

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**  
**BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.7647/Mum/2010

(निर्धारण वर्ष / Assessment Year: 2007-08)

Madhukar Sheth 603, Elizabeth Apts, B.S.M. Road Elphinstone (W), Mumbai-400013.	<b>बनाम/</b> Vs.	Addl. CIT Range-18(1) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ANXPS1972P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri O. P. Meena (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 07/10/2020

घोषणा की तारीख /Date of Pronouncement: 11/11/2020

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 22.07.2010 passed by the Commissioner of Income Tax (Appeals)-29, Mumbai (hereinafter referred to as the “CIT(A)”) relevant to the A.Y.2007-08.

**2. The assessee has raised the following grounds: -**

- “1. The Ld. CIT(A) has erred in law and in facts in passing the order and in determining the total income of the appellant at Rs.3,60,08,380/- as against returned income of Rs.2,74,19,647/-.
2. The Ld. CIT(A) has erred in passing the assessment order and making addition therein without giving effective opportunity of hearing to the appellant. The assessment order has been passed in gross violations of principles of natural justice.



3. *The Ld. CIT(A) has erred in law and facts wrongly disallowing the expenditure Rs.85,88,733/- being expenditure towards interest on loan Rs.31,21,609/-, Interest on delayed pay in charges Rs.44,84,892/- and professional fee Rs.2,82,232/-.*
4. *The appellant craves leave to add, amend, modify, alter and/ or delete any of the above grounds of appeal.”*

**3.** We have heard the argument advanced by the Ld. Representative of the Department and has gone through the case carefully. In fact, the Ld. Representative of the assessee did not argue the case on merits but argued on this point that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside in the interest of justice. 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) dated 22.07.2016 passed by the CIT(A) we find that the CIT(A) has decided the matter of controversy in absence of the assessee/Representative of the assessee without giving an opportunity of being heard to the assessee in the accordance with law. A proper and reasonable opportunity is required to be given to the assessee before the deciding the matter of controversy in accordance with law.

**4.** 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)

**5.** 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 after giving an proper opportunity of being heard to the assessee in accordance with 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 restore 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.

6. In the result, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 11/11/2020

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 11/11/2020

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**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//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai