

**IN THE INCOME TAX APPELLATE TRIBUNAL,
SURAT BENCH, SURAT
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER**

I.T.A. No.458/SRT/2018 : Assessment Year: 2014-15

Atman Dipakkumar Thakkar, Bungalow no.4 , Sant Tukaram Solc., Jamna Nagar, Ghoddod Road, Surat – 395 007.	Vs.	The Income Tax Officer, Ward-1(3)(1), Surat.
[PAN: AMJPT 1487 D]		
Appellant		Respondent

Assessee by	Shri Rasesh Shah – CA
Revenue by	Smt. Anupama Singla, Sr.DR
Date of hearing	30.04.2019
Date of pronouncement	30.04.2019

ORDER

PER O. P. MEENA, AM

- 1.** This appeal filed by the assessee is directed against the order of learned Commissioner of Income-tax (Appeals)-2, Surat [in short CIT (A)] dated 17.05.2018 pertaining to assessment year 2014-15.
- 2.** The assessee has taken the grounds of appeal against the confirmation of addition of Rs.37,95,120/- by credit in bank account by way of sale proceeds on sale of shares, disallowance of long term capital gain of Rs.37,63,340/- u/s.10(38) and disallowance of commission of Rs.75,902/- u/s.69 of the Act.
- 3.** At the outset, the Ld. Counsel for the assessee contended that no proper opportunity of hearing afforded to the assessee. The Id. 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 Id. 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 CIT (A).

5. We have heard the rival contentions of both the parties. We find that the Id. CIT(A) has simply dismissed the appeal for non-appearance by the assessee on various dates by applying case law of Multiplan India Limited, 38 ITD 320 (Del). We find that the Id. 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. Therefore, we are of the view that the assessee must be given one more opportunity of hearing and to represent his case. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this appeal to the file of Ld. 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 personally or through his authorized representative will appear before the Id. CIT (A) on 26.06.2019 at 10.00 AM for which no notice will be issued to him and make his

submissions or comply with hearing before CIT (A) as per dated of hearing that may be granted to the assessee . We make it clear that non attendance will of the assessee before CIT (A) 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. Order pronounced in the Open Court on 30.04.2019.

Sd/-

(H.S.SIDHU)

(न्यायिकसदस्यतथा/JUDICIAL MEMBER)

Sd/-

(O.P.MEENA)

(लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER)

सुरत/ Surat, दिनांक Dated: 30th April , 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