

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1686/Del/2014

Assessment Year: 2008-09

Income Tax Officer,
Ward-1(3), New Delhi

(APPELLANT)

vs. Sh. Rakesh Kumar Saini,
Prop. M/s RK Industries,
N-246,
South City-1, Gurgaon
(PAN:ALTPK0229P)

(RESPONDENT)

Department by : Sh. Shravan Gotru, Sr. DR

Assessee by : None

Date of Hearing : 07-04-2016

Date of Order : 06-05-2016

ORDER

PER H.S. SIDHU, J.M.

The Department has filed this Appeal which emanates from the Order dated 29.01.2014 of Ld. CIT(A)-2, Faridabad pertaining to assessment year 2008-09 on the following grounds:-

i. On the facts and the circumstances of the case, the Ld. CIT(A) has erred in facts and in law by admitting the additional evidences during the appellate proceedings under Rule 46A / despite the facts that none of the conditions laid down in Rule 46A are applicable to the case.

ii. The Ld. CIT(A) has erred in deleting addition of Rs.2,84,784/- out of addition of Rs,3,56,002/- made by the AO on account of non deduction of TDS on freight payments, ignoring the fact that the assessee could not produce all cash vouchers even during the course of appellate proceedings.

iii. The Ld. CIT(A) has erred in deleting the addition of Rs.1,02,080/- made by the AO on account of non deduction of TDS on rental payments, ignoring the facts that no rent agreement to justify that the rent of Rs.1,02,080/- out of total rent paid amounting to Rs.2,40,000/- was paid by him to other persons.

iv. The Ld, CIT(A) has erred in admitting the additional evidences w.r.t. addition of Rs.1,25,547/- made by the AO on account of non declaration of receipts in 1TR, when the same

were not produced before the AO during the assessment proceedings even after affording the ample opportunities and accordingly deleting the additions made by the AO.

v. The Ld. CIT(A) has erred in deleting the addition made by the AO on account of capital introduced of Rs.10,00,000/- on the basis of additional evidences produced during the appellant stage when the assessee failed to prove the creditworthiness and genuineness of the gift during the assessment proceedings.

vi. The Ld. CIT(A) has erred in deleting addition of Rs.6,65,890/- out of additions of Rs.11,06,367/- made by the AO on account of unexplained addition to Building Account, on the basis of additional evidences produced during the appellate stage.

vii. The Ld. CIT(A) has erred in deleting addition of Rs.16,26,647/- made by the AO on account of unexplained additions to Plant and Machinery on the basis of additional evidences produced during the appellate stage.

viii. That the appellant craves for the permission to add, delete or amend the grounds appeal before or at the time of hearing of appeal.

2. The brief facts of the case are that the Assessee filed return declaring income of Rs. 4,18,693/- on 30.9.2008. The case was processed u/s. 143(1) of the I.T. Act and subsequently the case was selected for scrutiny and accordingly, statutory Notices were issued and served upon the assessee. In response to the notices, Ld. AR of the Assessee attended the assessment proceedings and filed necessary details. After considering the documents, the AO determined the income of the assessee at Rs. 55,56,821/- by making various additions vide order dated 30.12.2010 passed u/s. 143(3) of the I.T. Act, 1961.

3. Aggrieved by the aforesaid order of the Assessing Officer dated 31.12.2010 passed u/s. 143(3), assessee filed an appeal before the Ld. First Appellate Authority, who vide impugned Order dated 29.01.2014 had decided the issues in dispute in favour of the assessee by partly allowing the appeal of the Assessee.

4. Aggrieved with the aforesaid finding of the Ld. CIT(A), Revenue is in appeal before the Tribunal.

5. At the time of hearing Ld. DR relied upon the order of the AO and reiterated the contentions raised by the Revenue in the grounds and requested that Appeal of the Revenue may be allowed.

6. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor his authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, we are deciding the present appeal *ex parte qua* assessee, after hearing the Ld. DR and perusing the records.

7. We have heard the Ld. DR and perused the records available with us, especially the impugned order.

8. Apropos issue related to admitting of additional evidences u/r 46A raised vide ground no. (i). We find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the same vide para no. 3.2 to 3.4 at pages 4 to 5 in his impugned order. The said relevant paras of the impugned order are reproduced as under:-

"3.2 I have considered the facts of the case together with the submissions of the appellant and the remand report of the AO on the issue admissibility of additional evidence. As per the report of the AO dated 30.3.2012, the appellant was provided adequate opportunity to submit the evidence, but he failed to do so. On this basis, the AO has stated the additional evidence may not be admitted at this stage. The appellant, on the other hand, stated that most of the documents were given to the AO on 25.11.2010, 13.12.2010 and 27.12.2010 respectively. These documents were given to him directly as a result of which the appellant could not get acknowledgement regarding the same. The appellant in his strong words stated that the file was misplaced by the AO for which blame was put on the assessee.

3.3. In order to resolve the issue of admissibility of additional evidence, I perused the assessment records. As per the order sheet entries forming a part of the assessment record, the first hearing was conducted on 01.12.2010 on which Shri Dinesh Kumar, the learned counsel of the appellant

appeared and was asked to file certain details. The case was adjourned to 06.12,2010, which was further adjourned to 09.12.2010 on which date the learned counsel of the appellant, Shri Dinesh Kumar appeared. A written reply was furnished on that date. The AO sought a number of details in addition to the books of account and the case was adjourned to 13.12.2010. There is no mention of the progress of assessment proceedings on 13,12.2010. There is only one order-sheet entry which appears on 28.12.2010 on which date, Shri Dinesh Kumar, the learned & counsel of the appellant was asked to submit 12 details, which included audit report of assessment years 2007-08 and 2008-09, purchase bill of vehicles, materials for building, plant and machinery, receipts in respect of payment of rent, confirmation regarding addition to capital, proof of deduction u/s 80L, housing loan certificate, secured loan proof, reasons for low GP, the non-deduction of tax, date-wise capital account and to give an explanation regarding non-declaration of receipts from Jindal Mectec and M/s Timplex Industries. For filing voluminous details, the appellant was given

only one day and the case was adjourned to 29.12.2010. There is no record as to what happened on that date, but the assessment order was passed on 30.12.2010.

3.4.Thus, from the details of the order-sheet entries, it is evident that the AO asked for a lot of details on 28.12.2010 and finally passed the Assessment order on 30.12.2010. The appellant was given only one day to provide voluminous details, which was almost impossible for him. In view of the inadequate time provided by the AO to the appellant for furnishing details during the course of assessment proceedings, as is evident from the assessment record, I hold that it would be in the interest of justice and fair play to admit the additional evidence filed during the course of appellate proceedings. Hence, the additional evidence given by the appellant during appellate proceedings is hereby admitted."

8.1 After going through the aforesaid finding of the Ld. CIT(A) on the issue in dispute, we are of the view that the Ld. First Appellate Authority has rightly admitted the additional evidences and thereafter passed a well reasoned order which

does not need any interfere on our part. Hence, we uphold the order of the Ld. CIT(A) on this issue and dismiss the ground no (i) raised in the Revenue's Appeal.

9. Apropos issue relating to deletion of addition of Rs. 2,84,784/- out of addition of Rs. 3,56,002/- made by the AO on account of non-deduction of TDS on freight payment raised vide ground no. (ii) is concerned, we find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the same vide para no. 6.3 to 6.4 at pages 6 to 7 in his impugned order. The said relevant paras of the impugned order are reproduced as under:-

"6.3 Para 3 is on account of addition of Rs.5,96,002/- on account of two factors. The first factor is non-deduction of TDS on freight of Rs.3,56,002/- and the second factor is on account of non-deduction of TDS on rental payment amounting, in all, Rs.2,40,000/-. The AO, in his report dated 30.03.2012 stated the following with regard to these additions:

"The contention of the assessee has been considered carefully. In this regard, it is submitted that the assessee has only

filed Rent Agreement with Sh. Om Prakash at the time of appellate proceedings. As regards, rent agreement with other parties vis-a-vis Sh. Pawan Kumar and Sh. Mahesh Kumar, has not been furnished by the assessee neither at the time of assessment proceedings nor at the time of appellate proceedings. As regards, freight the assessee has not filed any ledger account so as to support his claim that the freight was paid to individual tempo or three wheeler in cash and payment to a single party did not exceed Rs. 20,000/-. As the assessee has failed to produce documentary evidences in regard to his claim towards rent and freight paid, the AO has rightly made addition of Rs. 5,96,002/-."

6.4 The appellant in his rejoinder dated 05.08.2013 submitted that the freight did not entail TDS since it was paid to individual tempo on daily basis and that not a single party received more than Rs.20,000/- per annum so as to make it necessary

to deduct TDS on the said payments. On a perusal of cash vouchers, it is found that the appellant could not produce all cash vouchers as a result of which it is held that 20% of the total payment was in excess of Rs.20,000/- to a single party. Thus, 20% of the total freight payment amounting to Rs.71,218/- is disallowed as per provisions of Section 40(a)(ia) of the Income Tax Act."

9.1 After going through the aforesaid finding of the Ld. CIT(A) on the issue in dispute, we are of the view that the Ld. First Appellate Authority has passed a well reasoned order on this issue which does not need any interfere on our part. Hence, we uphold the order of the Ld. CIT(A) on this issue and dismiss the ground no (ii) raised in the Revenue's Appeal.

10. Apropos issue relating to deletion and deletion of addition of Rs. 1,02,080/- made by the AO on account of non-deduction of TDS on rental payment raised vide ground no. (iii) is concerned, we find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the same vide para no. 6.5 at page 7 in his impugned order. The said relevant paras of the impugned order are reproduced as under:-

"6.5. As regards, non-deduction of TDS on rent payments, the appellant gave rent agreement in respect of Shri Om Prakash and rent receipt in respect of Shri Pawan Kumar and Shri Mahesh Kumar. In case of Shri Om Prakash, the agreement signed in 2005 showed a rental payment of Rs.9500/- per month. It also provided for a 10% annual increase. If 10% annual increase is added to the rental payment of Rs.9,500/- per month, the total amount exceeds Rs.1,20,000/- p.a for the year under consideration. Hence the AO was right in invoking the provisions of Section 40(a)(ia) in respect of rental payment to Shri Om Prakash. As regards the other two rental payments, I agree with the appellant that the total payment was less than Rs.1,20,000/- p.a. and thus TDS provisions were not to be invoked. Hence the addition on account of non-deduction of TDS in respect of rental payment is restricted to the payments made to Shri Om Prakash. Hence, the addition made by the AO in Para 3 of the assessment order is partly allowed."

10.1 After going through the aforesaid finding of the Ld. CIT(A) on the issue in dispute, we are of the view that the Ld. First Appellate Authority has passed a well reasoned order on this issue which does not need any interfere on our part. Hence, we uphold the order of the Ld. CIT(A) on this issue and dismiss the ground no (iii) raised in the Revenue's Appeal.

11. Apropos issue relating to admission of additional evidences w.r.t. addition of Rs. 1,25,547/- made by AO on account of non-declaration of receipts in ITR raised vide ground (iv) is concerned, we find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the same vide para no. 6.7 to 6.8 at page 8 in his impugned order. The said relevant paras of the impugned order are reproduced as under:-

"6.7.The addition in Para 5 of the order is on account of non-declaration of receipts of Rs.16,759/- from M/s Timplex Industries and Rs.1,08,815/- from M/s Jindal Mectec. This was detected by the AO consequent upon the matching of receipts as per Form No. 26AS with the receipts shown by the appellant in his return of income.

6.8. During the course of appellate proceedings, the appellant gave a detailed paper book in which a copy of sales register for the period 01.04.2007 to 31.03.2008 was given. As per the sale register duly reconciled by the appellant, the gross sale for the period under consideration were Rs.1,67,79,883/-. Out of these receipts, the appellant had also included receipt of Rs.1,08,815/- from M/s Jindal Mectec and Rs.16,759/- received from M/s Timplex Industries. Hence, there is no force in the contention of the AO, that these two amounts were not shown by the appellant in his return of income. Thus the addition made in Para 5 of the assessment order is hereby deleted. The appellant gets relief accordingly."

11.1 After going through the aforesaid finding of the Ld. CIT(A) on the issue in dispute, we are of the view that the Ld. First Appellate Authority has passed a well reasoned order on this issue which does not need any interfere on our part. Hence, we uphold the order of the Ld. CIT(A) on this issue and dismiss the ground no (iv) raised in the Revenue's Appeal.

12. Apropos issue relating to deletion of addition made by the AO on account of capital introduced of Rs. 10,00,000/- on the basis of additional evidences produced during appellate proceedings raised vide ground no. (v) is concerned, we find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the same vide para no. 6.9 to 6.11 at pages 8 to 10 in his impugned order. The said relevant paras of the impugned order are reproduced as under:-

"6.9 The addition in Para 6 is in respect of Rs. 10 lacs received by the appellant from his father, Shri Ram Kishan Saini. This addition was made in view of the fact that the appellant failed to prove the genuineness of transaction and credit-worthiness of his father. During the course of appellate proceedings, the appellant gave additional evidence which was examined by the AO. The AO in his report dated 30.03.2012 submitted the following with regard to this addition:

"The contention of the assessee is not acceptable as the assessee has not filed any documentary evidence to certify that the amount was received as gift from his father.

Neither Sh. Ram Kishan Saini has complied with the summon u/s 131 dated 12.03.2012, to enable this office to examine creditworthiness and genuineness of the gift, nor any gift deed in this regard has been furnished. Therefore the addition of Rs. 10 Lacs has rightly been made by the AO."

6.10. The additional documents given by the appellant- were examined by the under-signed as well. The documents included an affidavit from the father of the appellant, namely, Shri Ram Kishan Saini as per which he gifted an amount of Rs. 10 lacs to his son-in-law and the appellant, Shri Rakesh Kumar Saini vide account payee cheque No. 00432 dated 23.03.2006 drawn on Indian Overseas Bank, Rewari. Shri Ram Kishan Saini, also stated in his affidavit that this amount was received by him on 24.09.2005, on account of sale proceeds of his parental property and land, in Rewari, outside municipal area. Shri Ram Kishan Saini further submitted in his affidavit that he had provided the bank statement, pass-book and copy of land records and also attended personally along with the

appellant and his learned counsel at the office of Shri G.L. Meena, ITO on 19.03.2012 at 11.00 A.M. However, the ITO did not accept the copies from him since he forgot to his Income Tax Return. Along with his affidavit, Shri Ram Kishan Saini gave a copy of his bank account as per which the amount of Rs. 10 lacs was debited to his account on 23.03.2006. This amount was received by the appellant in his bank account on 27.03.2006. As an evidence of the sale of land, the appellant gave a copy of the Sale Deed as per which the said land was sold on 14.11.2005.

6.11.1 have considered the facts of the case together with the remand report of the AO and the detailed submissions of the appellant together with the evidence filed by the learned counsel for the appellant. The appellant not only gave the affidavit of Shri Ram Kishan Saini, father of the appellant, but also, a copy of the relevant bank accounts from which the money had been withdrawn and deposited to the bank account of the appellant together with the evidence regarding the source from which the money was received by his father.

Considering all these evidences. I hold that the appellant has been able to prove the genuineness of transaction and the creditworthiness of the lender. Hence, the addition of Rs. 10 lacs made by the AO on account of capital introduced by the appellant is hereby deleted.”

12.1 After going through the aforesaid finding of the Ld. CIT(A) on the issue in dispute, we are of the view that the Ld. First Appellate Authority has passed a well reasoned order on this issue which does not need any interfere on our part. Hence, we uphold the order of the Ld. CIT(A) on this issue and dismiss the ground no (v) raised in the Revenue's Appeal.

13. Apropos issue relating to deletion of addition made by the AO of Rs. 6,65,890/- out of additions of Rs. 11,06,367/- on account of unexplained addition to building account, on the basis of additional evidences raised vide ground no. (vi) is concerned, we find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the same vide para no. 6.12 to 6.13 at page 10 in his impugned order. The said relevant paras of the impugned order are reproduced as under:-

"6.12 The AO made an addition of Rs.11,06,367/- in Para 7 of his order on account of addition made to buildings. During the course of appellate proceedings, the appellant gave details of the said additions along with relevant bills/vouchers. The AO on examination of the said details stated the following in his report dated 30.03.2012:

"The assessee has not filed any proof of sale of these assets neither at the time of assessment proceedings nor at the time of appellate proceedings. In absence of any such proof and explanation/ the AO has rightly made additions to the retuned income of the assessee on account of additions to Plant and Machinery and Building. Further, the assessee has neither produced the books of accounts during the assessment proceedings nor during the remand proceedings. It is thus not verifiable that the cash utilized for purchase of new assets was from the sale proceeds of old assets."

6.13.The relevant supports given by the appellant to substantiate additions to building during the year under consideration was also examined by the under-signed. On a perusal of relevant supports the same were found to be in order. However, there was one major discrepancy noted on a perusal of relevant bills/vouchers. The discrepancy was in respect of a bill of M/s Gaurav Steels, which was for an amount of Rs. 48,947/- instead of Rs. 4,89,424/-. When asked to give an explanation of the difference between the two, the appellant was not in a position to explain the difference. As a result, the difference between the two accounts, to the tune of Rs. 4,40,477/-, is regarded as unexplained investment and is thus added to the income of the appellant. Thus the addition with regard to Para 7 is limited to this amount. The appellant, accordingly, gets partial relief.”

13.1 After going through the aforesaid finding of the Ld. CIT(A) on the issue in dispute, we are of the view that the Ld. First Appellate Authority has passed a well reasoned order on this issue which does not need any interfere on our part. Hence, we uphold the order of the Ld. CIT(A) on this issue and dismiss the ground no (vi) raised in the Revenue's Appeal.

14. Apropos issue relating to deletion of addition of Rs. 16,26,647/- made by the AO on account of unexplained additions to Plant and Machinery on the basis of additional evidences raised vide ground no. (vii) is concerned, we find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the same vide para no. 6.14 at page 11 in his impugned order. The said relevant paras of the impugned order are reproduced as under:-

"6.14 The addition in Para 8 of the assessment order, to the tune of Rs.16,26,647/-, in on account of addition to plant and machinery. During the course of appellate proceedings, the appellant gave detailed break-up of the said addition along with relevant bills/vouchers, which were found to be in order. The AO'S comments with regard to addition in Para 8 of the order have already been incorporated in his report while discussing addition made in Para 7 of the order. Accordingly, the addition made by the AO in Para 8 of the order stands deleted. Ground No.4 of the appeal is thus partly allowed."

14.1 After going through the aforesaid finding of the Ld. CIT(A) on the issue in dispute, we are of the view that the Ld. First Appellate Authority has passed a well reasoned order on this issue which does not need any interfere on our part. Hence, we uphold the order of the Ld. CIT(A) on this issue and dismiss the ground no (vii) raised in the Revenue's Appeal.

15. In the result, the Revenue's Appeal stands dismissed.

Order pronounced in the Open Court on 06/05/2016.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(H.S.SIDHU)
JUDICIAL MEMBER**

Dated: 06/05/2016

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

ASSITANT REGISTRAR