

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 2362/Mum/2019
(Assessment Years: 2009-10)**

Mr. Ankit jitendra Jhaveri 2202, Crescent heights, VN Naik Marg, Mumbai – 400036.	बनाम/ Vs.	ITO – 19(1)(1) Aayakar Bhavan, M.K Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACPJ5461A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Snehal Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Brajendra Kumar, DR

सुनवाई की तारीख / Date of Hearing	15/12/2020
घोषणा की तारीख/Date of Pronouncement	17/12/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals) -4, Mumbai passed u/s. 144 r.w.s 147 and 250 of the Income Tax Act, 1961.

2. Brief facts of the case are that, the assessee is engaged in the business of dealing in gift articles, novelties etc and filed the return of income with total

income of Rs Nil on 10.08.2009. The Assessing officer completed the assessment applying the provisions of Sec144 of the Act, being Best judgment Assessment with addition on account of non genuine purchases estimated @ 15% as profit on aforesaid purchases and passed the order u/s 144 r.w.s 147 of the Act dated 27.02.2015. On appeal, the LdCIT(A) has restricted the addition percentage to 12.5% and partly allowed the appeal. Aggrieved by the LdCIT(A) order, the assessee has filed an appeal with the Hon'ble Tribunal.

3. At the time of hearing Ld. AR, submitted that, the assessment was completed u/s 144 r.w.s 147 of the Act and no proper notice was issued on the address of the assessee. The LdCIT(A) has restricted addition @ 12.5% as against 15% estimated by the Assessing officer. Further, the assessee was not provided opportunity to file evidences, due to non receipt of notices issued by the Assessing authority. In the Appellate proceedings, the assessee has filed the additional grounds of appeal and written submissions. The LdCIT(A) has not considered the additional grounds of appeal, which goes to the roots

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of the case. Therefore prayed for an opportunity before the CIT(A) to substantiate the case.

4. Contra, the DR supported the orders of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie, we find that the Assessing officer has passed the assessment u/s 144 r.w.s 147 of the Act applying the provisions of Best judgment as the assessee could not substantiate the case with explanations and Evidences. The LdAR submitted that no opportunity was provided to the assessee to substantiate the case and LdCIT(A) has overlooked the additional grounds of Appeal raised by the assessee. We considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case. Accordingly, we restore the disputed issues to the file of the Ld CIT(A) to adjudicate afresh and pass a speaking order and the assessee shall cooperate in submitting the information for early disposal of the appeal, and we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 17.12.2020

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 17 /12/2020

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai