

आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

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

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 3272/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

Deepak S. Mishra C/o T.M. Gosher & Co. C.As., 12, Shivaji Fort Co-op. Hsg. Society Ltd., Eastern Express Highway, Sion (East), Mumbai-400 022	Vs.	Income Tax Officer, Ward. 29(1)(3), Bandra, Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AHIPM1482B		

अपीलार्थी की ओर से / Appellant by : Shri GC Lalka, AR

प्रत्यर्थी की ओर से / Respondent by : Shri Satischandra Rajore,
DR

सुनवाई की तारीख / Date of hearing:	04.02.2019
घोषणा की तारीख / Date of pronouncement :	04.02.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-39, Mumbai [in short CIT(A)], in appeal No. CIT(A)-39/IT-10148/ITO-29(1)(3)/15-16 vide dated 08.03.2018.



The Assessment was framed by the Income Tax Officer, Ward-29(1)(3) Mumbai (in short 'ITO/ AO') for the A.Y. 2009-10 vide dated 11.03.2015 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, it is noticed that the CIT(A) has not admitted the additional evidences in respect of fees received by assessee or his wife and correspondingly recorded in the bank books of the assessee. The assessee before CIT(A), during the appellate proceedings filed brief summary of fees received by assessee with a copy of pass book in respect of assessee's Canara Bank Account i.e. jointly held with his wife and HDFC Bank Account along with corresponding bank books of the assessee. The assessee also filed statements showing to whom the receipts and payment relates. The assessee also filed copy of computation, copy of profit and loss account, capital account and balance sheet stating the student wise fee received during the year. The CIT(A) has not admitted these evidences and also adjudicated the matter on merits without recording the finding of fact. For this the CIT(A) has observed in para 5.1 and 5.2 as under: -

"5.1 I find from the assessment order that the appellant was given large number of operation to furnish details. But the appellant furnished details only at the fag end of the assessment proceedings. Also, I find that the appellant did not file the details before the AO which he filed in the course of the appellate proceedings. The appellant has not been able to explain under which provisions of Rule 46A, these evidences



are admissible. I, therefore, refuse to admit the additional evidences. Accordingly, I proceed to decide the appeal without considering the additional evidences filed now.

5.2 I find from the assessment order that there was deposit of ₹ 15,75,700/-. I find that the appellant chosen not to furnish the relevant details before the AO in spite of several opportunities given to him as is evident from paragraphs 3.2 and 3.3. of this order. On going through the records, I find that the AO was justified in making the addition of Rs. 15,75,700/-. I therefore, confirm the addition made by the Assessing Officer. In the result, the ground of appeal is dismissed.”

3. When these were confronted to the learned Sr. Departmental Representative, he fairly agreed that the issue has not been adjudicated by a speaking order and the documents filed by assessee as additional evidences have not been admitted. The learned Counsel for the assessee agreed that matter can be remand back to the file of the AO for admission of additional evidences and therefore adjudication accordingly.

4. I have heard rival contentions and gone through the facts and circumstances of the case. I noted that the assessee has filed the complete details which are essential for adjudication of the issue. Hence, I am of the view that these should be admitted accordingly, I admit the same. I, accordingly, restore this issue back to the file of the CIT(A) who will consider all these evidences and will decide this issue accordingly.



ITA no.3272/Mum/2018

The appeal of assessee is allowed for statistical purposes and set aside to the file of the CIT(A).

5. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.02.2019.

आदेश की घोषणा खुले मे दिनांक 04.02.2019 को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 04.02.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

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 (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai