

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-3', NEW DELHI**

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

**ITA No. 1659/Del/2015
AY: 2009-10**

Sh. Man Mohan Garg
11/411 B, Balar Kutir, Gali No.11
Lalita Park, Laxmi Nagar
New Delhi 92

vs. ITO, Ward 58(2)
New Delhi

PAN: AAQPG 0847 B

(Appellant)

(Respondent)

Appellant by : Sh. C.S.Anand, C.A.

Respondent by : Sh. Anil Sharma, Sr.D.R.

ORDER

This is an appeal filed by the assessee directed against the order of the Ld. Commissioner of Income Tax (Appeals)-19, New Delhi dt. 23.01.2015 pertaining to the assessment year (A.Y.) 2009-10.

2. Facts in brief:- The assessee is an LIC agent and filed his return of income on 26.3.2010 declaring total income of Rs.1,47,940/-. He earns a commission for mediating in sale of machinery. The Assessing Officer (A.O.) passed an order under section 143(3) on 29.12 2011 determining the income at Rs.23,89,940/-.

2.1. On appeal the First Appellate Authority granted part relief. Aggrieved the assessee is in appeal before me.

3. The assessee moved an application under rule 29 of ITAT Rules, 1963 seeking admission of additional evidence which are as follows.

- (i) computation of income along with relevant enclosures of Shri Ramesh Chand Gupta for the assessment year (A.Y.) 2009-10.
- (ii) The assessee submits that these documents prove that Sh. Ramesh Chander Gupta of M/s RS Electricals has sold machines for Rs.18 lakhs and declared short term capital gain of Rs.1,97,377/- (Rs.18,00,000 (-) Rs.16,05,623) and that he had also paid income tax on the same. He submits that this return of income and the intimation issued by the department u/s 143(1) of the Act shows that Shri Ramesh Chander Gupta is the sole Proprietor of M/s R.S. Electricals.

4. The Ld.Counsel for the assessee submitted that the A.O. had conducted enquiry behind the back of the assessee and came to a wrong conclusion that M/s R.S.Electricals has not filed its income tax returns. It was submitted that neither the A.O. nor the Ld.CIT(A) directed the assessee to file any of these documents and hence these could not be obtained from the third party and filed. He prayed that these additional evidences may be admitted.

5. The Ld.D.R. on the other hand relied on the order of lower authorities.

6. After hearing rival contentions I find that this is a fit case for admission of additional evidence, as the assessing officer has made enquiries behind the back of the assessee and has made addition without proper enquiries. Thus I admit the additional evidence. I set aside the issue to the file of the assessing officer for fresh adjudication in accordance with law.

7. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 05th January, 2017.

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 05th January, 2017.

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar