IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI RAJENDRA SINGH, ACCOUNTANT MEMBER AND
SANJAY GARG, JUDICIAL MEMBER

ITA No. 9228/Mum/2010
Assessment Year: 2007-08

ITO 24(1)(4) 5th Floor C-13 Bldg. R. No. 502 Pratyakshakar Bhavan Bandra-Kurla Complex Bandra (E) Mumbai 400 051	Vs.	Chaitanya Developers 604-605, C wing Hetal Arch Opp Natraj Market, Malad (W) Mumbai 64 PAN:AAFFC 0709 H
(Appellant)		(Respondent)

Respondent by : Shri R. A Pant
Respondent by : Dr.K. Shivaram & Rahul K. Hakani

Date of hearing : 29.07.2013
Date of Pronouncement : 29.07.2013

O R D E R

PER SANJAY GARG, JM:

The present appeal has been filed by the Revenue against the order of the Ld.CIT(A) -34, Mumbai dated 25.10.2010 for the Assessment Year 2007-08.

2. The brief facts of the case are that the AO during the assessment proceedings made disallowance Rs. 8,75,000/- shown by the assessee as advance received from the customers. The AO further made the disallowance of Rs. 85,00,000/- on account of unsecured loan and thus added back the said sum into the income of the assessee.

3. In appeal the Ld.CIT(A) deleted the said disallowances made by the AO, relying upon certain documents., which were admitted as additional evidence by him.

4. The grievance of the revenue is that the Ld.CIT(A) has wrongly and illegally admitted the additional evidence in gross violation of rules 46(A) of the Income Tax Rules. While admitting the said evidence, no opportunity was given to the AO to examine or rebutt the said documents, reference to which is found mention in para 3 & 3.1 of the impugned order under appeal.

5. The Ld. AR has been fair enough to admit that no opportunity was granted by the Ld.CIT(A) to AO to examine, verify or rebut the said additional evidences. In view of the above circumstances, the action of the Ld.CIT(A) in admitting the additional evidence without giving any notice or calling any remand from the AO cannot be said to be justified. At this stage the Ld. AR has submitted that instead of remanding back the case to the Ld.CIT(A), the case file be remanded back to the Ld. AO before whom the assessee will produce necessary evidences as no useful purpose will be served by remanding the back to the Ld.CIT(A), who in turn will have to send the case file back to the AO. In view of the submission made by the Ld. AR, we accordingly set aside order under appeal and remand the case to the file of the AO for a fresh assessment. Needless to say that the AO will afford proper opportunity to the assessee to present its case and the evidences, if any, thereafter to pass a speaking order in accordance with law.

6. In the result, the appeal filed by the Revenue is **allowed for statistical purpose**.

Order pronounced in the open court on this 29th day of July, 2013.

Sd/-	**Sd/-**
(RAJENDRA SINGH)	**(SANJAY GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 29.07.2013.
*Srivastava

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR "C" Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.