

आयकरअपीलीयअधिकरण ,इन्दौरन्यायपीठ ,इन्दौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
 INDORE BENCH, INDORE**

श्री सी.एम.गर्ग ,न्यायिकसदस्य

तथा

श्रीओ.पी.मीना ,लेखासदस्यकेसमक्ष

**BEFORE SHRI C. M. GARG, JUDICIAL MEMBER  
 AND  
 SHRI O.P. MEENA, ACCOUNTANT MEMBER**

आ.अ.सं /I.T.A. No.156/Ind/2017		
निर्धारणवर्ष/ <b>Assessment Year: 2009-10</b>		
<b>Shri Ajit Darda 163-A, Brinjeshwar Annex Indore</b>	<b>vs.</b>	<b>Income tax Officer 2(3) Indore</b>
<b>अपीलार्थी /Appellant</b>		<b>प्रत्यर्थी /Respondent</b>
<b>स्था.ले.सं./PAN: AEXPD - 4727Q</b>		
<b>अपीलार्थी की ओर से/Appellant by</b>		<b>None</b>
<b>प्रत्यर्थी की ओर से/Respondent by</b>		<b>Shri Mohd. Javed</b>
<b>सुनवाई की तारीख/Date of hearing</b>		<b>21.03.2017</b>
<b>उद्घोषणा की तारीख/Date of pronouncement</b>		<b>27.03.2017</b>

**आदेश /O R D E R**

**PER BENCH**

This appeal is filed by the assessee against the order of Id. Commissioner of Income tax (Appeals)-II, Indore [hereinafter referred to as the CIT (A)] dated 16.11.2016. This appeal pertains to Assessment Year 2009-10 as against appeal decided in respect of assessment order dated 16.12.2011 passed u/s. 144 of Income Tax

Act, 1961(herein after referred to as "the Act) by the ITO 2(3), Indore [hereinafter referred to as the AO].

1. At the time of hearing, none attended on behalf of the assessee at the time of hearing inspite of notice. The learned DR was heard.

2. The sum and substance of the grounds of appeal of the assessee is that the learned CIT(A) was not justified in confirming the addition of Rs.14,27,056/- made by the Assessing Officer u/s 68 of the Act in respect of cash deposits made by the assessee in his savings bank account without considering the material fact that the entire cash deposits were made by the assessee out of the explained sources only .

2.1 Succinctly, facts as culled out from the orders of lower authorities are that the return of income was filed by the assessee on 25.3.2010 declaring total income at Rs. 1,98,650/-. The case was selected for scrutiny and first notice u/s 143(2) of the Act was issued on 18.8.2010 fixing the hearing of the case for 9.9.2010. The notice was served on the assessee on 25.8.2010. However, there was no representation on behalf of the assessee on the date of hearing. Thereafter detailed questionnaire along with notices u/s 143(2) and 142(1) were issued to the assessee on 20.1.2011 by

speed post fixing the date of hearing on 11.2.2011. On this date also, none attended on behalf of the assessee. The Assessing Officer again issued another notice u/s 142(1) on 14.2.2011 fixing the date of hearing on 8.3.2011. However, on this date also, neither anybody attended nor any reply was filed on behalf of the assessee. Further the Assessing Officer issued notice u/s 143(1) on 25.5.2011 fixing the date of hearing on 9.6.2011 but to no avail. As last opportunity, the Assessing Officer again issued a notice u/s 142(1) of the Act on 6.7.2011 fixing the case for hearing on 15.7.2011. The Assessing Officer issued questionnaire vide notice dated 20.1.2011 in response to which the AR of the assessee attended and filed written reply. Vide note sheet entry dated 3.11.2011 the Assessing Officer asked the assessee to submit the requisite information and documents by fixing the case for hearing on 10.11.2011. However, on this date also, neither the assessee attended nor filed any reply. Since it was a time barring case and the assessment was to be made by 31.12.2011, therefore, finally notice u/s 143(2)/142(1) of the Act dated 25.11.2011 was issued to the assessee fixing the case for hearing on 25.11.2011 by clearly mentioning therein that "*as a last opportunity, you are once again*

*requested to furnish the requisite information as per notices above on 12.12.2011 at 11 AM otherwise your assessment has been completed on the basis of facts and record under section 144 of the Act for which are only responsible".* However, the assessee did not care to respond. In view of this conduct of the assessee, the Assessing Office had no alternate but to proceed to make the assessment u/s 144 of the Act on the basis of material available on record. During the course of assessment proceedings, the Assessing Officer found that the assessee has deposited an amount of Rs.14,27,056/- in the savings bank account with standard Chartered Bank. However, the assessee did not file any source of proof of the said deposit with the return of income or during the course of assessment proceedings. The Assessing Officer, therefore, observed that the assessee has no proof regarding the source of cash deposit and this money has been deposited by him out of his undisclosed income. He, therefore, added this undisclosed income of Rs.14,27,056/- to the total income of the assessee u/s 68 of the Act.

2.2 Felt aggrieved with the above addition made by the Assessing Officer, the assessee preferred first appeal before the learned CIT(A).

The learned CIT(A) considering the submissions of the assessee in the wake of the facts of the case, confirmed the action of the Assessing Officer.

2.3 Against the confirmation of addition by the learned CIT(A), the assessee is in appeal before the Tribunal.

2.4 The learned DR supported the orders of the authorities below. The learned DR submitted that since the assessee has been provided a number of opportunities, the assessee is not entitled for further opportunity.

2.5 After careful consideration of the submissions of the parties in view of the facts of the case, we find that in this case the Assessing Officer has made the assessment u/s 144 of the IT Act. It is a well settled principle of natural justice that no-body should be condemned unheard. Principle of natural requires that sufficient opportunity of being heard should be provided to the assessee before deciding the issue against him. We are of the view that since the Assessing Officer has decided the matter without hearing the assessee in violation of the principles of natural justice and fair play, this appeal needs to be restored to his file for deciding the same after providing due opportunity of being heard to the

assesseees. We, therefore, following the principle of natural justice, restore this appeal to the file of the Assessing Officer with the direction to frame fresh assessment after providing the assesseees due opportunity of being heard. Needless to mention that the assessee is at liberty to file evidence, if any, in support of his claim before the Assessing Officer.

2. In the result, the appeal of the assesseees is allowed for statistical purposes.

3. Order pronounced in the open Court on 27<sup>th</sup> March, 2017.

Sd/-

(सी.एम.गर्ग)  
न्यायिक सदस्य  
**(C.M.GARG)**  
**JUDICIAL MEMBER**

**Sd/-**

(ओ.पी.मीना)  
लेखा सदस्य  
**(O.P.MEENA)**  
**ACCOUNTANT MEMBER**

दिनांक /**Dated : 27<sup>th</sup> March , 2017**

**Dn/-**