

**आयकरअपीलीयअधिकरण, सुरतन्यायपीठ, सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**

**BEFORE SHRI. BHAVNESH SAINI, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A. No.28/AHD/2016:निर्धारणवर्ष/Assessment Year: 2007-08**

M/s. Mahavir Foods Pvt. Ltd, Sarvoday Building, Opp. Railway Station, Navsari.	<b>Vs.</b>	Income Tax Officer, Ward-3, Navsari
<b>[PAN: AABFD 8442 Q]</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>निर्धारितकीओरसे /Assessee by</b>	Shri Mahesh Rana, employee of the assessee
<b>राजस्वकीओरसे /Revenue by</b>	Shri Prasoon Kabra, Sr. DR

<b>सुनवाईकीतारीख/ Date of hearing :</b>	13.05.2019
<b>उद्घोषणाकीतारीख/Pronouncement on :</b>	16.05.2019

**आदेश /O R D E R**

**PER O.P. MEENA, AM:**

1. This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-Valsad [in short "the CIT(A)"], dated 27.01.2012 for the assessment year 2007-08.
2. The grounds raised by the assessee are as under:
  1. *That the learned CIT[A] has passed impugned order without following due process of laws, legal maxim "*

*Expressio Unis Est Exclusio Aterius "* which means that if a statue provides for a thing to be done in a particular manner than it has to be done in that manner and recourse to other manner is not allowed, etc.

2. That learned CIT(A) has not gone through the records of the Memorandum of Appeal and necessary submission made in process of hearing of the said appeal and without recording the facts by making judicially enquiry and applying judicially mind has passed the impugned order which require to be set aside.

3. That the learned CIT(A) has not dispose off interlocutory application submitted in the process which are having bearing on final order and has passed impugned order in violation of principle of natural justice and provisions of order (14) rule-II of CPC.

4. That the learned CIT(A) failed to considered the laws to comply with the principle of natural justice by issuing directions to the learned Assessing Officer to provide list of documents and records based on which impugned order has been seeked by Appellant passed enabling appellant to rebut the evidences and project the defenses thereon while representing the said appeal and thus passed ultra virus order.

5. That the learned CIT(A) failed to considered the facts with circumstances with a judicially enquiry and confirmed the addition of Rs. 37,28,699/- as unsecured loan under section 68 of the Act made by learned Assessing Officer without considering the volume of

*business and the volume of assets and liabilities with a past record' as per Annual Accounts and past records.*

6. *That the learned CIT(A) has erred by not making judicially enquiry and applying judicial mind and has confirmed addition on accounts of non verifying of Sundry Creditors amounting to Rs. 71,82,655/- made by Assessing Officer considering the volume of business and the items stated in annual accounts;*

7. *That the learned CIT(A) has erred by not making judicially enquiry and applying judicial mind and has confirmed addition on accounts of non verifying of purchase amounting to Rs.1,19,065 /- made by Assessing Officer considering the volume of business and the items stated in annual accounts;*

8. *That the learned CIT(A) has erred by not making judicially enquiry and applying judicial mind and has confirmed addition on accounts of non verifying of expenses amounting to Rs. 1,69,775 /- made by Assessing Officer considering the volume of business and the items stated in annual accounts;*

9. *That the learned CIT(A) has erred by not making judicially enquiry and applying judicial mind and has confirmed addition on accounts of non verifying of interest amounting to Rs. 1,69,775/- made by Assessing Officer considering the volume of business and the items stated in annual accounts;*

10. *That the learned CIT(A) failed to considered by applying judicially mind and making judicially enquiry to find out about proper service of notice of hearing as per the provisions of section 282 of Income Tax Act*

*1961 and there by with the said suppressed facts and confirmed the order passed by the learned Assessing Officer.*

*11. That the learned CIT(A) failed to considered principle of natural justice and principle of fairness by making judicially enquiry and applying judicially mind while confirming the Assessment Order and passed impugned order;*

3. Ground No. 1 to 4 and 11 states that the CIT(A) passed order without giving opportunity and hearing in accordance with law and not passing proper appeal order.
4. Shri Maheshkumar N Rana, an employee of the assessee company attended but neither sought any adjournment or made any submissions except stating that the appeal may be decided on the reference submissions made by the assessee before the Tribunal vide letter dated 16.10.2018.
5. *Per contra*, the Ld. Sr. DR for the Revenue submitted that the assessee has adopted non-cooperative attitude and therefore the addition confirmed by the Ld. CIT(A) is required to be upheld.
6. We have heard the ld. Sr. D.R. and perused the submissions of the assessee dated 16.10.2018. The assessee vide submissions dated 16.10.2018 alleged that the AO passed assessment order without considering the objection of its Representative in respect of service

of notice under section 143(2) as per section 282 of the Act. However, we find that the AO has duly disposed-off this objection in the assessment order hence, submissions are not tenable. It is further mentioned in submissions that the Tribunal has granted adjournment by hearing dated 20.04.2018 to 28.05.2018 enabling the Appellant to collect certified copies for the office of the AO and Ld. CIT (A) Valsad. But the said authorities has not cooperated. We observe that the assessee has been allowed sufficient opportunity to collect the necessary information in support of his contentions. This is the appeal of the assessee, who is in possession and position to produce the necessary evidence in support of his contention. The copies of confirmation, bank account, books of accounts are in possession of the assessee. Hence, the onus cast upon the assessee to produce the same to enable the tribunal to decide the appeal on merit. But it is seen that the assessee has failed to produce necessary documents and evidences in support of his contentions raised in the grounds of appeal of this appeal, inspite having been allowed number of opportunities of being heard. The case laws relied by the assessee in submissions dated 16.10.2018 are irrelevant when the assessee not cooperated and not

filed any evidence before us. Therefore, we are deciding this appeal based on material available with us on record and as mentioned in assessment order and appellate order. We also note that the assessee has been non cooperative during the course of assessment proceedings as well as during the course of appellate proceedings before the ld. CIT (A). It would be relevant to produce the findings recorded by the Ld. CIT (A) in respect of ground no. 1 to 4 & 11 in Para 5 of the appellate order which are as under:-

*“The aggrieved with the assessment order filed the appeal before me. When the case was fixed for hearing, the appellant, instead of pursuing the appeal on the basis of the grounds raised therein, raised frivolous contention and refused to participate in the appellate proceeding either the appellant itself or through duly authorized representative. I have made it very clear to the appellant vide my letter dated 28<sup>th</sup> April, 2010 in the initial stage itself that the case was of High Demand and such cases are taken up on priority to avoid inconvenience/harassment to the assessee because the AO start pressing for collection of demand.*

*In the said letter it was also informed to the appellant that my jurisdiction aroused on the filling of the appeal by you and I have to decide the grounds raised in the appeal after affording you the opportunity to submit your explanation/clarification at the time of hearing. It was categorically made clear to the appellant that appeal was filed by you on being aggrieved by the order of the AO and it is your responsibility to make submission either in person or through Authorized Representative for the disposal of appeal and in case the appellant failed to do that, CIT(Appeals) is empowered to dispose off the appeal ex-parte on the basis of materials on records. Further, it was impressed upon the appellant that hearing before the CIT(Appeals) is a quasi-judicial proceeding, it must confirm to the rule of natural justice for which it is obligatory on the CIT(Appeals) to give a notice of hearing to the appellant as well as to the AO against whose order the appeal was preferred. Accordingly the appellant was given opportunity as many as six times to*

*present its case and submit the explanations relevant to the grounds raised by him in the Appeal. The appellant acknowledged all the hearing notices and replied with unwarranted and irrelevant contents not pertaining the grounds raised. In this background, after giving sufficient opportunity and considering the case being a High Demand, the appeal is disposed off on the basis of materials on records.”*

7. The perusal of the above observations of Ld. CIT(A) shows that the assessee was not interested in prosecuting the appeal. The assessee has raised irrelevant issues and rather submissions on the grounds of appeal. Further, the assessee has refused to participate in the appellate proceedings and has made irrelevant submissions in the proceedings nor it has appeared himself or through duly Authorized Representative (AR). We find that the Ld. CIT (A) has allowed as many as six opportunities of being heard, but, the assessee has failed to availed the same. Though, the appellant has acknowledged all the hearing notices and but made replied with unwarranted and irrelevant contents not pertaining to grounds of the appeal. Therefore, CIT (A) was left with no option

but to confirm the same on the basis of material available on record. We also note that before us also, the assessee has not appeared even though the hearing of the case was fixed for hearing on 20.04.2018, 28.05.2018, 22.06.2018, 05.07.2018, 16.10.2018, 07.12.2018 and on 13.05.2019. Only on 13.05.2019, Shri Maheshkumar N Rana, employee attended, but he has not made any submissions in support of grounds of appeal raised and simply stated that the appeal be decided based on submissions made on 16.10.2018. Thus, neither the assessee appeared nor his authorized representative. We note that the ground No. 1 to 4 and 11 are not grounds of merits consideration but mere allegations and contentions, which are not supported with any evidence, hence, we do not find any merits on the same based on the findings of the CIT (A). Therefore, these grounds of appeals are accordingly dismissed.

8. Ground No. 5 relates to confirming the addition of Rs.37,28,699/- as unsecured loan u/s. 68 of the Act.

9. Facts as emerged from the orders of the authorities below are that the balance sheet of e-return of income filed by the assessee showed the unsecured loan of Rs.37,28,699/- as on March

ending. During the course of assessment proceedings, the assessee was specifically asked to prove the genuineness of unsecured loan by furnishing credible evidence. However, the assessee except mere filing confirming letters, which also does not shows that the cash credits are genuine and creditworthiness are filed. The AO after discussing the same in the Para 10.1, 10.2, 10.5, and 10.13 of assessment order, made the addition of Rs.37,28,699.

10. The assessee carried the matter before CIT(A). However, Ld. CIT (A) vide Para 6.1 of his appellate order has given finding that due to non-cooperative attitude of the appellant and in the absence of any evidence produced before the AO, additions so made are confirmed. The Ld. CIT(A) found that the appellant has chosen the same path of non-cooperation by not submitting any explanation/evidence in this regards, as taken before the AO, therefore, the addition was came to be confirmed.

11. Being aggrieved the assessee filed the appeal before us. The assessee vide his return submission on 16.10.2018, submitted that the LD. CIT(A) decided the appeal without considering the case laws with the effect and issued no notice for hearing as per laws

was given and pass appellate order without considering laws. The assessee has also cited of some case laws.

12. *Per contra*, the Ld. Sr. DR relied on the order of the lower authorities and submitted that the assessee has not filed any evidence in support of his contentions before CIT(A) nor before the Tribunal nor appeared either in person or through authorized representative before the tribunal, hence, addition sustained by the Ld. CIT(A) needs to be confirmed.

13. We have heard the rival submissions and find that in spite of opportunities being heard given by this Tribunal for fixing the hearing on 20.04.2018, 28.05.2018, 22.06.2018, 05.07.2018, 16.10.2018, 07.12.2018 and 13.05.2019. The assessee has not appeared before the Tribunal nor filed any evidence in support of his claim that the aforesaid creditors from whom unsecured loans are taken are identifiable, worthy of credit and genuineness of transaction. Therefore, in absence of any documentary evidence and non-cooperation attitude of the assessee, we have no alternative but to upheld findings given by the lower authorities. In view of these facts and circumstances, the addition sustained by

the CIT(A) are confirmed. This ground of appeal of the assessee is dismissed.

14. Ground no. 6 relates to confirmation of addition on account of non-verifying of sundry creditors amounting to Rs.71,82,655/- made by Assessing Officer.

15. Briefs facts of the case as discussed in Para 11 and 11.1 in the assessment order by the AO are as under:-

*“On verification of balance sheet of e-return of income it is noticed that the assessee shown creditors of Rs.71,82,655/-. The assessee was asked to furnish the complete details of creditor along copy of accounts. However, the assessee did not produce the details of creditors. In fact, the assessee tried to mislead the department by filling evasive reply. In absence of credible evidence, the creditors as shown by the assessee are unverifiable. It is a surprise to note that the assessee has shown sales of only Rs.7,55,198/- and has shown closing stock of Rs.10,850/- only. It clearly shows that the assessee has introduced its unaccounted money in the guise of bogus sundry creditors. That is*

*why the assessee has preferred to avoid the assessment proceedings and non-compliance to the various notices issued by this office from time to time. In absence of details from the assessee, the so called unverifiable creditors of Rs.71,82,655/- are added to the total income of the assessee.*

*I am satisfied that the assessee has concealed the particulars of its income to the extent of Rs.71,82,655/-. Penalty proceedings u/s. 271(1)(c) r.w.s. 274 of the I.T. Act is separately initiated.”*

16. Being aggrieved, the assessee filed before the Ld. CIT(A). However, CIT(A) has confirmed the additions made by the AO by observing as under:-

*“I have carefully perused the findings of the AO leading to the addition in this ground. I found no incoherence in the findings of the AO in the absence of relevant clarification/explanation from the appellant. Before me also the appellant choosed the same path of non-cooperation by not submitting any explanation/evidence in this regards. In these circumstances, I am constrained to agree with the*

*findings of the AO. Therefore, the addition made by the AO in this ground is confirmed and the ground raised by the appellant is dismissed.”*

17. Being aggrieved the assessee filed this appeal before us. Shri. Ketan Chimanlal Dhruv, Director of the assessee company, made written submissions dated 16.10.2018 and submitted that the CIT(A) has confirmed the addition without considering the case laws with a facts and laws based on which grounds of appeal have been submitted not even served the notices for hearing as per law and passed impugned order without considering the law.

18. *Per contra*, the Ld. Sr. DR supported the order of the lower authorities and submitted that the appellant has adopted non-cooperative attitude by not submitting anything before lower authority as well as before this Tribunal. Hence, an addition made by the AO needs to be confirmed.

19. We have heard the rival submissions and find that in spite of opportunities being heard given by this Tribunal for 22.06.2018, 05.07.2018, 16.10.2018 and 07.12.2018 and 13.05.2019, the assessee has not appeared before the Tribunal nor filed any evidence in support of his claim that the aforesaid sundry creditors

are genuine, therefore, in absence of non-cooperation attitude of the assessee, we have no alternative but to upheld findings given by the lower authorities. Accordingly, the addition sustained by the CIT(A) are confirmed. This ground of appeal of the assessee is dismissed.

20. Ground No. 7 relates to confirming addition on accounts of non-verifying of purchases amounting to Rs.1,19,065/-.

21. Briefs facts relating to above grounds are that the AO observed in Para 12 of the assessment order as under:-

*“On verification of profit and loss account of e-return of income, it is revealed that the assessee has shown purchases of Rs.5,95,328/-. During the course of assessment proceedings, the assessee was asked to justify its purchases with supporting documentary evidences. However, the assessee did not furnish any details with supporting documentary evidence, despite numerous opportunities were afforded including show cause notice dated 17.11.2009, wherein the assessee was specifically asked to furnish the details of purchases otherwise Rs.1,19,065/- being 20% out of the*

*above purchases of Rs.5,95,328/- will be made. However, the assessee did not furnish any details with supporting documentary evidence. Accordingly, Rs.1,19,065/- is added to the total income of the assessee on this account.”*

22. The assessee carried the matter before the CIT(A) who vide Para 8 of the order confirmed the addition of made.

23. Being aggrieved, the assessee filed this appeal before us. The Ld. Sr. DR supported the order of the AO and CIT(A).

24. We have heard the rival submissions and find that in spite of opportunities being heard given by this Tribunal fixing hearing for 20.05.2018, 28.05.2018, 22.06.2018, 05.07.2018, 16.10.2018 and 07.12.2018 and 13.05.2019, the assessee has not made any submission nor these opportunity were not availed by the assessee company. The assessee nor his authorized representative appeared before the Tribunal nor filed any evidence in support of his claim that the claim that the assessee has made genuine purchases. Therefore, in absence of non-cooperative attitude of the assessee, we have no alternative but to upheld findings given by the lower

authorities. Accordingly the addition sustained by the CIT(A) are confirmed. This ground of appeal of the assessee is dismissed.

25. Ground No.8 relates to confirming addition of Rs.1,69,775/- on accounts of non-verifying expenses. The AO vide Para 13 observed as under:-

*“On verification of profit and loss account of e-return of income, it is revealed that the assessee has claimed other expenses of Rs.1,69,775/-. During the course of assessment proceedings, the assessee was asked to justify its claim of expenses with supporting documentary evidences. However, the assessee did not furnish any details with supporting documentary evidence, despite numerous opportunities were afforded including show cause notice dated 17.11.2009, wherein the assessee was specifically asked to furnish the details of expenses otherwise the alleged expenses will be made. However, the assessee did not furnish any details with supporting documentary evidence. As such, it could not be verified whether these expenses are incurred wholly and exclusively for the business purpose.”*

26. Since the assessee has failed to furnish any details/evidence addition was made.

27. Being aggrieved, the assessee carried the matter in appeal before CIT(A) who has confirmed the same in absence of any details before him.

28. We have heard the rival submissions and find that in spite of opportunities being heard given by this Tribunal for fixing the hearing on 20.04.2018, 28.05.2018, 22.06.2018, 05.07.2018, 16.10.2018, 07.12.2018 and 13.05.2019, the assessee has not appeared before the Tribunal nor filed any evidence in support of his claim. Therefore, in absence of any details and non-cooperative attitude of the assessee, we have no alternative but to upheld findings given by the lower authorities. Accordingly the addition sustained by the CIT(A) are confirmed. This ground of appeal of the assessee is dismissed.

29. Ground No. 9 relates to confirming addition of Rs.18,041/- on accounts of non-verifying of interest. The AO has observed in Para 14 as under:-

*“On verification of profit and loss account of e-return of income, it is revealed that the assessee has claimed interest*

*expenses of Rs.18,041/-. During the course of assessment proceedings, the assessee was asked to justify its purchases with supporting documentary evidences. However, the assessee did not furnish any details with supporting documentary evidence, despite numerous opportunities were afforded including show cause notice dated 17.11.2009, wherein the assessee was specifically asked to furnish the details of interest expenses of Rs.18,041/- otherwise the same will be disallowed. However, the assessee did not furnish any details with supporting documentary evidence. Accordingly, Rs.18,041/- is allowed and added to the total income of the assessee on this account.”*

30. Since the assessee has failed to furnish any details/evidence addition was made.

31. Being aggrieved, the assessee carried the matter before CIT(A) who has confirmed the same in absence of any details before him.

32. We have heard the rival submissions and find that in spite of opportunities being heard given by this Tribunal for fixing the hearing on 20.04.2018, 28.05.2018, 22.06.2018, 05.07.2018,

16.10.2018, 07.12.2018 and 13.05.2019, the assessee has not appeared before the Tribunal nor filed any evidence in support of his claim. Therefore, in absence of any details before us, we have no alternative but to uphold findings given by the lower authorities accordingly the addition sustained by the CIT(A) are confirmed. This ground of appeal of the assessee is dismissed.

33. Ground No. 10 states that the CIT(A) failed to consider that the notice of hearing as per provisions of section 282, was not properly served.

34. The facts as emerged from the assessment orders reveals that the notice u/s.143(2) of the Act, was issued on 22.09.2008 and duly served upon the assessee on 24.09.2008 by speed post. Subsequently, a detailed questionnaire along with notice u/s.142(1) of the Act was issued on 17.06.2009 and served. However, nobody attended on the appointed date and time. Therefore, another notice u/s.142(1) was issued on 12.08.2009 and served upon the assessee on 13.08.2009. In response to the said notice u/s. 142(1) dated 12.08.2009, written submissions dated 17.08.2009 were received by the office of the AO on 24.08.2009 from Jagiwala & Co., Chartered Accountant, wherein, the issue of

notice u/s. 143(2) was contested. However, the AO vide Para 4 has given his findings as under:-

*“It is pertinent to mention here that the scrutiny assessment proceedings are starts with issuance of notice u/s.143(2) of the I.T. Act. As per provisions contained in Section 143(2), such notice shall be issued and served within one year from the end of the month in which the return of income is furnished. Now, this provision has been amended with effect from financial year 2008-09 that notice u/s. 143(2) shall be served within 6 months from the end of the financial year in which the return of income its furnished. Verification of case records of the assessee revealed that the assessee has filed its e-return of income for the year under consideration on 23.10.2007. Notice u/s. 143(2) of the I.T. Act was issued on 22.09.2008 and duly served upon the assessee on 24/09/2008. As such, the initial notice u/s. 143(2) of the I.T. Act was validly issued and served upon the assessee within time as stipulated in the I.T. Act. This fact was brought to notice to the assessee vide this office letter dated 27/10/2009 and requested the assessee to furnish the detail and documents*

*as called for vide questionnaire dated 17.06.2009 along with books of accounts in order to complete the assessment proceedings.”*

35. Being aggrieved the assessee filed an appeal before the CIT(A) who has dismissed the ground of appeal by observing as under:-

*“I have carefully considered the record and assessment order. The AO had issued a valid notice and completed assessment as per law, therefore the ground of appeal is dismissed.”*

36. Being aggrieved the assessee has filed this appeal before Tribunal. We have heard the appeal on the basis of material available on record and with the assistance of Ld. Sr. DR. we observe that the assessee has not appeared before us. Therefore, the contentions regarding issue of notice u/s. 143(2) cannot be considered at this stage. However, it is discernible from assessment order that the notice u/s. 143(2) was issued by the AO, within six months from the end of relevant financial year in which return of income has been filed. Since, in this case return of income was filed on 31.10.2007; therefore, the notice could be

issued within six months after expiry of financial 2007-08. Since the notice u/s. 143(2) was issued on 22.09.2008 and served on 24.09.2008 which is within six months from the end of the financial year 2007-08. Hence, we do not find any illegality in the issue of notice in absence of any clarification/evidence before us. Accordingly, this ground of appeal is therefore dismissed.

37. In the result, the appeal of the assessee is dismissed.

38. The Order pronounced in the open court on 16.05.2019

Sd/-  
(BHAVESH SAINI)  
(JUDICIAL MEMBER)

Sd/-  
(O.P. MEENA)  
(ACCOUNTANT MEMBER)

सुरत/ Surat, दिनांक Dated: 16<sup>th</sup> May, 2019/S.Samanta, 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