

**आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**'SMC' 'BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**  
**And**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 698/AHD/2017

ढधरण वर्ष/Asstt. Year: 2008-2009

Dilip Mafatlal Patel, C/o Rakesh Mafatlal Patel, M232, 2780, Satyam Apt. Sola Road, Naranpura, Ahmedabad.  PAN: AGPPP9925Q	Vs.	Income Tax Officer, Ward-1, Patan.
--	-----	--

(Applicant)	(Respondent)
Assessee by :	Shri Pritesh Shah, A.R
Revenue by :	Ms Smiti Samant, Sr. D.R

सुनवाई क ढ ताराख/Date of Hearing : 21/08/2019

घोषणा क ढ ताराख /Date of Pronouncement: 01/10/2019

**आदेश/O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Gandhi Nagar dated 28/09/2016 ( in short 'Ld.CIT(A)') arising in the matter of assessment order passed under s. 144 r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt. 06/10/2015 relevant to the Assessment Year 2008-2009.

The assessee has raised the following ground of appeal.

1. *The learned CIT(A) erred in law and on facts in confirming the addition made by AO of Rs.10,62,400/- as unexplained cash deposit under section 68 of the Income Tax Act, 1961, such addition is requested to be deleted.*

However, the assessee vide letter dated 04/03/2019 has also filed following additional ground of appeal:

*The learned CIT(A) failed to give an adequate opportunity of being heard to submit the additional evidences, such opportunity of being heard is requested to be granted*

First we take up additional ground of appeal raised by the assessee. The issue raised by the assessee in the additional ground of appeal is that the "Ld.CIT (A)" erred in passing the order confirming the addition made by the AO without giving adequate opportunity of being heard.

2. We have heard the rival contention of both the parties and perused the relevant materials available on record. The "Ld.AR, before us has filed a paper book running from pages 1 to 118 and submitted that the assessee has requested to the "Ld.CIT (A)" vide letter dated 19/09/2016 to grant the time for 20 days in order to file the additional evidences. However, the "Ld. CIT (A)" passed the order vide dated 29/09/2016 without considering the prayer of the assessee. The Ld.AR, in support of his contention drew our attention on page 27 of the PB where the application for seeking time was placed.

2.2 The Ld.AR, further submitted that the bank account in which the cash was deposited was a joint bank account of assessee along with his brother. In fact the brother did not co-operate with the assessee in furnishing the requisite details to the AO during the assessment proceedings due to some personal dispute between them. Accordingly the AO passed the ex-parte order in the absence of sufficient documentary evidence.

In view of the above the Ld. AR for the assessee prayed before us to restore the matter to the AO for fresh adjudication and after considering the supporting evidences.

3. On the other hand the Ld. DR raised no objection if the matter is set aside to the file of the AO for fresh adjudication as per the provision of law.

4. Considering the submission of the assessee and the fact of the case we note that the order has been passed by the "Ld.CIT (A)" without giving sufficient opportunity to the assessee. In our considered view the opportunity of being heard is *sine qua non* to decide the issue on hand. Accordingly in the interest of justice and fair play we deem it fit to restore the matter to the file of AO for fresh adjudication as per the provision of law. We also make it clear that the assessee should co-operate before the AO during the assessment proceeding. The assessee is at his liberty to file the requisite documents in support of his contention. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

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

**Order pronounced in the Court on 01/10/2019 at Ahmedabad.**

**-Sd-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER**

**-Sd-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

(True Copy)  
Ahmedabad; Dated 01/10/2019  
*manish*