

आयकर अपीलीय अधिकरण  
मुंबई पीठ "ई"  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एम.बालगणेश,लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI M BALAGANESH, ACCOUNTANT MEMBER

आअसं.6520/मुं/2010 (नि.व. 2008-09)  
ITA NO.6520/MUM/2010 (A.Y.2008-09)

Deputy Commissioner of Income Tax,  
Central Circle 11, Room No. 804, 8<sup>th</sup> Floor,  
Old CGO Annexe Bldg.,  
Mumbai-400 020

..... अपीलार्थी /Appellant

बनाम Vs.

Shri. Sudhir S Jhunjunwala  
Flat No. 41/42, 4<sup>th</sup> Floor,  
Meghna Apts., SV Road,  
Santacruz West Mumbai-54  
Pan No. AAFPJ7148H

..... प्रतिवादी /Respondent

आअसं.6543/मुं/2010 (नि.व. 2008-09)  
ITA NO.6543/MUM/2010 (A.Y.2008-09)

Shri. Sudhir S Jhunjunwala  
Flat No. 41/42, 4<sup>th</sup> Floor,  
Meghna Apts., SV Road,  
Santacruz West Mumbai-54  
Pan No. AAFPJ7148H

..... अपीलार्थी /Appellant

बनाम Vs.

Assistant Commissioner of Income Tax,  
Central Circle 11,  
Old CGO Annexe Bldg.,  
Mumbai-400 020

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/Assessee by : None  
प्रतिवादी द्वारा/Department by : Shri Prakash R. Mane, CIT DR  
सुनवाई की तिथि/ Date of hearing : 12/07/2022  
घोषणा की तिथि/ Date of pronouncement : 10/10/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These cross appeals by the Revenue and the assessee are against the order of Commissioner of Income Tax Appeals 37-Mumbai [in short "the CIT(A)] dated 18/06/2010 for the assessment year 2008-09.

2. These appeals are more than a decade old and are pending for disposal. A perusal of the files reveal that repeated notices were sent to the assessee on the address mentioned in Form No. 36 for hearing of the appeals. The notices sent to the assessee were not received back unserved from the Postal Authority, therefore, deemed to be served. The acknowledgement of the service of some of the notices is available on record. Despite repeated service of notice, neither the assessee nor any authorised representative of the assessee appeared after 27/01/2020. It seems, that the assessee is not interested in prosecuting his appeal, therefore, these appeals are taken up for adjudication with the assistance of Id. Departmental Representative and the material available on record.

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3. The Revenue in appeal as raised as many as five grounds. The only issue raised in the appeal by the Revenue is admission of additional evidence by CIT(A)

in violation of Rule 46A of the Income Tax Rules 1962 (hereinafter referred to as “the rules”)

4. Shri. Prakash R. Mane representing the department submitted that the assessee had filed additional evidences before the CIT(A). The CIT(A) admitted additional evidences without following statutory procedure as laid down in Rule 46A.

5. We have heard the submissions made by Id. Departmental Representative and have examined the orders of authorities below. A perusal of the impugned order reveals that the additional evidences filed by the assessee in First Appellate proceedings were forwarded to the Assessing Officer for his comments on admissibility and also for his comments on the merits of such evidences. The Assessing Officer furnished his report dated 26/05/2010. In the said report the Assessing Officer did not object to admission of the additional evidences. The Assessing Officer after verification of the additional evidences furnished his remand report. Thus, it is evident from records that an opportunity was granted to the Assessing Officer to file objections to the admissibility of additional evidences filed by the assessee at First Appellate stage. No objection whatsoever was raised by the Assessing Officer. Now, the Assessing Officer cannot raise objection to the admission of additional evidences citing provisions of Rule 46A. We find no merit in the appeal of Revenue, hence, the same is dismissed.

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6. The assessee in appeal has raised solitary ground assailing the findings of CIT(A) in confirming addition of Rs.1,04,34,265/- on account of undisclosed cash

balance. Consequent, to search and survey action under Section 132 and 133A of the Income Tax Act 1961 (hereinafter referred is as “the Act”) on 13/03/2008, the assessment for the impugned assessment year in the case of assessee was made. During assessment proceedings, none appeared to represent the assessee despite repeated notices. Hence, the Assessing Officer was constrained to complete the assessment under Section 144 of the Act. One of the addition made by Assessing Officer was in respect of Dabba Trading with Jayesh Kuwadia. Jayesh Kuwadia, in his statement admitted that there were receipts from the assessee. The fact that cash was exchanged with Jayesh Kuwadia was also confirmed by Ramakant Tiwari, one of the employee of the assessee. The Assessing Officer made addition of the peak cash receipts by Jayesh Kuwadia from the assessee during the period 17/09/2007 to 10/10/2007 and made addition of Rs.1,04,34,265/-. In First Appellate proceedings the CIT(A) on the basis of remand report dated 26/05/2010 confirmed the addition. No contrary material is available before us to take a different view, hence, the solitary ground raised by the assessee in appeal is dismissed.

7. To sum up, appeal of the Revenue and the appeal of assessee are dismissed.

Order pronounced in the open court on Monday the 10th day of October, 2022.

(M BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated 10/10/2022

M.R. Sonavane

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/  
Sr.Private Secretary  
**ITAT, Mumbai**

	Details	Date	Initials	Designation
1	Draft dictated/directly typed on computer			Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			