

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.17 & 18/Kol/2015

(निर्धारणवर्ष / Assessment Year: 2004-05

I.T.O, Ward – 5(4), Kolkata	Vs.	M/s Vanguard Credit & Holdings Pvt. Ltd. 7C, K.S. Roy Road, Hastings Chamber, 1 st Floor, Kolkata – 1.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AABCV 7665 G		
(Revenue/Department)	..	(Assessee)

Assessee by :Shri Ravi Tulsiyan, FCA

Revenue/Department by :Shri KalyanNath, ACIT

सुनवाईकीतारीख/ **Date of Hearing** : **04/09/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **04/10/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

Captioned two appeals filed by the Revenue, pertaining to Assessment Year 2004-05 & 2005-06, are directed against the orders passed by the Commissioner of Income Tax (Appeals)-VI, Kolkata, which in turn arise out of assessment orders passed by the Assessing Officer u/s 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2.Since these two appeals relate to same assessee, different Assessment Years, identical issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience

and brevity. The Revenue's appeal in ITA No.17/Kol/2015, for Assessment Year 2004-05, is taken as the lead case.

3.The grounds of appeal raised by the Revenue in lead case, ITA No.17/Kol/2015, reads as under:

“(i)That on the facts and in circumstances of the case, the CIT(A) erred on facts as well as in law in holding that the addition of Rs.75,36,730/- was not warranted by accepting additional evidences which is not in accordance with Rule 46A as it was not furnished before the Assessing Officer for examination.

4.At the outset, the Id. DR for the Revenue has submitted, before us that there is violation of Rule 46A of the Income Tax Rules, which was done by the Id. CIT(A) while adjudicating these two appeals.That is, during the appellate proceedings, the Id. CIT(A) had accepted additional evidence in violation of Rule 46A of the Income Tax Rules. The IdCIT(A) did not give adequate opportunity to the AO to examine the additional evidence therefore, Id DR requested the Bench to remand the matter back to the file of the Assessing Officer to adjudicate the issue afresh.

5. The Id. Counsel for the assessee has submitted, before us, that there is no any violation of Rule 46A of the I.T. Rules.Whatever the additional evidences the assessee submitted before the Id. CIT(A), during the appellate proceedings, had been sent by him to the Assessing Officer to examine them and prepare a remand report on them. At this juncture, the Id. Counsel for the assessee, drew our attention towards the remand report submitted by the Assessing Officer to the CIT(A)- VI, the relevant para of the remand report is reproduced below:

“Now, on the basis of the additional documents furnished by the assessee during the appellate stage,it appears that MohanlallNathany was the

proprietor of M/s. JuggonPursadBaijnath, the address of which is shown as 59, MuktaramBabu Street, Kolkata-700 007, which also happens to be the address of Mr. MohanlallNathany. This new fact has emerged during the course of appellate proceedings regarding the name of the proprietor of M/s. JuggonPursadBaijnath.

In view of the above, since it appears to be a fact related to the case, the undersigned has no objection for admitting the said documents submitted before your kindness as additional evidence.”

Based on the relevant para, of the remand report,cited above, the Id. Counsel submitted that during the appellate proceedings, the Assessing Officer had examined the additional evidence furnished by the assessee and, that is why, the Assessing Officer had clearly stated in his remand report that he had no objection for admitting the said documents submitted before the CIT(A), as an additional evidence. Therefore, whatever, the documents submitted by the assessee during the appellate proceedings, the same had been examined by the Assessing Officer and a proper remand report was sent by the Assessing Officer to the Id. CIT(A).

6. Without prejudice to the above submissions, the Id Counsel for the assessee took an alternative plea, stating that during the appellate proceedings, while adjudicating the quantum of the said appeal, the CIT(A) did not use these additional evidences at all. The Id CIT(A) did not feel any necessity to use these additional evidences, that is, these additional evidences, did not have any impact on the decision (*ratio decendi*) of the CIT(A), if these additional evidences were used or not. Therefore, considering the factual position, there is no violation of Rule 46A of the I.T Rules. At this juncture, the Id Counsel drew our attention towards Rule 46A of the I. T Rules 1962, which reads as under:

“Rule 46A:Production of additional evidence before the Commissioner (Appeals)].

“(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) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer]; or

(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal; or

(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(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—

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant; or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.”

The Id Counsel submitted that it is abundantly clear from Rule 46A, mentioned above, that although the assessee is not entitled to produce additional evidences before the Id. CIT(A), however, there are circumstances where the additional evidence can be produced, these circumstances include: 1) where the Assessing Officer has refused to admit evidence, 2) where the appellant was prevented by sufficient cause from producing the evidence. 3) where the Assessing Officer has made the order appealed against without giving sufficient opportunity. Rule 46A(2) clearly says that 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 to examine this evidence. In the assessee's case under consideration, all the above cited conditions are being satisfied and hence there is no violation of Rule 46A of the I.T. Rules.

7. On the other hand, Id DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

8. Having heard the rival submissions, perused the material available on record, we are of the view that in the given case, the Id. CIT(A) admitted the additional evidence in writing which was not produced before the Assessing Officer and he sent these additional evidences to the Assessing Officer for his examination. The Assessing Officer had examined the additional evidences and he reported to the Id. CIT(A) by way of a remand report stating that he did not have objection for admitting said documents. Therefore, there is proper compliance of Rule 46A on the part of CIT(A). At this juncture, we also examine the ruling of Hon`ble High

Court of Delhi in the case of **COMMISSIONER OF INCOME TAX vs. MANISH BUILD WELL (P) LTD.204 Taxman106**(Del. H.C),(which is in favour of Revenue), wherein it was held that:

"The CIT(A) having admitted the additional evidence by way of confirmations of advances received by the assessee from customers for the first time in appeal without confronting the AO with the same and allowing him any opportunity to furnish his comments and without verification, sub-r. (3) of r. 46A has not been complied with and, therefore, the issue is restored to the CIT(A) to comply with the requirements of r. 46A and take a fresh decision on merits in accordance with law."

In the assessee`s case under consideration, the Id CIT(A) admitted additional evidences as per the procedure laid down in Rule 46A and then sent these additional evidences to the AO for his examination. After verification of these additional evidences the AO sent a remand report to the LdCIT(A). The IdCIT(A) after taking into account the remand report, and assessee`s submissions, had adjudged the assessee`s case, therefore, there is proper compliance of Rule 46A. The case law which is in favour of Revenue, in **MANISH BUILD WELL (P) LTD.204 Taxman106**(Del. H.C) (supra), does not apply to the assessee under consideration because in the assessee`s case the CIT(A) after getting the additional evidence, sent to AO for his verification and got a remand report thereon, whereas in case of **MANISH BUILD WELL (P) LTD.204 Taxman106**, the CIT(A) did not send the additional evidence toAO for his examination.

Therefore, considering the factual position and provisions of Rule 46A as explained above, we are of the view that there is no any infirmity in admitting the additional evidence by the Id. CIT(A). Moreover, we also note that the Id. CIT(A) did not use these additional evidences while adjudicating the appeal of the

assessee. Therefore, we are of the view that there is a proper compliance of Rule 46A. Therefore, we confirm the order passed by the Id. CIT(A).

9. In the result, the appeals by the Revenue (in ITA No.17 & 18/Kol/2015), are dismissed.

Order pronounced in the open court on this **04/10/2017**.

Sd/- (A. T. VARKEY) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (DR. A.L.SAINI) लेखा सदस्य / ACCOUNTANT MEMBER
---	---

कोलकाता /Kolkata; दिनांक Dated 04/10/2017
[RS SPS]

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee-M/s Vanguard Credit & Holdings Pvt. Ltd.
2. प्रत्यर्थी/ The Revenue-I.T.O, Ward – 5(4), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता/** DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.