



ITA.No.1502/Mum/2018
Sahani Auto Parts Company
Assessment Year- 2009-10

आयकर अपीलीय अधिकरण "एक-सदस्य मामला" न्यायपीठ मुंबई में।

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

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
**BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.1502/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

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| Sahani Auto Parts Company 355/1, Laxmi Nivas V.P.Road, Grant Road Mumbai – 400 004 | बनाम/ Vs. | Income Tax Officer-19(3)(2) Matru Mandir Tardeo Mumbai- 400 007 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAPFS-1541-P | | |
| (अपीलार्थी / Appellant) | : | (प्रत्यर्थी / Respondent) |

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| Assessee by | : | Dr.P.Daniel, Ld.AR |
| Revenue by | : | N. Hemalatha, Ld. DR |

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| सुनवाई की तारीख / Date of Hearing | : | 23/05/2018 |
| घोषणा की तारीख / Date of Pronouncement | : | 23/05/2018 |

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-52 [CIT(A)], Mumbai, *Appeal No.CIT(A)-52/IT-93/19(3)(2)/17-18 dated 12/12/2017*. The assessment for impugned AY was framed by *Ld. Income Tax Officer 19(3)(2), Mumbai [AO] u/s 143(3) read with section 147 of the Income Tax Act,1961* on 19/03/2015 wherein the assessee has been saddled with addition on account of *alleged bogus*



purchases for Rs.12,40,727/-. The only grounds pressed before us are Ground Numbers- 2 & 3, which reads as under:-

2. On the facts and circumstances of the case, the Learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that proceedings initiated under section 147, read with section 148 are bad as the condition and procedure prescribed under statute have not been complied with.

3. On the facts and circumstances of the case, the Learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment order passed is otherwise bad in law in absence of valid service of notice U/s 148 of the IT Act 1961.

2. The Ld. Authorized Representative, *Shri P.Daniel*, drawing our attention to the documents placed before us, pleaded that notice u/s 148 was never issued to the assessee and therefore, the Ld. AO had no valid jurisdiction under law to reframe the assessment. Our attention is drawn to the fact that Ld. first appellate authority has not dealt with this vital aspect of jurisdiction and therefore, the same may be adjudicated. *Per contra*, Ld. Departmental Representative [DR], *Ms. N.Hemalatha* submitted that the assessee had participated in the reassessment proceedings.

3. Upon careful consideration, we find that issuance of statutory notice u/s 148 is *sine qua non* to assume valid reassessment jurisdiction by Ld. AO. The onus is on revenue to demonstrate that a valid notice was issued to the assessee. Upon perusal of appellate order, we find that this aspect of the matter has not been adjudicated by Ld. CIT(A) despite being pleaded by the assessee. Therefore, without delving much deeper into the issue, the matter stand remitted back to the file of Ld. CIT(A) for re-adjudication of the jurisdictional issue as raised by the assessee.



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4. Resultantly, the assessee's appeal stand partly allowed for statistical purposes.

Order pronounced in the open court on 23rd May, 2018

Sd/-

Sd/-

(Saktijit Dey)

(Manoj Kumar Aggarwal)

न्यायिक सदस्य / **Judicial Member** लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 23.05.2018
Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि □ ग्रेषित/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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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