

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-2', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

**ITA No. 2260/Del/2014  
Assessment Year: 2002-03**

Income Tax Officer,  
Ward-26(2),  
Room No. 1808,  
E-2 Block, Civic Centre,  
New Delhi  
(Appellant)

vs. M/s Kay Bee Electricals,  
20/127, Vikram Vihar,  
Lajpat Nagar  
New Delhi – 110 024  
**(PAN: AAAPFK2386H)**  
(Respondent)

Appellant by : Sh. P. Dam Kanunjna, Sr. DR  
Respondent by : None

Date of Hearing : 27-10-2015  
Date of Order : 27-10-2015

**ORDER**

This appeal by the Department is directed against the Order dated 17/1/2014 of Ld. CIT(A)-XVII, New Delhi relevant for the assessment year 2002-03.

2. The grounds raised in the appeal of the Department read as under:

*“1. Deleting the addition of Rs. 12,13,156/- made by AO on account of purchase which remained unexplained.*

*2. Not getting the facts confronted by the AO by proving opportunity to the AO under Rule 46A before admitting the submission/ documents of the assessee.*

*3. The appellant craves the right to add, alter or amend any ground of appeal.*

3. The facts narrated by the Revenue authorities are not disputed by the Ld. DR, hence, the same are not repeated here for the sake of convenience.

4. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor its 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, I am of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, I am deciding the present appeal *ex parte qua assessee*, after hearing the Ld. DR and perusing the records.

5. Ld. DR supported the orders of the AO.

6. I find that the Ld. CIT(A) vide his order dated 17.1.2014 has allowed the appeal of the Assessee by holding as under vide para no. 5 to 5.8 from page no. 5 to 7:-

*"5. Ground No. 1, 2, 3 & 4 are in respect of addition of Rs. 12,13,156/- on account of unverified purchases. The appellant has stated that all books of account, bills and purchases vouchers were given but still the AO gave a finding that purchases of Rs. 12,13,156/- were unverified.*

*5.1 The facts of the case are that the original assessment u/s. 143(3) was made on an income of Rs. 14,75,524/- subsequent to survey. The additions were on account of purchases amounting to 12,13,156/- to verify the genuineness of these purchases of Rs. 14,608/- and out of expenses of Rs. 1,75,000/-. The Id. CIT(A) deleted addition of Rs. 14,608/-. The Hon'ble ITAT deleted the addition of Rs. 1,75,000/-, but restored the matter of purchases of Rs. 12,13,156/- to the file of the AO for fresh examination.*

*5.2. The AO in the order stated that purchase register was produced and examined partly. The other books of account were not produced. The AO again added back the amount saying purchases remained unverified.*

5.3. *The directions of the Hon'ble ITA T were that the purchases shall be verified by him and then a correct conclusion be drawn as per law.*

5.4. *It was felt by me that the AO in the assessment order had not complied with the directions of the Hon'ble ITAT. The AO called for books of accounts vide order sheet entry dated 23.12.2009. The AO has stated that the appellant attended on 29.12.2009 on which date the purchase register was examined partly. The AO stated that no other documents were produced. There is no other hearing after this date. The AO has not made any attempt to make any other inquiry. No further opportunity was given to the appellant to produce the books of accounts and documents. No inquiry was conducted, from the parties, from whom purchases had been made.*

5.5. *I, therefore, gave another opportunity to the AO to make inquiries. A letter was written to the AO as under.-*

*"During the course of appellate proceedings the AR of the appellant has filed submission on 30.03.2013. In view of the above, you are hereby directed to verify the books of accounts and other details as directed by the ITA T and to specific conclusion whether purchases are genuine or not. Further, you may also call for all books of accounts and other documents and give your comments on the merits of the case."*

5.6. *The AO gave a report as under:-*

*"Kindly refer to the above.*

*As per your direction letter has been issued to assessee for furnishing complete details in respect of purchases amounting to Rs. 12,13,156/- to verify the genuineness of these purchases vide letter dated 1.8.2013. In response to this the*

*assessee firm had furnished the list of parties from whom the alleged purchases were made. Letter has also been issued to the parties to furnish the details as under:-*

- 1. Copy of ledger account of M/s Kaybee Electricals in the books of parties.*
- 2. Copies of Bills/ vouchers raised against purchases under consideration.*
- 3. Documentary evidence in respect of payments made by Mis. Kaybee Electricals against purchases.*
- 4. Copy of form C for the relevant period.*
- 5. Copies of delivery challan.*
- 6. Details in respect of Debit amount outstanding in their books of account against M/s. Kaybee Electricals.*

*The parties have not furnished the complete details. In view of the above the purchase amount of Rs. 12,13,156/- remained unverified.*

*As can be seen, again the AO has not made proper inquiries to verify the genuineness of the purchases.*

*5.7 Before me in appellate proceedings the appellant has put on record confirmation from the sellers, copies of bills, sales tax order form of the relevant A.Y. etc. The additional evidence is admitted under Rule 46A.*

*5.7. In my view the purchases are supported by evidence filed. The contentions of the appellant are accepted. The addition unverified purchases is deleted on account of Rs. 12,13,156/-. The grounds of appeal are ruled in favour of the appellant. “*

- 7. Keeping in view of the facts as well as the findings given by the Ld. CIT(A), I am of the considered view that Ld. CIT(A) has admitted the additional evidences filed by the assessee, without giving opportunity to the assessee for verification which is contrary to the*

judgment of the Hon'ble High Court of Delhi delivered in the case of CIT vs. Manish Buildwell 245 CTR 397 wherein it was mandated that CIT(A) required to afford two opportunities to the A.O. i.e. one at the time of acceptance of additional evidence by inviting his objections for accepting the additional evidence and the second, after CIT(A) admits the same for his comments on merits of such additional evidence. Therefore, in view of the Hon'ble Jurisdictional High Court decision, Ld. CIT(A) in the present case has admitted the additional evidences contrary to the provisions of Rule 46A. In the interest of justice, I am remitting back the issue in dispute to the file for the Ld. CIT(A) with the directions to allow the opportunity to the Assessing Officer to make an enquiry on the additional evidences filed by the assessee and decide the same after receiving the Report from the Assessing Officer. Needless to add that both the parties may be given full opportunity of being heard.

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

Order pronounced in the Open Court on 27/10/2015.

**SD/-**

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

Dated: 27/10/2015

\*SR BHATNAGAR\*

**Copy forwarded to: -**

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

TRUE COPY

By Order,

**ASSISTANT REGISTRAR**