

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE**

श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्यके समक्ष
**BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./ I.T.A. No.459/Ind/2017
निर्धारणवर्ष /Assessment Year: 2008-09

Shri Badri Prasad, Bairagh Chichi, Kolar Road, Bhopal	v.	Income Tax Officer, 2(2), Bhopal
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: CUYPP1138 E		

अपीलार्थीकीओरसे/Appellant by	Shri Anil Kamal Gaud & Arpita Guad, CAs
प्रत्यर्थीकीओरसे/Respondent by	Shri Lalchand, CIT DR

सुनवाईकीतारीख/Date of hearing	26.09.2017
उद्घोषणाकीतारीख/Date of pronouncement	26.09.2017

ORDER

PER O.P. MEENA, AM.

This appeal filed by the Assessee is directed against the order of Id. Commissioner of Income-tax (Appeals)-1, Bhopal [in short referred to as the CIT (A)] dated 27.03.2017 pertaining to Assessment Year 2008-09.

2. The assessee has taken as many as four grounds of appeal, however, Ground No.1 & 2 relates that the AO has erred in making assessment order u/s 144 of the Act without considering the material fact and affordable reasonable opportunity of being heard to the assessee. Similarly, CIT(A) has also erred in dismissing the appeal without giving proper and effective opportunity being heard to the appellant and without prejudice by confirming the addition of Rs.40,00,000/- made on account of allegation of receipts which are capital receipts within the provision of Section 2(14)(iii) of the Act.

3. At the outset, the Ld. Counsel for the assessee submitted that the assessment was framed u/s 144 of the Act and without any all fairness he does not have any objection to the issue restored to the file of the AO for consideration.

4. The Ld. DR concurred with the submissions of the Ld. Counsel.

5. We have heard the rival contention of both the parties and we find that no proper opportunity being heard was allowed to the assessee by the AO as well as CIT(A). The principle of *audi alteram partem* rule is the basic principles of natural justice, expression, the *audi alteram partem* implies that a person must be given opportunity of being heard. This principle is a requirement in the every civilized society, the right to notice, the right to present the case and right to rebut with evidence, right to cross examination, right to legal representation, restore evidence to party and reasonable decision of speaking orders is must as held by the Hon'ble Supreme Court in the case of Menaka Gandhi V Union of

India. Therefore, we are of the view that the assessee must be given one more opportunity to represent his case. Therefore, in exercise of power conferred in section 28 of the Tribunal rules we restore the entire appeal with entire issue to the file of the Ld.AO for denovo consideration making as fresh assessment after allowing the assessee proper opportunity of being heard in accordance with the law. Nevertheless to mention that the assessee will cooperate in the assessment proceedings and file necessary evidences on which he wants to be relied upon.

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

The order pronounced in the open Court on 26.09.2017

Sd/-

Sd/-

**(C.M. GARG)
JUDICIAL MEMBER**

**(O.P. MEENA)
ACCOUNTANT MEMBER**

दिनांक /**Dated : 26th September, 2017**

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore