

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
(SMC)**

**ITA No.1606(Bang)/2018  
(Assessment year : 2014-15)**

Shri Bhavesh Ratilal Patel,  
No. 4/10, Hosur Road,  
Next to ICICI Bank,  
Bommanhalli,  
Bangalore-560 068.  
PAN : AKJPP0520B

Appellant

**Vs**

The ITO, Ward 4 (3) (4),  
Bangalore.

Respondent

**Appellant by : Shree G. Venkatesh, Advocate  
Revenue by : Shri Ganesh R Ghale,  
Standing Counsel for Deptt.**

**Date of hearing : 21-10-2019  
Date of pronouncement : 08-11-2019**

**ORDER**

**PER A.K. GARODIA, ACCOUNTANT MEMBER :**

This appeal is filed by the assessee and the same is directed against the order of the Id.CIT(A)-4, Bangalore dated 29-12-2017.

2. Ground No. 1 raised by the assessee is general. Ground No. 2 is as follows;

*" The learned CIT (A) is not justified in upholding the action of the AO in passing the assessment order in gross violation of the principles of natural justice in as much as the complete details of the investigation reports relied on against the*

*appellant were not made available and also no opportunity of cross examinations of persons whose statements were relied on was afforded the appellant and consequently, the assessment order passed is liable to be quashed and set aside on the facts and circumstances of the case.”*

3. Learned AR of the assessee placed reliance on the Tribunal order rendered in the case of Shri Ramesh Kumar Shah Vs ACIT in ITA No.595(B)/2018 dated 05-12-2018. He submitted a copy of the Tribunal order and drawn our attention to para-3.5 and pointed out that in this para, it is noted by the Tribunal that the assessee has specifically requested for cross examination of the deponents and under these facts, the Tribunal in that case held that the matter should go back to the file of the AO for fresh decision after making available to the assessee for rebuttal of documents including statements, Investigation report etc. relied upon by revenue for making the additions/disallowances and providing adequate opportunity to the assessee for cross examination of persons whose statements are being relied upon.

The ld. Counsel for the assessee submitted that in the present case also, as per Ground No. 3 raised before CIT (A), it was the claim of the assessee that complete details of the investigation reports were not made available and opportunity of cross examination was not afforded to the assessee and as a consequence, the assessment order is liable to be quashed. He submitted that in spite of this, learned CIT (A) has upheld the assessment order and therefore, this tribunal order is applicable on the present case because there is no finding of CIT (A) that opportunity of cross examination was afforded to the assessee. The

ld.DR of the revenue supported the order of the ld.CIT(A). He also submitted that as per page 9 & 10 of the order of CIT (A), all the documents were provided to the assessee. In the rejoinder, it was submitted by the learned AR of the assessee that as per letter dated 28.12.2016 to AO copy on pages 84 to 87 of the paper book, it was intimated by the assessee to the AO that the entire report was not provided to the assessee. He submitted that therefore, this tribunal order is applicable.

4. I have considered the rival submissions. First of all, I reproduce para 3.5 of the Tribunal order cited by the ld. AR of the assessee having been rendered in the case of Shri Ramesh Kumar Shah Vs ACIT in ITA No.595(B)/2018 dated 05-12-2018. The relevant para is reproduced as under;

*“3.5 We have heard both parties and perused and carefully considered the material on record, including the judicial decisions cited and the orders of the authorities below. Taking into consideration the facts and circumstances of the case that the assessee specifically requested for cross-examination of the deponents whose statement were the basis of addition by the AO and also the report of the Investigation Directorate, Kolkata for rebuttal from the judicial decisions cited, we find that the issue for consideration is squarely covered by the orders of the Bengaluru ITA in the cases of Arvind Kumar Moolchand (supra) and Pukhraj Hasmukhlal (supra). Following the aforesaid orders (supra) we set aside the orders of the AO and restore the matter*

*of treatment of profit declared on sale of shares, claimed as exempt u/s 10(38) of the Act to the file of the AO to re-adjudicate the issue afresh, after making available to the assessee for rebuttal all documents including statements, Investigation report etc. relied upon by revenue for making the additions/disallowances and providing adequate opportunity to the assessee for cross-examination of persons whose statements are being relied upon. It is accordingly ordered. Consequently, ground no.2 is disposed of as above”.*

5. It is seen that in the present case also, as per Ground No. 3 raised by the assessee before CIT (A), it was the claim of the assessee that complete details of the investigation reports were not made available and opportunity of cross examination was not afforded to the assessee and as a consequence, the assessment order is liable to be quashed. Although admittedly, some reports copy was provided by the AO to the assessee but as per the letter dated 28.12.2016 from the assessee to the AO, these reports are not complete. Hence, this objection of the assessee survives that the complete information received from DIT(Inv.), Kolkata was not furnished to the assessee for rebuttal and cross examination of the persons who have given adverse statement was also not provided to the assessee and therefore, this Tribunal order rendered in the case of Shri Ramesh Kumar Shah Vs ACIT (supra) is squarely applicable. Respectfully following the same, I set aside the order of the Id.CIT(A) and restore the matter back to the file of AO to re-adjudicate the issue afresh after making available to the assessee

for rebuttal all documents including statements, investigation reports etc. relied upon by the revenue for making the additions/disallowance and after providing adequate opportunity to the assessee for cross examination of persons whose statements are being relied upon. Accordingly, ground no.2 stands allowed and no adjudication is called for remaining grounds at the present stage.

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

Order pronounced on the date mentioned at the caption page.

Sd/-  
**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Dated: 08<sup>th</sup> November 2019.

**\*MS**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
- 6.Guard File

By Order

Asstt.Registrar