

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4998/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2014-15)

Jiten Kishore Ajmera (Legal Heir of Late Shri Kishore H. Ajmera) 29, Aryan, Mahal, C. Road, Churchgate, Mumbai-400020.	बनाम/ Vs.	DCIT, CC-2(2) Room No.806, 8 th Floor, Old, CGO Bldg, Pratistha Bhavan, M.K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AGPPA2452B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं/ I.T.A. No.5000/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

Jasmin Kishore Ajmera 29, Aryan, Mahal, C. Road, Churchgate, Mumbai-400020.	बनाम/ Vs.	DCIT, CC-2(2) Room No.806, 8 th Floor, Old, CGO Bldg, Pratistha Bhavan, M.K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AABPA7827Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं/ I.T.A. No.5002/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2014-15)

Jayesh Manharlal Ajmera (Legal Heir of Late Shri Manaharlal H. Ajmera) 20, Prabhat Bldg, B-Road, Churchgate, Mumbai-400020.	बनाम/ Vs.	DCIT, CC-2(2) Room No.806, 8 th Floor, Old, CGO Bldg, Pratistha Bhavan, M.K. Road, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AABPA7828B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)



Assessee by:	Ms. Dinkle Hariya (AR)
Revenue by:	Shri Akhtar Ali Ansari (DR)

सुनवाई की तारीख / Date of Hearing: 06/01/2020
घोषणा की तारीख /Date of Pronouncement: 15/01/2020

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the orders dated 26.06.2018 & 28.06.2018 passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Ys. 2013-14 & 2014-15.

ITA. NO.5000/Mum/2018

2. The assessee has filed the present appeal against the order dated 28.06.2018 passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2013-14.

3. The assessee has raised the following grounds: -

“1. BREACH OF PRINCIPLES OF NATURAL JUSTICE

1.1 The Learned Commissioner of Income - tax (Appeals) —48, Mumbai ["Ld. CIT (A)"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the assessment.

1.2 It is submitted that in the facts and the circumstances of the case, and in law, the assessment so framed be held as bad and illegal, as the same is framed in breach of the principles of natural justice and without application of mind to the factual and legal aspects involved in the appeal.

WITHOUT PREJUDICE TO THE ABOVE ORDER



2. Ex- Parte Order

- 2.1 The Ld. CIT (A) erred in dismissing the appeal for alleged want o persuasion of appeal.
- 2.2 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

3. THE ASSESSMENT ORDER WAS BAD IN LAW AND WITHOUT JURISDICTION

- 3.1 The Ld. CIT (A) erred in confirming the validity and legality of the assessment order passed by the A.O.
- 3.2 It is submitted that in the facts and the circumstances of the case, and in law, the assessment order passed by the A.O. was bad, illegal and without jurisdiction.

4. ON MERITS

- 4.1 The Id. CIT (A) erred in confirming the action of the A.O. in making addition of Rs.11,51,884/- being alleged unexplained investment in jewellery and it making charges.
- 4.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.
- 4.3 Without prejudice to the above, in the alternative, assuming but not admitting that some addition was called for, the computation of the same is not in accordance with the law, is arbitrary and excessive.

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5. The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.”

4. The brief facts of the case are that the search action u/s 132 of the I.T. Act, 1961 was carried out on 25.07.2013 at the residential and business establishments of the assessee and his family members and family concerns (hereafter called as M/s. Ajmera Group). Thereafter the proceeding u/s 153A of the I. T. Act, 1961 was initiated on 03.11.2014 by issuance of notice. The assessee had already filed the return of income on 16.09.2013



declaring total income at Rs.8,81,560/-. In pursuance of notice u/s 153A of the I. T. Act, 1961, the assessee filed return of income on 07.01.2015 declaring total income at Rs.8,81,560/- which he had already filed on 16.09.2013. The Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. On the basis of the seized papers marked as A1, the assessee has shown the investment in sum of Rs.1,51,884/- but the assessee failed to explain the same, therefore, the said amount was treated as unaccounted investment and added to the income of the assessee. The page no. 8 & 10 of the folder marked as A1 also speaks about the purchase of ornaments for payment of Rs.10,00,000/-. The assessee nowhere explained the investment, therefore, the same was also added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.20,33,444/- and the tax was computed to the tune of Rs.8,81,560/-. The income was also taxed @ 30% u/s 115BBE of the Act of Rs.11,51,884/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee did not argue the case on merits but argue on this point that the CIT(A) has decided the case *ex parte*, therefore, the finding of the CIT(A) is not justifiable and is liable to be set aside. It is also specifically argued that the CIT(A) nowhere considered the paper books as well as written submission submitted by the assessee, therefore, the finding of the CIT(A) is not justifiable in the interest of justice and is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order of the CIT(A), we noticed that



the CIT(A) decided the matter of controversy in absence of the assessee without giving an opportunity of being heard to the assessee. It is against the principle of natural justice. A proper and reasonable opportunity is not required to be given to the assessee before the deciding the matter of controversy in accordance with law specifically on merits.

6. For this proposition we place reliance upon the following case laws.

(1) CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom) 302

(2) CIT Vs. S Chenniappa Mudaliar (1969) 74 ITR 1 (SC)

7. Accordingly in the interest of justice we remit the issue raised in the appeal to the file of the Ld. CIT(A). Ld. CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving an proper opportunity of being heard to the assessee in accordance with the law. Therefore, in the said circumstances, we are of the view that the order of the CIT(A) is not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on all the issues and restored the matter before the CIT(A) to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law.

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8. Since the appeal of the assessee bearing ITA. No.5000/M/2018 for the A.Y.2013-14 is having similar controversy, therefore, the finding above is quite applicable to the facts of the present cases also as mutatis mutandis, therefore, these appeals are hereby also allowed accordingly.



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A.Ys. 2014-15 & 2013-14

9. In the result, the appeals filed by the assessee are hereby ordered to be allowed for statistical purposes.

Order pronounced in the open court on 15/01/2020.

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 15/01/2020.

Vijay Pal Singh/Sr. P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai