आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "एक-सदस्य मामला" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. **/ ITA No.842/PUN/2019**
निर्धारण वर्ष **/ Assessment Year : 2010-11**

Smt. Asmita Yogesh Mahadalkar,
At & Post Mandangad, Tal. Mandangad,
Dist. Ratnagiri-415203.

PAN : AGYPM9443P .... अपीलार्थी/Appellant

Vs.

ITO, Ward-4,
Ratnagiri. .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M. K. Kulkarni, AR
प्रत्यर्थी की ओर से / Respondent by : Shri Sanjeev Ghai, DR

सुनवाई की तारीख / **Date of Hearing : 26.09.2019**	घोषणा की तारीख / **Date of Pronouncement: 27.09.2019**

आदेश / **ORDER**

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-2, Kolhapur dated 15.04.2019 for the Assessment Year 2010-11.

2. The grounds raised by the assessee are as under :-

"1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) was not justified in dismissing the appeal of the assessee thereby confirming the addition made by the A. 0. on account of difference in state. Such ***addition is 'revenue neustral' of Rs. 3,18,103/-*** *be deleted.*
2. On the facts and in the circumstances of the case and in law the appellant-assessee had declared her net profit as per S. 44AF of the Act. Then A. O. either addition is sustainable. The addition be deleted.
3. On the facts and in the circumstances of the case and in law the declaration of additional income made in survey action u/s 133A was retracted by not declaring the same in the Return. Then it had no evidentiary value. The addition based on declaration be deleted.
4. On the facts and in the circumstances of the case and in law the appeal was decided on 22-02-2013 pertaining to A. Y. 2010-11. At the time of

deciding the appeal by Ld. CIT(A) the A. O. had lost his jurisdiction over the case in view of lapse of 6 years from the end of the assessment year as per S. 149(1)(b) of the Act. The order of the that of A. O. be set aside as time barred.
5. On the facts and circumstances of the case and in law the levy of interest u/s 234A, 234B and 234C is not justified.
6. The appellant craves to leave, add/amend or alter any of the above grounds of appeal."

3. Before me, at the outset, ld. Counsel for the assessee submitted that this is a case where some discrepancy found in the impounded Diary, inventoried during the survey action u/s 133A of the Act. It contains some discrepancy with regard to the unaccounted purchase of building material used in connection with the construction of a residential house by the assessee. Further, ld. Counsel submitted that the discrepancy is explained and therefore, no addition is called for. Mentioning that the details are furnished, ld. Counsel submitted that the said details were not appreciated by the authorities below. The ld. Counsel submitted that the CIT(A) adjudicated the issue in the absence of the assessee merely relying on the written submission. Therefore, ld. Counsel **pleaded for remanding** the issue to the file of the CIT(A) for fresh adjudication.

4. On the other hand, ld. DR for the Revenue submitted that this is a case of discovery of incriminating information qua the discovery of diary containing the incriminating information about the unaccounted purchase of the building material. The ld. DR further submitted that whatever details are furnished before the authorities below are merely self-serving documents and no third party or clinching evidences were available. The

ld. DR submitted that the request of the ld. Counsel for the assessee for remanding the issue to the file of the CIT(A) is not sustainable in view of the assessee's failure to discharge the onus about the unaccounted transactions recorded in the said diary seized during the survey action.

5. After hearing both the sides on this issue and perusing the *ex-parte* order of the CIT(A), I am of the opinion, the adjudication by the CIT(A) is not upto the mark in view of the non-appearance of the assessee or his authorized representative before the CIT(A). Generally, the quality of adjudication suffers when there is no personal appearance of the assessee or his Authorized Representative. Without going into the merits of the claim of the assessee as well as correctness of the decisions of the Assessing Officer and CIT(A), I am of the opinion, as proposed by the ld. AR for the assessee, the matter should be remanded back to the file of the CIT(A) for deciding the issue afresh after hearing the assessee or his authorized representative or both as per the set principles of natural justice. The adjudication of the appeal should be done after hearing the assessee and certainly not after considering the mere written submission of the assessee. The principles of *audi alteram partem* have to be strictly followed by the CIT(A). With these directions, the issues raised by the assessee are remanded to the file of the Assessing Officer for fresh adjudication. The assessee is directed to make appearance before the CIT(A) and the CIT(A) is directed to adjudicate the issue afresh after hearing

the assessee and shall pass a speaking order. Thus, the grounds raised by the assessee are allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 27th day of September, 2019.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 27th September, 2019.
Sujeet

<u>आदेश की प्रतिलिपि अग्रेषित/**Copy of the Order is forwarded to**</u> :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Kolhapur;
4. The Pr. CIT-2, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक–सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune