

आयकरअपीलीयअधिकरण, इंदौरन्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL, INDORE BENCH, INDORE
 श्रीसी.एम.गर्ग, न्यायिकसदस्यतथाश्रीओ.पी.मीना, लेखासदस्यकेसमक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./ I.T.A. No.278/Ind/2017
निर्धारणवर्ष / Assessment Year: 2009-10

Shri Anil Takalkar, 145-A, Silver Oaks Colony, Annapurna Road, Indore (MP)	v.	ITO, Dewas
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent
स्था.ले.सं./ PAN:ACAPT9132F		

अपीलार्थीकीओरसे/ Appellant by	Shri S.S. Deshpande, CA
प्रत्यर्थीकीओरसे/ Respondent by	Shri Mohmd. Javed, Sr. (DR)

सुनवाईकीतारीख/ Date of hearing	24.05.2017
उद्घोषणाकीतारीख/ Date of pronouncement	26.05.2017

आदेश / O R D E R

PER O.P.MEENA, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of learned Commissioner of Income tax (Appeals)-, Ujjain, [in short referred to as the CIT (A)] dated 06.01.2017 for assessment year 2009-10 on the sole grounds of appeal as under:-

That the Ld. CIT(A) has erred in sustaining the addition of Rs. 3,07,712/- for disallowance of expenditure.

2. At the outset, the Ld. AR submitted that no opportunity of hearing was offered to the assessee hence, the Ld. CIT(A) was not

justified in rejecting the appeal of the assessee ex parte therefore, it was prayed that the appeal be restored to the file of Ld. CIT(A) with a direction of proper opportunity of being heard may be allowed to the assessee. On the other hand, the Ld. Sr. DR has no objection if the matter is restored to the file of the Ld. CIT(A).

3. We have heard the rival submissions and find that the Ld. CIT(A) has not allowed proper opportunity of being heard. The principle of *audi-alterem partem* is the basic concept of natural justice. The expression "*audi-alterem partem*" implies that a person must be given an opportunity to defend himself, this principle is *sine-qua-non* of every civilized society. The right to notice, right to present case and evidence, right to rebut adverse evidence, right to cross-examination, right to legal representation, disclosure of evidence to parties, report of enquiry to be shown to the other party and reason or decision or speaking order is imperative requirement of the law. The view is found support from the decision of the Hon'ble Supreme Court in the case of Maneka Gandhi vs. Union of India wherein it was held that rules of fair hearing is necessary before passing any order. We find that in the instant case, the assessee was not given proper hearing and the appeals wear decided ex parte. Therefore, we are of the view that the assessee must be given one more opportunity of being heard and to represent his case. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this appeal to the file of Ld. CIT(A) for allowing proper opportunity of being heard in accordance with law. Nevertheless, to mention that the assessee will cooperate in appeal proceeding and furnish

necessary evidence for which he wants to rely. Accordingly, the issue set aside of the file of the CIT(A).

4. In the result, the appeal of the assessee is allowed for statistical purpose.

5. This order has been pronounced in the open court on 26.05.2017

Sd/-

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

(O.P.MEENA)
ACCOUNTANT MEMBER

Dated: 26.05.2017

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