

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'जी', मुंबई।

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

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री जी. मंजूनाथ, लेखा सदस्य, के समक्ष

**Before Shri JOGINDER SINGH, Judicial Member, and
Shri G. MANJUNATHA, Accountant Member**

**ITA NOs.308 & 309/Mum/2018
Assessment Years: 2007-08 & 2008-09**

Inter Carat Jewellery Private Limited, Unit No.14, New Nandu Industrial Estate, Shanti Nagar, Mahakali Caves Raod, Andheri (East), Mumbai-400093	बनाम/ Vs.	Income Tax Officer-10(1)(2) 02 nd Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
P.A. No.AABCI1023K		

निर्धारिती की ओर से / Assessee by	Shri Prakash Jotwani
राजस्व की ओर से / Revenue by	Ms. N. Hemlatha-DR

सुनवाई की तारीख / Date of Hearing :	03/05/2018
घोषणा की तारीख/ Date of Pronouncement	03/05/2018

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

These two appeals are by the assessee against the impugned ex-parte orders both dated 29/06/2017 of the Ld. First Appellate Authority, Mumbai.

2. During hearing, the ld. counsel for the assessee, Shri Prakash Jotwani, contended that no notice of hearing was ever served upon the assessee and thus an ex-parte order was passed by the First Appellate Authority, which is violation of principle of natural justice. On the other hand, Ms. N. Hemlatha, Ld. Sr. DR, contended that it was the duty of the assessee to make effective representation before the Ld. Commissioner of Income Tax (Appeal), therefore, the appeals were rightly rejected.

2.1. We have considered the rival submissions and perused the material available on record. Without going into the merits of the appeal, we note that the assessee is private limited company engaged in the business,

manufacturing and trading in jewellery. The assessee declared nil income in its return, which was processed u/s 143(1) of the Act on 22/01/2019 accepting the returned income at nil. Thereafter, the assessment was reopened u/s 147 of the Act on the basis of information with respect to unexplained expenditure. The assessee was claimed to be one of the beneficiaries of obtaining bogus bills for non-existing purchases amounting to Rs.1,06,784/- (Assessment Year 2007-08). However, we are of the view that as per mandate of Article 265 of Constitution of India, only due taxes has to be levied/collected. Keeping in view, the principle of natural justice that no person should be condemned unheard and since no service of notice was effected upon the assessee, we deem it appropriate to remand both these appeals to the file of the Ld. Commissioner of Income Tax (Appeal) for fresh adjudication on merit. The assessee be given opportunity of being heard with further liberty to furnish necessary evidence, if any, to substantiate its claim. The appeals of the assessee are allowed for statistical purposes.

Finally, the appeals of the assessee are allowed for statistical purposes.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 03/05/2018.

Sd/-

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03/05/2018

Shekhar, P.S./नि.स.,

Sd/-

(Joginder 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, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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