

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

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA Nos.4261/Del/2010 & 103/Del/2014
Assessment Years : 2006-07 & 2007-08

Shri Raj Thakur,
F-20, 1st Floor,
Lajpat Nagar,
New Delhi – 110 024.
PAN : AEAPT0676B.
(Appellant)

Vs. Income Tax Officer,
Ward-32(3),
New Delhi.

(Respondent)

ITA No.4292/Del/2010
Assessment Year : 2006-07

Income Tax Officer,
Ward-32(3),
New Delhi.

(Appellant)

Vs. Shri Raj Thakur,
F-20, 1st Floor,
Lajpat Nagar,
New Delhi – 110 024.
PAN : AEAPT0676B.

(Respondent)

Assessee by : Shri G.N. Gupta, ITP.
Revenue by : Shri Amrit Lal, Senior DR.

Date of hearing : 19.05.2016
Date of pronouncement : 27.06.2016

ORDER

PER G.D. AGRAWAL, VP :-

ITA No.4261/Del/2010 – Assessee's appeal for AY 2006-07 :-

This appeal by the assessee for the assessment year 2006-07 is directed against the order of learned CIT(A)-XXVI, New Delhi dated 30th June, 2010.

2. The assessee has raised the following grounds of appeal in this appeal :-

“1. That on facts and in circumstances of the case, the learned Commissioner of Income Tax (Appeal) XVII, New Delhi (hereinafter called the CIT(A) for short) erred in holding that the Assessing Officer was justified in framing the assessment order u/s 144 of the Income Tax Act, 1961 ignoring the plea of the appellant that barring a notice u/s 143(2) dated 20.07.2007 in respect of which an adjournment was duly sought for no subsequent notice was ever served on the appellant.

2. That on facts and in circumstances of the case, CIT(A) erred in holding that the evidence produced before him by the appellant was inadmissible under Rule 46A of the Income Tax Rules, 1962.

3. That on facts and in circumstances of the case, the learned CIT(A) erred in sustaining an addition of Rs.26.5 lacs under the provisions of Section 68 of the Income Tax Act, 1961.

4. That the appellant craves liberty to add, alter, vary or amend any ground of appeal.”

3. At the time of hearing before us, it is stated by the learned counsel that except the first notice which was issued u/s 143(2), no other notice was served upon the assessee. He stated that the appellant has changed the address and, therefore, the notices were not served upon him. He has filed a chronological table giving the date-wise details of the change of assessee's address and the dates on which the notices were issued. He, therefore, submitted that the orders of authorities below should be set aside and the matter should be restored to the file of the Assessing Officer. He also pointed out that the main addition in this appeal is with regard to addition for cash credit. Since the assessee did not get any opportunity before the Assessing Officer, he could not file any evidence in support of cash credit. However, all those evidences were filed before the learned CIT(A). Learned CIT(A) discussed those evidences, gave adverse remark and then in paragraph 7 of his order has mentioned that the additional evidences are not admissible under Rule 46A. He stated

that if the additional evidences are not admitted, then there is no question of making any comment on those evidences. He submitted that the order of learned CIT(A) is not justified. He, therefore, submitted that the orders of authorities below should be set aside and matter restored to the file of the Assessing Officer for readjudication for allowing opportunity of being heard to the assessee.

4. Learned DR, on the other hand, relied upon the order of the Assessing Officer. However, he stated that if the grounds raised in the assessee's appeal are set aside, then the grounds raised in the Revenue's appeal should also be set aside and let the entire matter may be examined by the Assessing Officer.

5. In the rejoinder, learned counsel for the assessee has no objection to this suggestion of the learned DR. Learned counsel also suggested that the issue raised in the appeal for assessment year 2007-08 should also be set aside because that year was reopened and addition was made in view of some adverse comments made by the CIT(A) while deciding the appeal for assessment year 2006-07. He pointed out that learned CIT(A) made some incorrect and uncalled for adverse comments while deciding the appeal for assessment year 2006-07 relating to assessment year 2007-08, that too, without allowing any opportunity of being heard to the assessee in this regard.

6. We have carefully considered the submissions of both the sides and have perused the material placed before us. From the chronological table, we find that the assessee was earlier residing at C-131, Lajpat Nagar-1, New Delhi but, later on, in August 2006, the assessee shifted to F-20, Lajpat Nagar-1, New Delhi. It seems that the notices were issued at the earlier address i.e., C-131, First Floor, Lajpat Nagar-1, New Delhi which led to non-service of notice upon the assessee. In view of these facts, in our opinion, it would meet the ends

of justice if the orders of authorities below are set aside and the matters are restored to the file of the Assessing Officer. We, therefore, set aside all the issues raised by the assessee as well as the Revenue in assessment year 2006-07 as well as 2007-08 and restore the same to the file of the Assessing Officer. We also observe that while making the reassessment, the Assessing Officer would readjudicate the issue after allowing adequate opportunity of being heard and would make the assessment afresh uninfluenced by any observation made by the learned CIT(A) in the impugned appellate orders.

7. In the result, the appeals of the assessee as well as the appeal of the Revenue are deemed to be allowed for statistical purposes.

Decision pronounced in the open Court on 27.06.2016.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Assessee : **Shri Raj Thakur,**
F-20, 1st Floor, Lajpat Nagar,
New Delhi – 110 024.
2. Revenue : **Income Tax Officer, Ward-32(3), New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar