the material available on record. The facts, in brief, are that the assessee is an individual, proprietor of M/s Demand Enterprises, engaged in the business of manufacturing of readymade garments. There was information under CASS, as per which, it was noticed that the assessee deposited cash amounting to Rs.18,52,135/- in his bank account maintained with ICICI Bank. The assessee was asked as to why the same should not be added as unexplained cash credit u/s 68 of the Act. However, the ld. Assessing Officer made the addition. On appeal, before the Ld. Commissioner of Income Tax (Appeal), notices were issued to the assessee and the case was fixed for 19/09/2013, 17/01/2014 and 13/03/2014. As per the impugned order, none appeared before the Ld. Commissioner of Income Tax (Appeal) to substantiate the claim. However, there is no finding in the impugned order that notices were

served upon the assessee. Without going into much deliberation and keeping in view the principle of natural justice, I am of the view that no person should be condemned unheard, therefore, the impugned appeal is remanded back to the file of the Ld. Commissioner of Income Tax (Appeal) for fresh adjudication in accordance with law. The assessee be given opportunity of being heard. The assessee is also directed to approach the office of the Ld. First Appellate Authority within one month from the receipt of this order. The Ld. First Appellate Authority is free to adjudicate the appeal on a mutually pre-decided date. The appeal of the assessee is allowed for statistical purposes only.

Finally, the appeal of the assessee is allowed for statistical purposes only.

This order was pronounced in the open in the presence of ld. representative from both sides at the conclusion of the hearing on 08/09/2016.

Sd/-  
(Joginder Singh)  
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 08/09/2016

*Shekhar, P.S/निजी सचिव*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT, Mumbai.

4. आयकर आयुक्त / CIT- , Mumbai
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**