

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

**BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.7316/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

Narendra Ishwarlal Gandhi 3C, Ridge Apartement, B.G Kher Marg, Malabar Hill, Mumbai-400006.	<b>बनाम/</b> Vs.	The Asst. Commissioner of Income Tax Circle 10(2)(1)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADNPG4447P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri Suman Kumar (DR)
Assessee by:	Ms. Shebali Garg

सुनवाई की तारीख / Date of Hearing: 05.07.2018

घोषणा की तारीख /Date of Pronouncement: 25.07.2018

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 15.05.2015 passed by the Commissioner of Income Tax (Appeals) -17, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2013-14.

2. The assessee has raised the following grounds: -

1. *The Ld CIT(A) has erred in law and on the facts of the case in dismissing the appeal on technical ground. The appeal was filed within 30 days from the date of the receipt of the order, the action is unjustified and unwarranted.*
2. *The Ld. CIT(A) has erred in law and on the facts of the case in confirming the addition of Rs- 840,000 notional income*

*from House Property. The addition is based more on suspicion than on facts. Without prejudice the addition is excessive.*

3. *The Ld CIT(A) has erred in law and on the facts of the case in confirming the action of the Assessing Officer in disallowing Rs,14,23,092 u/s 14A read with rule 8D. The action is unjustified and unwarranted particularly when the appellant has not claimed any expenditure in his return. x Without prejudice the addition is excessive.*
4. *Your Petition craves leave to add, amend, alter and/or withdraw all or any of aforesaid grounds of appeal.”*

3. The brief facts of the case are that the assessee filed his return of income on 22.07.2013 declaring total income to the tune of Rs.32,25,100/- for the A.Y. 2013-14. The assessee also filed the revised return of income on 22.07.2013 declaring total income to the tune of Rs.32,22,600/-. Thereafter, the case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. On verification, it was found that the assessee did not show his rental income from his office Himalaya House, therefore, the notional rental income was assessed to the tune of Rs.8,40,000/-. The assessee earned the exempt income to the tune of Rs.61,813/- u/s 10 of the I.T. Act, 1961. The Assessing Officer applied the provision of Section 14A r.w. Rule 8D of the I.T. Act, 1961 and assessed the expenses to earn the exempt income to the tune of Rs.14,23,092/- The total income of the assessee was assessed to the tune of Rs.54,82,690/-. Thereafter, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. In fact, the Ld. Representative of the

assessee did not argue the case on merits but argued on this point that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, in the said circumstances, the order of the CIT(A) in question is wrong and against law and facts and is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order of the CIT(A) dated 31.10.2017, we noticed that the CIT(A) decided the matter of controversy in absence of the assessee without giving an opportunity of being heard to the assessee. It is against the principle of natural justice. A proper and reasonable opportunity is required to be given to the assessee before the deciding the matter of controversy in accordance with law. Therefore, in the said circumstances, we are of the view that the order of the CIT(A) is not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on all the issues and restored the matter before the CIT(A) to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law.

**5. In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purpose.**

Order pronounced in the open court on 25.07.2018.

Sd/-  
(R. C. SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 25.07.2018.

*vijay*

Sd/-

(AMARJIT 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(A)-
4. आयकर आयुक्त / CIT
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**