

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 1932/MUM/2016
Assessment Year: 2009-10**

Shri. Mohd. Hussain Noor Mohd. Shaikh, 3/303, Khwaja Palace, Boren Road, Off Hill Road, Bandra (W), Mumbai- 400050. PAN:- AVQPS7666B	Vs.	The ITO- 18(3)(3), Mumbai.
(Appellant)		(Respondent)

Appellant by : Shri. Pramod Kumar Parida
Respondent by : Shri. Sanjeev Jain.

Date of Hearing: 08/06/2016
Date of Pronouncement: 21/10/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against order dated 12/01/2016 passed by the CIT(A)-33, Mumbai, for the assessment year 2009-10 whereby the Ld CIT(A) partly allowed the appeal filed by the assessee against the assessment order passed by the AO u/s 143(3) of the Income Tax Act,1961 (for short 'the Act').

2. The assessee had filed his return of income for the assessment year 2009-10 declaring the total income of Rs.1,48,380/-. The assessment was completed u/s 143(3) determining the total income of Rs. 1,00,44,447/- after making additions including additions u/s 68 and 69 of the Act. In first appeal the Ld. CIT(A) partly allowed the appeal of the assessee. Still aggrieved by the order passed by the Ld. CIT(A), the assessee is in appeal before the Tribunal.

3. Since the assessee had moved an application under rule 46A of the Income Tax Rules to allow the assessee to place on record certain documents as additional evidence which could not be produced before the A.O and the Ld. CIT(A), the Ld. authorised representative of the assessee (AR) submitted that due to improper representation and failure to file the relevant papers before the authorities below by the concerned CA, the Ld. AO made additions under section 68 and 69 of the Act, which were further confirmed by the Ld. CIT(A). The Ld. AR further submitted that the concerned CA did not submit the documents compiled in Paper Book-III which are relevant to decide the issues involved in this case and if the said documents are not admitted as additional evidence, a grave injustice will be caused to the applicant/assessee. The Ld. AR relying on the law laid down by the *Hon'ble Rajasthan High Court in CIT vs. Jaipur Udyog Ltd. 227 ITR 345(Raj)*, *Hon'ble Bombay High Court in Smt. Prabhavati V. Shah 231 ITR 1 (Bom)* submitted that since the assessee has been prevented by sufficient cause from producing evidence, it would not be in the interest of justice to deny the admission of crucial evidence for the reason that it was not produced before the authorities below.

4. The Ld. DR opposed the application on the ground that since the assessee has failed to produce the documents before the authorities below, he is now estopped from filing the same at this stage.

5. We have heard the rival submission and gone through the record placed before us. In our opinion, the reason mentioned by the assessee for non-production of documents before the lower authorities appears to be reasonable. Therefore, the assessee should get an opportunity to produce the documents before the concerned authorities in the interest of justice.

6. We, therefore, allow the application of the assessee and admit the additional evidence in the form of paper book No. III and remit the case to the Assessing Officer with the direction to pass the assessment order afresh after giving reasonable opportunity of being heard to the assessee on the basis of evident on record including the additional evidence produced by the assessee vide application dated 30/05/2016.

7. In the result the appeal filed by the assessee for the Asst. year. 2009-10 is allowed for statistical purpose.

Order pronounced in the open court on 21st October, 2016

Sd/- (B.R.BASKARAN) ACCOUNTANT MEMBER	Sd/- (RAM LAL NEGI) JUDICIAL MEMBER
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मुंबई Mumbai; दिनांक Dated: 21/10/2016

आदेश 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

Pramila