

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, H, मुंबई ।

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

**Before Shri Amit Shukla, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.6330/Mum/2014
Assessment Year: 2010-11**

Raghvan V. Nair, B-128, Rolex Shopping Centre, STN Rd, Goregaon(W) Mumbai-400062	बनाम/ Vs.	ITO 24(3)(4) R.No. 204, Pratyakshakar Bhvan, BKC, Bandra (E) Mumbai
(Appellant)		(Respondent)
P.A. No.ABIPN8309C		

Appellant by	Shri R.C. Jain (AR)
Revenue by	Shri M.C. Omi Niggshen (DR)
सुनवाई की तारीख/ Date of Hearing:	18/01/2017
आदेश की तारीख / Date of Order:	07/02/2017

आदेश / O R D E R

Per Ashwani Taneja, A.M:

This appeal has been filed by the Assessee against order of Ld. Commissioner of Income Tax (Appeals), Mumbai-34 (in short 'CIT(A)'), dated 01.08.2014 passed order against u/s 143(3) of the Act, Assessment order dated 28.03.2013 for Assessment Year 2010-11 on the following grounds:

"1. The learned Commissioner (Appeals) has erred in not adjudicating the ground raised by appellant that Assessment order and notice of demand was not served by learned assessing officer within the time limit prescribed by the law.

2. The authorities below have erred in law as well as on facts in making/ sustaining addition amounting to Rs 7,09,42,510 on account of "bogus purchases / low gross profit ratio"

3. The authorities below have erred in law in rejecting/ upholding rejection of the books of account u/s 145(3) of the Income Tax Act, 1961.

4. The authorities below have erred in law as well as on facts in rejecting the books of account u/s 145(3) of the Income Tax Act, 1961 without giving the assessee an opportunity of being heard.

5. The authorities below have erred in making/ sustaining addition amounting to Rs.13,10,855/- u/s 14A of the Act."

2. During the course of hearing, it was stated at the very outset by the Ld. Counsel of the assessee that though Ground no.1 was raised before the Ld. CIT(A), but it has not been adjudicated by him, therefore, this issue needs to be sent back to the file of the Ld. CIT(A) for adjudication of jurisdictional ground i.e. Ground No.1.

3. Per contra, Ld. DR fairly submitted that the aforesaid ground was raised by the assessee but it was not adjudicated by the Ld. CIT(A).

4. We have gone through the orders passed by the lower authorities. It is noted that Ld. CIT(A) has mentioned that Ground No.1 was general in nature, hence, it was not adjudicated. Ld. Counsel has submitted that this ground goes to the root of the matter therefore its proper adjudication is mandatory before any discussion could be held on merits. We agree with the submissions made by Ld. Counsel and therefore, this appeal is sent back to the file of Ld. CIT(A) who shall adjudicate all the grounds afresh including ground No.1 after giving adequate opportunity of hearing to the assessee. The assessee shall make requisite cooperation with the Ld.

CIT(A) by attending hearing and placing written submissions and evidences in his support and as may be directed as per law and facts.

4. In the result, the appeal filed by the assessee may be treated as allowed for statistical purposes.

Order was pronounced in the open court at the conclusion of hearing.

Sd/-
(Amit Shukla)

Sd/-
(Ashwani Taneja)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 07/02/2017

Patel, P.S./नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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