

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI  
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 2358/Mum/2018 (Assessment Year 2012-13)

Prem Sagar Rao 52,5 <sup>th</sup> Floor, Shiraz, Telly Galli, Andheri (East), Mumbai-400069. <b>PAN: ABVPR1851J</b>	Vs.	ITO-24(3)(3) Piramal Chambers, Mumbai.
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Appellant

Respondent

Appellant by : Shri K. Gopal (AR)  
Respondent by : Shri Abi Rama Karthikeyan (Sr DR)  
Date of Hearing : 05.09.2019  
Date of Pronouncement : 05.09.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. CIT(A)-36, Mumbai dated 30.01.2018 for Assessment Year 2012-13. The assessee has raised the following grounds of appeal:

1. The Ld. CIT(A) erred in upholding the assessment order dated 30.03.2015 passed under section 143(3) of the Act without providing the Appellant a reasonable opportunity of being heard. Thus, the order passed by the Ld. CIT(A) is against the principles of natural justice and the same may be set aside.
2. The Ld. CIT (A) erred in confirming the addition of Rs.18,17,351/- on the basis of AIR information by treating the same as unaccounted sales without appreciating the facts and circumstances of the case. Thus, the addition of Rs.18,17,351/- is unjustified and the same may be deleted.
3. The Ld. CIT(A) erred confirming the addition of Rs.13,00,778/- under section 69 of the Act on account of unexplained investment without

appreciating facts and circumstances of the case. Thus, the addition of Rs.13,00,778/- under section 69 of the Act is unjustified and the same may be deleted.

4. The Ld. CIT(A) erred in confirming the interest under section 234A, 234B, 234C & 234D of the Act without appreciating the fact that Appellant denies his liability to the same.
2. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that the Id. CIT(A) passed the ex-parte order without providing reasonable opportunity of hearing to the assessee. It was submitted that the assessee has raised specific ground of appeal that no fair and proper opportunity was given to the assessee by Id CIT(A), vide ground no.1 of the appeal.
3. On the other hand, the Id. Departmental Representative (DR) for the revenue submits that the assessee was given sufficient opportunity as recorded by Id. CIT(A) in para-4 of his order. The assessee failed to attend the proceeding and to substantiate the ground of appeal, therefore, the Id. CIT(A) has no option except to decide the appeal on the basis of material available on record. In the rejoinder submission, the Id. AR of the assessee submits that the First Appellate Authority (FAA) has not decided on various grounds of appeal on merit, therefore, the matter needs fresh consideration at the level of FAA.
4. We have considered the submission of both the parties and gone through the order of Id. CIT(A). We have noted that the assessee has filed the

present appeal on 05.06.2015. The Id. CIT(A) allegedly issued various notice as recorded by him in para-4 of his order:

<b>Date of issue of notice</b>	<b>Date of hearing</b>	<b>Remarks</b>
18.01.2017	14.02.2017	No attendance, adjournment letter dated 10.02.2017 was filed.
27.03.2017	02.05.2017	No attendance, adjournment letter dated 03.05.2017 was filed.
23.05.2017	19.06.2017	No attendance, adjournment letter was filed seeking for adjournment till July 2017.
12.12.2017	28.12.2017	No attendance, adjournment letter dated 22.12.2017 was filed. Next date of hearing was fixed on 05.01.2018.
22.12.2017	05.01.2018	<b>On 05.01.2017 the authorized representative of the appellant appeared but filed only condonation of delay. Any submission regarding the case was not made. The case was adjourned to 30.01.2018.</b>
05.01.2018	30.01.2018	No attendance, adjournment letter dated 29.01.2018 was filed.

5. On perusal of the aforesaid dates of hearing, we find that the Id. AR of the assessee appeared on 05.01.2018 and case was adjourned for 30.01.2018. On 30.01.2018, the Id. CIT(A) noted that none appeared on behalf of assessee, however, an application for adjournment was filed in advance on 29.01.2018. The Id. CIT(A) has not recorded the reasons/grounds of seeking for adjournment in his order. The Id. CIT(A) further not recorded, if the assessee has shown sufficient/valid reasons for seeking adjournment or not. The Id. CIT(A) decided the appeal on 30.01.2018 itself. In our view in absence of subjective satisfaction, if the assessee has shown reasonable cause or not the denial of further opportunity to the assessee was not justified. We have further noted that

appeal was pending before the ld. CIT(A) since March 2015 and it was decided on the day itself i.e. 30.01.2018. Considering the fact that ld. CIT(A) decided the issue in absence of assessee, therefore, we deem it appropriate to restore the appeal to the file of ld. CIT(A) to decide all the issues afresh.

6. Needless to order that before deciding all the issues, the ld. CIT(A) shall grant fair and proper opportunity to the assessee. The assessee is also directed to fully co-operate and to furnish necessary evidence to the ld. CIT(A). The assessee is further directed to approach the ld. CIT(A) within two month from receipt of the order for fixing the date of hearing and will not seek adjournment without any valid reasons.
7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 05/09/2019.

**Sd/-**  
**R.C. SHARMA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 05.09.2019

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**

**Dy./Asst. Registrar**  
**ITAT, Mumbai**