

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No.559/SRT/2018

निर्धारण वर्ष/Assessment Year : 2014-15

Shri Dakshaben Dilipkumar Shah, 104, Sukhsagar Apt., Behind Kakadia Complex, Ghod Dod Road, Surat. [PAN: ADRPS 1096 E]	Vs.	The Income Tax Officer, Ward-1(3)(1), Surat.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Kiran K.Shah - CA
राजस्व की ओर से /Revenue by	Shri Prasoon Kabra - Sr.DR

सुनवाई की तारीख/ Date of hearing:	26.02.2019
उद्घोषणा की तारीख/Pronouncement on:	27.02.2019

आदेश /ORDER

PER O.P.MEENA, AM:

1. This appeal filed by the Assessee are directed against the order of learned Commissioner of Income Tax (Appeals)-2, Surat(in short “the CIT (A)”) dated 03.07.2018 pertaining to Assessment Year 2014-15.

2. The grounds raised by the assessee read as under :

- “1. The learned CIT (A) grossly erred in dismissing the appeal though adjournment letters were filed and the AR was under the bonafide impression regarding restriction was disposal of case by the CIT(A) where the tax effect on account of addition exceeds Rs.10/- lacs.
2. The learned CIT (A) grossly erred in confirming addition of Rs.51,80,900/- being peak amount in the bank account no.1001005003445 of TTCBS and bank account no. 55410010011763 of IDBI Bank as unexplained cash deposit.

3. *The learned CIT (A) grossly erred in not appreciating the facts that both the bank accounts though the said bank accounts were duly reflected in the accounts of her husband as mentioned in the ground of appeal before the CIT(A)."*

3. At the outset, the Ld. Counsel for the assessee contended that no proper opportunity of hearing was afforded to the assessee. The ld. CIT (A) was not justified in rejecting the appeal of the assessee ex-parte. The documents relied by the AO were not made available to assessee. The Ld. Counsel prayed that the appeal be restored to the file of ld. CIT (A) with a direction that proper opportunity of being heard may be allowed to the assessee.

4. The Ld. Senior D.R. relied on the orders of the authorities below, however, has no objection if the entire issue is set-aside to ld.Assessing Officer.

5. We have heard the rival contentions of both the parties. We find that the ld. CIT (A) has not allowed proper opportunity of being heard. The principle of *audi alteram partem* is the basic concept of natural justice. The expression "*audi alteram partem*" implies that a person must be given an opportunity to defend himself. This principle is *sine qua non* of every civilized society. The right to notice, right to present case and evidence, right to rebut adverse evidence, right to cross examination, right to legal representation, disclosure of evidence to party, report of enquiry to be shown to the other party and reasoned decisions or speaking orders. We took this guidance for right of hearing, from the ratio as is laid down by the Hon'ble Supreme Court in the case of Maneka

Gandhi v. Union of India, wherein Hon'ble Supreme Court has laid down that rule of fair hearing is necessary before passing any order. We find that it is pre-decision hearing standard of norm of rule of *audi alteram partem*. We find that in this instant case, the assessee was not given proper hearing and simply dismissed appeal by relying on the decision in the case of B. N. Bhattacharjee 118 ITR 461 (SC). Therefore, we are of the view that the assessee must be given one more opportunity of hearing to represent his case. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this appeal to the file of Id.CIT(A) for reconsideration all grounds of appeal after allowing proper opportunity of being heard in accordance with law. Nevertheless, to mention that the assessee will cooperate in the appeal proceedings and his failure will entail confirmation of the impugned addition made by the AO. The assessee will file necessary evidences on which he wants to rely upon.

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

7. The order pronounced in the open court on 27.02.2019.

Sd/-

(KUL BHARAT)

(न्यायिकसदस्यतथा/JUDICIAL MEMBER)

Sd/-

(O.P.MEENA)

(लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER)

सुरत/ Surat, दिनांक Dated: 27th February, 2019/S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat