

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F': NEW DELHI

BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 2114/Del/2011k
[Assessment Year: 2005-06]

The A.C.I.T
Circle - II
Faridabad

Vs.

P.D. Lakhani
1340, Sector - 14
Faridabad

PAN : AAGPL 7938 Q

[Appellant]

[Respondent]

Date of Hearing : 04.05.2016

Date of Pronouncement : 04.05.2016

Appellant by : Ms. Kesang Y. Sherpa, Sr. DR

Respondent by : Shri M.K. Madan, CA

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

The Revenue has filed this appeal against the order dated 25th March, 2014 passed by the ld. CIT(A), Faridabad for A.Y 2005-06.

2. In this appeal, the Revenue has raised the following grounds of appeal:

“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in facts and in law in deleting the addition of Rs.18,50,880/- [38.56% of Rs. 48,00,000/-] made by the Assessing Officer on account of deemed dividend u/s 2(22)(e) of the Income Tax Act. ”

“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in facts and in law in deleting the addition of 18,50,880/- 38.56% of Rs. 48,00,000/-] made by the AO in ignoring the facts that the most vice versa transaction entries made 30.04.2004 onwards upto 31.03.2005 were not trade advances.”

3. *“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in facts and in law in not appreciating the facts that the assessee has camouflaged the payments of Rs. 12 lacs on 08.10.2004 and Rs. 20 lacs on 11.10.2004 by routing these through the business transaction account when in fact there was no business transaction relatable to these.”*

4. *“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in facts and in law in appreciating the facts that the above advances made by M/s Lakhani Rubber Works to M/s Lakhani Rubber Udyog Pvt Ltd were repaid as such by Lakhani Rubber Udyog Pvt. Ltd. to M/s Lakhani Rubber Works within a span of 04 days and 06 days respectively and hence were not adjusted towards any trade liability.”*

3. In addition to the above, the Revenue has raised the following additional ground of appeal:

“Advances were made by M/s LRUPL to M/s Lakhani Rubber Works and M/s Lakhani Footcare Pvt. which were claimed as

Trading advances before A.O. The assessee before CIT (A) has changed his id and claimed that these were repayments/ and submitted evidence of vice versa transactions count of M/s LRUPL with these entities claiming them to be trading transactions. These claims and supporting accounts and bank statements were not confronted to the A.O. for his comments and no remand report was sought by the Ld. CIT (A) before adjudicating on the matter.”

4. In view of the well settled proposition laid down in the decision in the case of NTPC pertaining to Rule 46A of the Income Tax Rules, 1962 [for short ‘the Rules], additional ground is admitted.

5. We have heard the arguments of both the sides and carefully perused the relevant material placed on record before us. The ld. DR drew our attention towards page Nos, 7 to 9 of the ld. CIT(A) order and submitted that the assessment order was passed ex parte qua the assessee u/s 147/144 of the Income-tax Act, 1961 [‘the Act’ for short] and the assessee did not submit any document before the AO and the same were submitted before the first appellate authority who admitted and considered the same for granting relief to the assessee. Therefore, there was violation of Rule 46A of

the Rules. He, therefore, pleaded that the matter may be restored to the file of the ld. CIT(A) for fresh adjudication after calling for remand report from the AO. Alternatively, the ld. DR submitted that the case may be restored to the file of the AO for fresh adjudication.

6. On the other hand, the ld. AR vehemently supported the order of the ld. CIT(A) and submitted that the AO did not provide due opportunity of hearing to the assessee. Therefore, some documents placed at pages 17 to 27 could not be submitted before the AO and the same were submitted before the first appellate authority. The ld. AR further submitted that the assessee has no serious objection if the matter is restored to the file of the AO for fresh adjudication.

7. After considering the rival submissions, we find that no remand report has been called for by the ld. CIT(A) which is in contravention of the provisions of Rule 46A of the Rules. It is pertinent to mention that assessment order was passed *ex parte* qua the assessee u/s 147/144 of the Act and therefore, the assessee was prevented from filing relevant documents in his favour. Therefore, in the interest of justice,

we deem it fit to restore the grounds of appeal raised by the Revenue to the file of the AO for fresh adjudication. Needless to mention that the AO shall provide due and proper opportunity of being heard to the assessee without being prejudiced with the earlier impugned order. Grounds of appeal raised by the Revenue are allowed for statistical purposes.

8. In the result, the appeal of the Revenue is allowed for statistical purposes.

The order is pronounced in the open court on 04.05.2016.

Sd/-

**(S.V. MEHROTRA)
ACCOUNTANT MEMBER**

Sd/-

**(C.M. GARG)
JUDICIAL MEMBER**

Dated: 04th May, 2016

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi