IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 1852/PUN/2016
Assessment Year: 2011-12

M/s Kaka Rayon S 29/B, Dwarkanath Compound, Village Kariwali, Bhiwandi, Thane-421302 **PAN No. AAHFK2626H**	Vs.	ACIT, Circle-1 Mohan Plaza, Wayle Nagar, Khadak Pada Kalyan-421301.
Appellant		**Respondent**

ITA No. 5365/MUM/2016
Assessment Year: 2011-12

Asstt. Commissioner of Income Tax, Circle-1, 1st Floor, Mohan Plaza, Wayale Nagar, Kalyan West-421301.	Vs.	M/s Kaka Rayon S 29/B, Dwarkanath Compound, Village Kariwali, Bhiwandi, Thane-421302 **PAN No. AAHFK2626H**
Appellant		**Respondent**

Assessee by	:	Mr. B.P. Purohit, AR
Revenue by	:	Mr. Sunil Deshpande, DR
Date of Hearing	:	05/11/2020
Date of pronouncement	:	02/12/2020

ORDER

PER N.K. PRADHAN, A.M.

The captioned cross appeals - one by the assessee and other by the Revenue - are directed against the order of the Commissioner of Income Tax (Appeals)-2, Thane [in short 'CIT(A)'] and arise out of the assessment completed u/s 143(3) of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off by this consolidated order for the sake of convenience.

ITA No. 1852/PUN/2015
Assessment Year: 2012-13

2. The grounds of appeal filed by the assessee read as under :

1) On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in sustaining partly the addition made by the ACIT, Circle-1, Kalyan (the AO) treating the genuine bona fide purchases as bogus purchases without appreciating that all of our purchases are genuine and bona fide real purchases and that the appellant has adduced various evidences, none of which have been belied or disproved by the AO. The said addition made by the AO and sustained by the CIT (A) may therefore be deleted.
2) On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in sustaining partly the addition made by the AO, on the basis of materials / information, if any, collected behind the back, without giving opportunity to cross examine the witnesses and to rebut the same. The impugned order is therefore against the principles of natural justice and hence void on this score alone. The impugned order may therefore be declared void and / or the addition made / sustained thereby may by deleted.
3) On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in sustaining partly the addition made by the AO, ignoring the fact that the

appellant has produced all and every details, documents and records proving genuineness of his impugned purchases and that too without pointing out any infirmity in the details, documents and records produced by the appellant. The impugned order is therefore without any substance and is based on assumption and presumption. Such order cannot be sustained in the eyes of law. It may please be quashed.

4) On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in sustaining partly the addition made by the AO, without appreciating that it is for the AO to raise specific requisition and ask the assessee to produce details, documents and records he wants the assessee to produce. If he fails to do so, he cannot fasten the blame on the door of the assessee and make addition. The AO has not pointed out even a single instance where the appellant has failed to produce the requisitioned details etc. Hence, the addition made by the AO and sustained partly by the CIT (A) is arbitrary, unwarranted and unlawful.
5) The appellant therefore submits that the addition sustained partly by the CIT(A) by treating the genuine and bona fide purchases as bogus may be deleted and such other and further reliefs, as may be favorable to the appellant, may be granted as may be thought fit to meet the ends of justice.

ITA No. 5365/MUM/2016
Assessment Year: 2012-13

3. The grounds of appeal filed by the Revenue read as under :

1) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in relying on the decision of Supreme Court in the case of Kanchwala Gems vs. JCIT 288 ITR 10(SC) and Hon'ble High Court's decision in the case of Vijay Protein,Sanjay Oil Cake Industries, etc.
2) On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in not following the order of ITAT, Pune in ITA No. 1411-1415 dated 20.02.2015 in the

case of M/s. Kolte Patil Developers Ltd. wherein 100% addition of bogus purchases was confirmed.

3) On the facts and in me circumstances of the case, the Ld. CIT(A) has erred in giving relief to the assessee to the extent of suppressed G.P. out of total bogus purchases even though-
   i. The assessee could not produce primary evidences like Octroi Receipts, Delivery challan etc. evidence to prove the genuineness of the purchases before the AO and before CIT(A).
   ii. The affidavits filed by the entry providers before Sales Tax Authorities cannot be ignored having evidentiary value

4. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2011-12 on 29.09.2011 showing total income of Rs.24,02,437/-. During the course of assessment proceedings, the AO received information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills from the following entry providers:

S. No.	**Name of the entry provider**	**Amount in the bills taken by the assessee in Rs.**
1	Ashtavinayak Sales Agency	13,22,210
2	Adinath Trading Company	15,30,123
3	Nisha Entgrprise	95,737
4	Choksi Brothers	20,12,843
5.	Kamalnayan Exim Private Limited	14,03,761
6.	Polaris Sales Agency Private Limited	20,61,382
7.	BSR Multitrade Trading Private Limited	13,39,735
8.	Anshu Mercantile Pvt. Ltd	4,41,369
		1,02,07,160

Noting that the Proprietors/Partners of the above entry providers have also filed affidavits before the Sales Tax Authorities stating that they have

issued only sale bills and no real transaction has taken place, the AO asked the assessee to prove the purchases from the above 8 parties. In response to it, the assessee filed copy of purchase bills, ledger account along with sales invoice, delivery challans. However, the assessee failed to file confirmation of purchases from the above parties. In response to the action of the AO to produce the above parties for verification of the genuineness of the transaction, the assessee filed the following reply :

> "Please appreciate that all our purchases are genuine, bona-fide, real and actual. Therefore there is no reason to raise any suspicion or question regarding purchases from these parties.
>
> Please appreciate that the onus to prove or establish genuineness of our case on is prima facie. By adducing the above evidences, we discharged the said onus. Now, the onus shifts on the department to prove why our version of the case should not be accepted by the department. For that purpose, you have to disprove our case on the basis of cogent materials. Without doing so none of our purchases can be disbelieved or disallowed."

However, the AO was not convinced with the above reply on the reason that the assessee showed its inability to file the confirmation of the said purchases ; also the assessee showed its inability to produce the above parties to prove the genuineness of the purchases.

As the assessee failed to discharge the onus cast on it, the AO made an addition of Rs.1,02,07,160/- as bogus purchases.

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). During the course of appellate proceedings, the assessee filed

written submission along with 'Paper Book' containing various evidence stating therein that the AO has not allowed proper opportunity of being heard. Accordingly, the Ld. CIT(A) called for a 'Remand Report' from the AO, after allowing due opportunity of being heard to the assessee. In pursuance to it, the AO submitted a 'Remand Report' before the Ld. CIT(A). After receipt of the said 'Remand Report', the Ld. CIT(A) forwarded a copy of it to the assessee for information and comments, if any in the matter. The assessee filed a reply *vide* letter dated 06.01.2016.

Having examined the facts of the case along with the 'Remand Report' submitted by the AO and reply to it by the assessee in the background of facts of the case, the Ld. CIT(A) came a finding that (i) the assessee, instead of justifying the genuineness of purchases made from the said entry providers, by filing confirmation, current mailing address etc., has merely reiterated the fact that payment to these parties were made in cheques, the material purchased has been used for manufacturing/packing the goods and corresponding sales have been recorded, (ii) the assessee failed to establish the genuineness of those purchases by furnishing credible documents along with confirmation of ledger accounts and also failed to produce those parties for examination in persons.

Keeping in mind, the observation of the Hon'ble Delhi High Court in the case of *CIT v. Jansampark Advertising & Marketing (P.) Ltd*. that "it was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried", the Ld. CIT(A) provided a fresh

opportunity to the assessee to establish the genuineness of those purchases by furnishing the following information :

> "Keeping in view the above facts and submissions of the Ld. AR. the appellant was requested to establish the genuineness of these purchases, affording a fresh opportunity by furnishing the information as under:
>
> > Please furnish current mailing address of the hawala parties, their confirmation of accounts, their bank statements, produce for examination, proof for delivery of goods i.e. delivery challan transport receipts, octroi receipts, loading, unloading expenses, stock register, etc. to prove the hawala purchases. Also furnish qualitative quantitative details i.e. O.S., Purchases, total, sales. C.S. item-wise party-wise, on month to month basis. Please also furnish comparative turnover, GP, GP rate, NP & NP for the hawala year last 2 years & subsequent 2 years & also furnish similar details after addition of purchase for the year and last 2 years and subsequent 2 years and justify the account w.r.t the provision of section 145(3) of the Act, in view of the above facts.

Furnish the qualitative/quantitative details i.e. O.S., Purchases, total sales, C.S, item-wise/party-wise, on month to month basis, in the following format, for hawala parties:-

Name of the Party-

Date of Purchases	Amount	Date of payment	Amount	Mode of payment till date

Quantitative tally with HP & without HP-

Raw Material

Opening Stock (Quantity)	Purchase (Quantity)	Total (Quantity)	Consumption (Quantity)	Closing Stock (Quantity)

Finished Goods

Opening Stock (Quantity)	Production (Quantity)	Total (Quantity)	Sale (Quantity)	Closing Stock (Quantity)

As noted by the Ld. CIT(A), the assessee could not furnish those details in the prescribed format item-wise/party-wise with the plea that the required information are not maintained in the prescribed format ; the assessee also could not furnish confirmed copy of ledger account, present mailing address; the assessee also failed to produce those parties for verification. Observing that in the absence of current mailing address, it is not possible for the Revenue to summon them for examination/verification/cross-examination, the Ld. CIT(A) found defects in the case of M/s Ashtavinayak Sales Agency, M/s Adinath Trading Company, M/s BSR Multitrade Trading Pvt. Ltd. Also observing that the assessee could not reconcile the quantity-wise details of purchases from those hawala parties vis-à-vis sales thereof, the Ld. CIT(A) held as under :

> "5.13 Considering the above facts and in view of the decision of the Hon. Delhi High Court in the case of CIT Vs. Jansampark Advertising and Marketing (P) Ltd. it is also an obligation on the part of the first appellate authority to ensure that the effective enquiry is carried out to arrive at logical conclusion. Therefore, to understand the impact of booking of hawala purchases on the profit of the year, the Ld AR was required to furnish the comparative details of GP/NP and GP/NP rates for hawala years, preceding two years and subsequent two years. In compliance, the appellant has submitted the details, as under :-

A Yr	**Sales**	**GP**	**% of GP to T/O**	**NP**	**% age of NP to T/O**
2009-10	9,94,11,179	4615181	4.64	1107004	1.11
2010-11	14,07,22,110	6632260	4.71	1377429	0.98
2011-12	19,19,29,209	8513330	4.44	2402434	1.25

2012-13	18,84,92,010	8678937	4.60	2737800	1.45
2013-14	18,03,16,961	11296727	6.26	(-)554514	(-)0.31

5.14 From the above chart, it is noticed that the gross profit rate has gone down from 6.26% in A Yr 2013-14 (non-hawala purchase year) to 4.44% in A Y 2011-12, the year in which the alleged hawala purchases were booked, for which the appellant could not offer any valid explanation. These facts clearly established that the appellant had suppressed its profits by booking alleged hawala purchases, as above by 1.82% (6.26 - 4.44) in A Yr 2011-12, as compared to GP of A Yr 2013-14. This has resulted into suppression of gross profit by Rs.34,93,111/- (19,19,29,209 x 1.82%). Considering the nature of appellant's business, i.e. dyeing of yarn and the turnover, the appellant has shown GP quite at lower side, hence the same is liable to be re-estimated by rejecting the accounts. In this regard, I would like to place my reliance on the ratio laid down by the following courts - it is held by the Hon'ble Supreme Court in the case of *H M Esufali H M Abdulla* 90 ITR 271 (SC) that if the estimation made by the Assessing Authority is a bond fide estimate and based on a rationable basis, the fact that there is no good proof in support of that estimate is immaterial. Apex court has further held in the case of *M/s. Kanchwala Gems Pvt. Ltd. vs. JCIT* 288 ITR 10 (SC) that it is well settled that in a best judgment assessment, there is always a certain amount "guess work". The Hon'ble Supreme Court, in the case of *CIT v. Calcutta Agency Ltd*. (SC) 19 ITR 191 and *Lakshimaratan Cotton Mills Co. Ltd. v. CIT* (SC) 73 ITR 634 has held that in order to claim that an expenditure falls u/s 37(1) of the Act, the burden of proving the necessary facts in that connection is on the assessee and not on the Department. Similarly, the Apex Court in the case of *Lakshminarayan Madan Lal v. CIT* (SC) 86 ITR 439 and in the case of *Swadeshi Cotton Mills Co. Ltd. v. CIT* 63 ITR 57, has held that the taxing authorities have right to consider whether the expenditure claimed by the assessee was excessive.

5.15 it is pertinent to mention here that the appellant was able to harvest GP @ 6.26% in A Yr 2013-14, from same business, by same management, as against GP of

4.44% declared in A Y. 2011-12. In the absence of any valid explanation, along with credible documents, the contention of the appellant is not tenable, therefore books of accounts are hereby rejected and GP declared in A Y 2013-14. i.e. 6.26% is estimated in the hawala year as well, in the light of decision of the Hon'ble S.C. in the case of M/s Kanchwala Gem 288 ITR 10. Accordingly, the suppressed GP is work out at Rs.34,93,111/- (19,19,29,209 x 1.82%). The appellant being manufacturer, and in the light of the decisions Hon'ble Gujarat High Court in the case of Vijay Proteins 58 ITD 428 and Sanjay Oil Cake Industries 316 ITR 274, if the analogy of disallowance @ 25% of the bogus purchases i.e. Rs.25,51,790/- (1,02,07,160 x 25/100) is considered, which is also worked out almost at par to the suppressed GP of Rs.34,93,111/-. This squarely establishes the fact that the appellant had suppressed its profits by inflating its purchases.

5.16 By booking alleged bogus purchases, as compared to the A.Y. 2013-14. The appellant has suppressed its profit by Rs.34,93,111/-. In compliance, the Ld. AR could not offer any valid reasons for fall in the GP rate. Considering the facts in entirety and relying on decisions in the case of M/s. Kanchwala Gems Pvt. Ltd. V/s JCIT 288 ITR 10 (SC), etc. as quoted above, in my considered opinion, the estimation of GP @ 6.26% will be justified. Therefore, the disallowance to the extent of Rs.34,93,111/-, out of hawala purchases of Rs.1,02,07,160/-, is sustained and balance amount of Rs.67,14,049/- (Rs.1,02,07,160/- Less Rs.34,93,111/-) is hereby deleted. All the grounds of appeal, as raised above, are partly allowed."

6. Before us, the Ld. counsel for the assessee files a copy of (i) the letter dated 04.03.2014 addressed to the AO, (ii) tabular statement showing purchase and supporting documents in respect of the 8 named parties and (iii) stock register. It is certified by the assessee that the above documents were filed before the AO/CIT(A).

Then the Ld. counsel refers to the observation of the Hon'ble Supreme Court in *Andaman Timber Industries v. Commissioner of Central Excise* (Civil Appeal No. 4228 of 2006) dated 02.09.2015 that "not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected".

It is argued that the onus on the assessee is to adduce sufficient evidence which are in its possession to prove the transactions *prima facie* ; the assessee has already submitted original purchase bills of the parties in question, their ledger accounts, assessee's bank statements reflecting payments made to the parties in question against purchases made from them. It is further stated that once the assessee has adduced the evidence to prove the transaction *prima facie*, the onus shifts to the Revenue, whereas in the present case the AO has neither been able to disprove the documents adduced by them, nor has he explained why the assessee's case should not be accepted based on cogent material in his possession.

It is further stated that the stock register filed by the assessee contained detailed information of opening stock, purchases, sales, consumption, closing stock etc. To summarize the contentions, it is stated by the Ld. counsel that the assessee had furnished before the AO/CIT(A) all relevant details such as copies of purchase bills, ledger accounts, delivery challans, computer generated stock register.

As an alternate argument, the Ld. counsel relies on the decision of the Hon'ble Bombay High Court in *Pr. CIT v. M/s Mohommad Haji Adam & Co*. (ITA No. 1004 of 2016). In that case, during the course of survey operations in the case of entities from whom the assessee had claimed to have made purchases, the Department collected information suggesting that such purchases were not genuine. The AO noticed that the assessee had shown purchases of fabrics worth Rs.29.41 lakhs from three group concerns, namely M/s Manoj Mills, M/s Astha Silk Industries and M/s Shri Ram Sales and Synthetics. On the basis of statement recorded during such survey operations, the AO concluded that the selling parties were engaged only in supplying the bogus bills, that the goods in question were never supplied to the assessee, and therefore, the purchases were bogus. He, therefore, added the entire sum in the hands of the assessee as its additional income. The assessee carried the matter in appeal before the CIT(A), who accepted the factum of purchases being bogus. However, he compared the purchases and sales statements of the assessee and observed that the Department had accepted the sale, and therefore, there was no reason to reject the purchases, because without purchases there cannot be sales. He, therefore, held that under these circumstances the AO was not correct in adding the entire amount of purchases as the assessee's income. He, therefore, deleted the addition restricting it to 10% of the purchase amount. He also directed the AO to make addition to the extent of difference between the gross profit rate as per the books of accounts on undisputed purchases and gross profit on sales relating to the purchases made from the said three parties. The assessee carried the matter before the Tribunal. The Revenue also carried the issue before the Tribunal. The Tribunal allowed the

appeal of the assessee partly and dismissed that of the Revenue. The Tribunal noted that the CIT(A) had not given any reasons for retaining 10% of the purchases by way of ad-hoc additions. The Tribunal, therefore, deleted such additions, but retained the portion of the order of the CIT(A) to that extent he permitted the AO to tax the assessee on the basis of difference in the GP rates. In further appeal before the Hon'ble Bombay High Court, the Revenue referred to the decision of the Division Bench of the Hon'ble Gujarat High Court in the case of N.K. Industries Ltd. v. DCIT in Tax Appeal No. 240 of 2003 and connected appeals decided on 20.06.2016 and also pointed out that the SLP against such decision was dismissed by the Hon'ble Supreme Court. The Hon'ble Bombay High Court held :

> "8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

> " So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

7. On the other hand, the Ld. Departmental Representative (DR) submits that as the assessee failed to file before the Ld. CIT(A) the details in the prescribed format, item-wise/party-wise [page 13 of the CIT(A)'s order]; failed to file confirmed copy of ledger accounts, present mailing address; failed to produce those parties for verification, the Ld. CIT(A) should have confirmed the addition of Rs.1,02,07,160/- instead of sustaining disallowance on estimate of GP @ 6.26% which comes to Rs.34,93,111/-.

8. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

In the instant case, as mentioned earlier, it is the contention of the Ld. counsel that the payments to those parties were made in cheques, the materials purchased were used for manufacturing/packing the goods and the corresponding sales have been recorded. It is also the contention of the Ld.

counsel that the assessee had furnished all relevant details such as copies of purchase bills, ledger accounts, delivery challans, computer generated stock registers before the AO.

A perusal of the order of the Ld. CIT(A) clearly shows that the assessee could not file before him the qualitative/quantitative details i.e. opening stock, purchases, total sales, closing stock, item-wise/party-wise month to month basis in the required format.

During the course of hearing on 5.11.2020, the Ld. counsel emphasized again and again that the assessee was not given opportunity to cross-examine the witnesses. This is also the second ground of appeal which is closely linked with the first ground filed by the assessee. It is to this that we turn below.

In *Andaman Timber Industries* (supra), relied on by the Ld. counsel, the assessee was engaged in the business of manufacture and sale of ply wood. Some of the products were sold directly from the factory premises in South Andaman to certain buyers. The major portion of products manufactured were sold to other dealers from the assessee's numerous depots, situated at various places of the country. The assessee had filed its declaration u/s 173C of the Central Excise Rules showing the price of the goods at which they were sold ex-factory and delivery basis. The AO observed that there was a large price difference between the goods sold at ex-factory basis in comparison with the goods which were sold to the buyers from their depots. While investigating the price differential, the statements of two customers were taken and relied on by the revenue to adopt the depot sale price as the value of the goods for excise purposes. The assessee *inter-alia* questioned the

correctness of the statements of the aforesaid two witnesses and demanded right to cross-examine them. The Tribunal rejected the plea of the assessee to cross-examine the dealers whose statements were relied upon by the AO on the basis that cross-examination would not help the assessee as it would not bring out any material which would not already be in the possession of the appellant themselves. The Hon'ble Supreme Court has held that not allowing the assessee to cross-examine the witnesses by the AO though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected; the Tribunal simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellants themselves to explain as to why their ex-factory prices remain static; it was not for the Tribunal to guess as to for what purposes the appellant wanted to cross-examine those dealers and what information the appellant wanted to extract from them.

In the instant case, the assessee failed to file before the AO/CIT(A) confirmed copy of the ledger account, present mailing address of the said parties. In such a situation, in absence of current mailing address, it was not possible for the Revenue to summon those parties for examination/verification/cross-examination. Therefore, the reliance placed by the Ld. counsel on the decision in *Andaman Timber Industries* (supra) is misplaced.

In the instant case, the issue is genuineness of purchases, which arose because of the investigation done by the Sales Tax Department, Government of Maharashtra which resulted in the affidavits filed by the entry providers that they had merely provided entries and no goods were supplied.

In the overall facts and circumstances of the case, the contentious issue would be resolved through cross-examination of the parties. A proper hearing must always include a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view. Cross-examination is allowed by procedural rules and evidently also by the rules of natural justice. Any witness who has been sworn on behalf of any party is liable to be cross-examined on behalf of the other party to the proceedings.

The Hon'ble Supreme Court in *State of Kerala vs. K.T. Shaduli Grocery Dealer* AIR 1977 SC 1627, recognised the importance of oral evidence by holding that the opportunity to prove the correctness or completeness of the return necessarily carry with it the right to examine witnesses and that includes equally the right to cross-examine witnesses.

In *ITO vs. M. Pirai Choodi* (2012) 20 taxmann.com 733 (SC), the Hon'ble Supreme Court has held that "Order of assessment passed without granting an opportunity to assessee to cross-examine, should not have been set aside by High Court; at most, High Court should have directed Assessing Officer to grant an opportunity to assessee to cross-examine concerned witness."

Thus considering the above factual scenario and position of law, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make a *de novo* order, after allowing the opportunity of cross-examination to the assessee. We direct the assessee to file the relevant accounts/documents/evidence before the AO. Needless to say, the AO would give reasonable opportunity of being heard to the assessee before passing the order.

9. In the result, the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 02/12/2020.

Sd/-	Sd/-
(SAKTIJIT DEY)	(N.K. PRADHAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai;
Dated: 02/12/2020.
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy.//Asst. Registrar)
ITAT, Mumbai