

**आयकर अपीलीय अधिकरण, अहमदाबाद “C” न्यायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**“C”BENCH, AHMEDABAD**

**BEFORE SHRI O. P MEENA, ACCOUNTANT MEMBER**  
**AND Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.2887/AHD/2017

निर्धारणवर्ष/Assessment Year:2014-15

<b>Shri Ramesh A Marand,</b> <b>5, Elegance Bungalow, Opp.</b> <b>Bhavin School , Thaltej,</b> <b>Ahmedabad 380 051</b>	<b>बनाम</b> <b>Vs.</b>	<b>Assistant Commissioner of</b> <b>Income Tax, Central Circle-</b> <b>7(1) Ahmedabad</b>
<b>PAN: AMVPM 2813 N</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>निर्धारितकीओरसे /Assessee by</b>	<b>Shri Mehul Thakker, CA</b>
<b>राजस्वकीओरसे /Revenue by</b>	<b>Shri L. P. Jain, Sr. D.R.</b>

<b>सुनवाईकीतारीख/ Date of hearing:</b>	<b>19.09.2019</b>
<b>उद्घोषणाकीतारीख/Pronouncement on</b>	<b>19.09.2019</b>

**आदेश /O R D E R**

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

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-7, Ahmedabad (in short “the CIT (A)”) dated 17.10.2017 for the Assessment Year 2014-15
2. Ground no. 1 relates to confirming disallowance of Rs. 10,30,019 being difference between returned income and as per 26AS and Ground No. 2 relates to confirming addition of Rs. 1,20,061 being difference between Form No. 16 as provided by the employer and as per ITR.

3. Both the grounds of appeal are being considered together as these are related to each other.

4. Succinct facts are that the assessee has filed return of income on 31.07.2014 declaring total income of Rs. 55,33,060. The case was selected under scrutiny through CASS. In response to notice under section 142(1), the assessee filed details as required but could not file Form No. 16, as it was not available due to dispute with employer. However, after three months the assessee collected Form No. 16 and filed the same before the AO. Meanwhile, the AO directly collected Form No. 16 from the employer i.e. Sparsh Technologies. The AO found that Form No. 16 received from employer shows the allowance to the extent of Rs. 18,661 only whereas the assessee has claimed exempt income of Rs. 10,48,680 as allowance in his Form No. 16. Hence, the AO held the Form No. 16 submitted by the assessee, which is obtained from employees of the employer is false. Therefore, the AO made addition of difference of Rs. 10,30,019 [ 10.48.680-18,661] as allowances claimed by the assessee were not found supported by any evidence. The AO further found that as per information received from employer, the gross salary was shown at Rs. 87,77,543 whereas the assessee has shown gross salary at Rs. 86,57,482 in computation of income. Thus, there was difference of Rs. 1,20,061. In his reply, the appellant submitted that this amount is reflected in Form No.26AS and in Form No. 16 Part -A.

Since, According to the AO, the Form No. 16 was false, hence, the amount reflected in Form No. 16 was added to total income.

5. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). The assessee has filed copy of bank statement showing the amount of salary received and comparison with amount of salary shown by his employer. It was further claimed that there was dispute between him and his employer; therefore, the employer did not provide Form No. 16 to the assessee. It was further submitted that the reason for deduction of TDS more than 10 time during last two months' salary was not provided. Further, the salary credited in his bank account, as shown by the assessee is not tallied, and there is vast difference. The pattern of tax deduction by the employer in the initial months as compared to last two months give rise to possibility that employer would have considered exemption claimed by the assessee while estimation of salary for the purpose of section 192 of the Act and accordingly, estimated lower salary for the purpose of tax deduction under section 192 of the Act. It is because of resignation of the assessee from the company, the employer with a view to harass the appellant by deducting more tax and not providing the Form No. 16 and thereafter, providing different Form No. 16 in response to notice under section 133(6) of the Act. However, the CIT (A) observed that the AO noted discrepancies in Form No. 16 submitted by the assessee and provided by the employer and the

assessee has claimed exemption under section 10 amounting to Rs. 10,48,680 for which no reasons are explained. Considering these facts, the action of the AO was confirmed.

6. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that there was dispute between the assessee and his employer therefore; the assessee has resigned from the service. The assessee has obtained Form No. 16 through house staff working in the employee company as the employer has denied giving Form No. 16 to the assessee. The AO has also procured vide notice under section 133(6) from employer. The assessee has given false Form No. 16. The learned counsel for the assessee referred his submissions dated 05.10.2017 filed before CIT (A) and placed at Paper Book Page No. 29 to 34. It was submitted that the AO should have been more objective in reading the reply of the employer wherein employer has mentioned that individual cheques transfer details are not traceable in the bank statement. The employer may be true but how much amount month wise transferred in the bank account of the assessee can be traceable from the payroll maintained by the employer. The employer being the technology firm expected to have electronic payroll since it makes payment of salary to employees electronically. Thus, the employer for some reason decided to keep silence on the month-wise payments to the assessee and furnished such tricky reply

in response to notice under section 133(6) of the Act. The Ld.AO without affording opportunity of cross-examination of the employer has ignored the vital facts hence; the addition so made is not sustainable in law and on facts. With regard to disallowance of Rs. 1,20,061, it was contended that difference is due to deduction claimed under chapter VIA of the Act by the assessee. It was further submitted that the amount shown in Form No. 16 by the employer does not match with Form No.26AS and therefore, the AO has grossly erred in making such addition. The learned counsel for the assessee filed comparison date wise chart of salary payment and TDS deducted and amount of salary as received in his HDFC bank account. It was submitted that as per employer total amount paid comes to Rs. 86,57,482 on which TDS of Rs. 25,00,062 was made and net salary of Rs. 61,57,420 was received by the assessee. As against, this the bank statement of HDFC bank account of the assessee shows credit of salary receipt at Rs. 52,62,881. If TDS of Rs. 25,00,062 is added then it comes to Rs. 77,62,420. The salary receipts are supported by bank statement of HDFC. It was pointed out that the employer has debited salary of Rs. 29,12,200 as on 12.11.2013 whereas the bank account of the assessee shows receipt of salary at Rs. 14,20,297. Similarly, the credit of salary on 27.12.2013 is at Rs. 9,67,400 and same is reflected in bank account of the assessee. However, on various dates there

is mismatch of salary credit by the employer and receipt credited in bank account of the assessee. Therefore, this needs reconciliation with employer.

7. *Per contra*, the ld. Sr. D.R. relied on the orders of lower authorities.

8. We have heard the rival submissions and perused the relevant material on record. We find that the assessee has not submitted Form No. 16, as according to him, the employer has not provided him due to dispute by which the assessee has resigned from service. However, later on, the assessee has procured Form No. 16, through hose staff of his employer. In meanwhile, the AO obtained Form No. 16 from employer. Thus, there was difference between two Form No.16 submitted before the AO. However, the AO believed the Form No.16 submitted by the employer of the assessee and disbelieved the Form No.16 submitted by the assessee and treated it as false. However, before treating the same the AO should have verified the correct facts from the employer by calling him and producing records. The perusal of letter received on 23.12.2016 by the AO from Sparsh Technologies (PB-21) shows that they have not furnished individual cheque/ transfer details of the employee on the ground that that same is not traceable in the bank statement. Therefore, the gross salary paid by them and claimed to be at Rs. 87,77,543 is not ascertainable. However, this could be ascertained from individual ledger account of salary or from the payroll registers maintained by the employee. Further, the 26as part And B are not

verified by the AO as the assessee has only submitted Form No. 16 with part B. The mismatch between bank account of the assessee and salary credited by the employer needs verification to arrive at correct amount and reason for claiming deduction / exemption under chapter VIA. Thus, we find that the Ld.AO has not allowed proper opportunity of being heard nor allowed opportunity of cross examination of the employer to the assessee before accepting his supply. We find that there was dispute between employee and employer therefore, it was necessary for the AO to examine and allow cross-examination. 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, we restore this appeal to the file of the AO for reconsideration all grounds of appeal after allowing proper opportunity of being heard in accordance with law and allowing cross examination of the employer of the assessee to the assessee. The AO may issue summons under section 131 of the Act to the employer and ask to produce salary register and payments details and copy of bank statement to verify the payment made to the assessee. 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.

9. In the result, the appeal is allowed for statistical purposes.

10. The order pronounced in the open Court on 19.09.2019.

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER

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

Ahmedabad: Dated: 19<sup>th</sup> September, 2019/opm  
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file  
of ITAT.

By order

Assistant Registrar, Ahmedabad