

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

**BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 2800/MUM/2017  
Assessment Year: 2006-07**

Santhanam V. Sundapalayam, 3/4, Sea Breeze, A.G. Khan Road, Worli, Mumbai - 400018  PAN: AAAHS4490N	<b>Vs.</b>	The Income Tax Officer 18(1)(4), 108, Piramal Chamber, Lalbaug, Mumbai - 400012
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Raturaj H. Gurjar (Advocate)  
Revenue by : Shri Rajore Satishchandra (DR)

Date of Hearing: 23/10/2018  
Date of Pronouncement: 26/10/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 13.12.2016 passed by the Commissioner of Income Tax (Appeals)-33 (for short 'the CIT(A), Mumbai, for the assessment year 2006-07, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 144 r.w.s.147 of the Income Tax Act, 1961 (for short the 'Act').

2. In the present case, the assessment was re-opened on the basis of AIR information to the effect that the assessee during the year relevant to the assessment year under consideration made investment in HDFC Mutual Funds amounting to Rs. 17,00,000/- and the assessee has not explained the source of same and also not filed any return for the said assessment year.

3. The assessee did not respond to notice u/s 148 of the Act. Even during the course of assessment, no reply was filed to the notice issued u/s 142 (1) of the Act. However, the assessee filed a written submission in response to show cause notice dated 20.03.2014 stating that since the income was below taxable limit no return was filed during the assessment year 2006-07. The assessee further submitted that it had purchased shares worth Rs. 96,559.66 and received dividend amounting to Rs. 2,883.48 from Mutual Funds Investment of Rs. 7,00,000/-. The assessee enclosed the bank statement along with computation of total income , cash deposit and receipts statements and details of investment made in HDFC Mutual Funds amounting to Rs. 17,00,000/-. Since, the assessee did not file details regarding the source of investment, the AO made addition of Rs. 17,00,000/- holding the same as undisclosed source .

4. The assessee challenged the assessment order before the Ld. CIT (A). During the appellate proceedings, the assessee submitted copies of rent agreement to show receipt of security deposit which was claimed to be utilized for investment in Mutual Funds. However, the Ld. CIT (A) rejected the same holding that the assessee has failed to explain, and justify the reason for not submitting the documents before the AO. Accordingly, the Ld. CIT (A) dismissed the appeal and confirmed the addition made by the AO. The assessee is in appeal before the Tribunal against the said findings of the Ld. CIT (A).

5. The assessee has challenged the impugned order on the following effective grounds:-

- 1. "The Ld. CIT (A) has erred in not accepting the additional evidence filed by the appellant during the course of the appellant proceedings on the ground of mere technical defect & without going into the merits of the claim. In doing so, the Ld. CIT (A) has further erred in not appreciating the fact that the documentary evidences duly submitted by the appellant goes directly to the root of the matter & are of vital importance for the claim of the appellant.*

2. *Without prejudice to the above, the Ld. CIT (A) has erred in upholding the order passed by the Ld. AO, by treating the investment in HDFC Mutual Fund of Rs. 17,00,000/- made by the appellant along with his sibling, as his income.*
3. *The Ld. CIT (A) has further erred in treating the Mutual Fund investment as appellant's undisclosed income without appreciating the fact that the said investment was made by the appellant's sister & appellant's name was added as a second holder."*

6. Before us, the Ld. counsel for the assessee submitted that the assessee was not given adequate opportunity to produce the evidence to explain the source of investment by the AO. Since, the documentary evidence could not be produced before the AO, the same were produced before the Ld.CIT (A) during the appellate proceedings. However, the Ld. CIT (A) rejected the submission of the assessee and also rejected the additional evidence submitted before him and dismissed the appeal of the assessee. Since, the Ld. CIT (A) has decided the appeal in a mechanical manner without applying his mind, the impugned order is liable to be set aside.

7. On the other hand, the Ld. Departmental Representative (DR) relying on the order passed by the Ld. CIT (A) submitted that since the assessee has failed to produce the evidence during the assessment proceedings, the Ld. CIT (A) has rightly rejected the admission of additional evidence and dismiss the appeal of the assessee.

8. We have heard the rival submissions and also gone through the orders passed by the authorities below. We notice that in the present case, the final show cause notice was issued by AO on 20.03.2014 fixing the hearing on 24.03.2014 and the assessee filed its reply on 25.03.2014. Thereafter, without giving any notice or asking to submit any evidence, the AO passed the assessment order on 26.03.2014. Under these circumstances, the Ld. CIT (A) should have allowed the request of the assessee for admission of additional

evidence under rule 46A of the Income Tax Rules and decided the case on merits. However, instead of doing so, the Ld. CIT (A) has rejected the request for admission of additional evidence ignoring the fact that the assessee was not given adequate opportunity to produce the said documents during the assessment proceedings. We are therefore of the considered view that since the assessee was prevented by sufficient cause from producing the evidence in question, an opportunity to explain the source of income should be given, on the basis of the additional evidence produced before the Ld. CIT (A). We therefore allow the additional evidence in the interest of justice. Accordingly, we set aside the impugned order passed by the Ld. CIT (A) and remand the appeal back to the AO for passing assessment order afresh after taking into consideration, the additional evidence produced before the Ld. CIT (A). Needless to say, that the AO shall afford reasonable opportunity of being heard to the assessee.

In the result, appeal filed by the assessee for assessment year 2006-2007 is allowed for statistical purposes.

Order pronounced in the open court on 26<sup>th</sup> October, 2018.

*Sd/-*  
(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 26/10/2018

*Sd/-*  
(RAM LAL NEGI)  
JUDICIAL MEMBER

Alindra, PS

**आदेश 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