

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

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "I", 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 NO.5177/Mum/2016
Assessment Year: 2012-13**

DCIT 1(1)(2) Mumbai	बनाम/ Vs.	Friends Development Corporation P Ltd. 276, 1 st Floor, Lawrence & Mayo House, Dr D N Road, Fort, Mumbai 400 001.
(राजस्व /Revenue)		(निर्धारिती /Assessee)
PAN. AABCF5801A		

राजस्व की ओर से / Revenue by	Shri Ashok Jha-DR
निर्धारिती की ओर से / Assessee by	Shri K Shivram (AR) Shri Rahul Hakani (AR)

सुनवाई की तारीख / Date of Hearing :	14/06/2018
आदेश की तारीख /Date of Order:	15/06/2018

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated 18.05.2016 of the learned First Appellate Authority on the grounds stated in the Grounds of appeal.

2. The first ground raised by the Revenue pertains to admitting the additional evidence by the learned CIT(A) without giving opportunity to the Assessing Officer to examine the additional evidence filed by the assessee, which is in contravention of Rule 46A of the Rules.

3. During hearing Shri Ashok Jha, learned CIT-DR, strongly pleaded the ground no.1 by advancing arguments which is identical to the ground raised. The learned counsel for the assessee- Dr. K Shivram fairly agreed that the learned Assessing Officer was not provided opportunity and additional evidence was filed by the assessee.

4. We have considered the rival submissions and perused the material on record. The facts in brief are that the assessee is engaged in the business of real estate, building/developers declared loss of Rs. 17,78,48,397/- in its return filed on 30.09.2012. The assessment order was framed under section 143(3) on 16.08.2015 at an income of Rs. 31,12,365/-While framing the assessment the learned Assessing Officer made various additions/disallowances as has been mentioned in the assessment order.

5. On appeal before the learned CIT(A) the assessee filed additional evidences, which were considered and neither any remand report was sought from the Assessing Officer nor the additional evidence filed by the assessee was confronted to the Assessing Officer. Certainly, it is a violation Rule 46A of the rules. Therefore, without going into much deliberation, we remand this appeal to the file of the learned Assessing Officer to examine the factual matrix, uninfluenced by the observation made in the impugned order, and decide afresh in accordance with law. The assessee be given opportunity to file evidence, if any, in support of its claim, with further liberty of

opportunity of being heard. Thus, the appeal of the Revenue is allowed for statistical purposes only.

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

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 14/06/2018.

Sd/-

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 15/06/2018

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

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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,