

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "A" KOLKATA**

Before **Shri A.T.Varkey, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.2370/Kol/2013**  
Assessment Year :2007-08

ITO Ward-1(4), P-7, Chowringhee Square, Kolkata-69	<b>V/s.</b>	M/s Talent Vinimay Pvt. Ltd., P-41, Princep Street, 5 <sup>th</sup> Floor, Room No. 509, Kolkata-72 <b>[PAN No.AACCT 1833 H]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri R.S. Biswas, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	09-01-2017
घोषणा की तारीख/Date of Pronouncement	31-01-2017

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-I, Kolkata dated 13.06.2013. Assessment was framed by ITO Ward-1(4), Kolkata u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.12.2009 for assessment year 2007-08.

2. At the time of hearing none appeared on behalf of assessee though notice of hearing was sent through DR. However we decided to hear the present appeal as we find that the hearing is possible without the appearance of assessee or by Ld. AR for the assessee. Shri R.S. Biswas, Ld. Departmental Representative represented on behalf of Revenue.

3. First issue raised by Revenue is that Ld. CIT(A) erred in deciding the appeal of assessee on the basis of fresh evidence which was admitted in contravention of the provision of Rule 46A of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rule')

4. At the outset, Ld. DR before us submitted that the addition made by Assessing Officer was deleted by Ld. CIT(A) on the basis of fresh evidence which was admitted in contravention of the provision of Rule 46A of the Rules. Accordingly, Ld. DR prayed to restore the issue to the file of AO.

5. Heard Ld. DR and perused the materials available on record. On examination of records and orders of Authorities Below, we find that assessment was framed u/s. 144 of the Act vide order dated 31.12.2009. On perusal of assessment order, we find that several notices were issued upon the assessee on different dates but same were not served upon the assessee. In the absence of any compliance on the part of assessee, finally, the notice was served through affixture and ex-parte assessment was framed.

5.1 The AO treated the money deposited in the bank account of assessee as unexplained cash credit and accordingly assessment was framed at ₹7,36,55,170/-. However, the Ld. CIT(A) granted relief to assessee after observing that the assessee was engaged in providing accommodation entries. Before appellate stage, assessee submitted paper book along with affidavit, copy of bank statement, copy of bank account with ICIC Bank dated 18.03.2013 in support of his claim. However, on perusal of the order of Ld. CIT(A), we find that paper book and the affidavit dated 23.03.2013 were submitted first time and Ld. CIT(A) has not called for remand report from AO. In view of the above, we are of the view that the additional evidence were accepted by Ld. CIT(A) without having any remand report from the AO. Thus, in our considered view, Ld. CIT(A) has contravened the provision of Rule 46A of the Income Tax Rules. The provision of Rule 46A requires the Commissioner Appeals to take cognizance of fresh evidences only after giving a reasonable opportunity to Assessing Officer. But in the instant case, no such

reasonable opportunity was given by Ld. CIT(A) to AO. The relevant extract of the provisions of rule 46A of Income Tax Rules read as under :

***[Production of additional evidence before the [Deputy Commissioner (Appeals) [and Commissioner (Appeals)]]***

**46A.(1)** *The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely:-*

(a) ... ..

(b) ... ..

(c) ... ..

(d) ... ..

(2) ... ..

(3) *The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity-“*

In view of the provisions of law, we are inclined to restore this issue to the file of AO for fresh adjudication as per law. Hence, this ground of Revenue is allowed for statistical purposes.

6. Remaining grounds do not call for any adjudication at this stage because the matter has already been restored back to the file of AO for deciding the issue afresh after providing reasonable opportunity of being heard to assessee.

**7. In the result, Revenue's appeal stands allowed for statistical purpose.**

Order pronounced in the open court 31/01/2017

Sd/-

(न्यायिक सदस्य)

(A.T.Varkey)

(Judicial Member)

Kolkata,

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

(Accountant Member)

\*Dkp, Sr.P.S

दिनांक:- 31/01/2017

कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-ITO Ward-1(4), P-7, Chowringhee Square, Kolkata-69
2. प्रत्यर्थी/Respondent- M/sTalentVinimayPvt. Ltd., P-41, Princep St, 5<sup>th</sup> Fl, Rm.509,Kol-72
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
**कोलकाता** ।