

आय अधकरण, "डी" ढयायपीठ, चेन्नई  
PELLATE TRIBUNAL 'D' BENCH, CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं श्री धुवु आर.एल रेडी, ढयायक सदस्य के समु  
Before Shri Sanjay Arora, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.494/Mds/2017

ढनधाकरण वष/Assessment Year:2012-13

The Assistant Commissioner of  
Income Tax,  
Non Corporate Circle 16,  
Chennai 600 034.

Shri Koo Bonjik,  
Vs. C/o M/s. K & K Contech Pvt. Ltd.,  
3203, 1<sup>st</sup> Floor, UK Towers, Mount  
Poonamallee, Kattupakkam,  
Chennai 600 056.  
[PAN:AWTPK8247Q]

(अपीलाथ /Appellant)

(ढूयथ/Respondent)

अपीलाथ क ओर से / Appellant by : Shri P. Nagendra Kumar, JCIT

ढूयथ क ओर से/Respondent by : Shri Anandd Babunath, C.A.

सुनवाई क ताराख/ Date of hearing : 22.06.2017

घोषणा क ताराख /Date of Pronouncement : 03.07.2017

### आदेश /O R D E R

#### PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 4, Chennai dated 21.12.2016 relevant to the assessment year 2012-13, wherein the Revenue has raised the ground that the Id. CIT(A) has erred in directing the Assessing officer to delete the addition of .1,14,00,000/- made under section 69 of the Income Tax Act, 1961 [Act+ in short] towards unexplained investments

0/- upheld by the Id. CIT(A)] by considering fresh evidence in violation of the provisions of Rule 46A of the Income Tax Rules.

2. At the very outset, while referring to ground No.2.2 & 2.3 of the grounds of appeal, the Id. DR has pleaded that provisions of Rule 46A have been violated before accepting fresh evidence filed by the assessee for the first time in appeal proceeding and the Id. CIT(A) has considered the same to delete the major portions addition. Therefore, it was prayed for setting aside the order of the Id. CIT(A) and the matter shall be remitted back to the file of the Assessing Officer for verification of evidences filed before the Id. CIT(A) and decide the appeal afresh in accordance with law.

3. On the other hand, the Id. Counsel for the assessee strongly supported the order passed by the Id. CIT(A).

5. We have heard both the sides, perused the materials available on record and gone through the findings of the authorities below. The assessee was employed as Director in M/s. K.K. Contech Pvt. Ltd. and was drawing salary from the company. As per ITS information, the Assessing Officer has observed that the assessee has invested .3,13,00,000/- in the fixed deposits with HDFC Bank. The case of the assessee was selected for scrutiny to verify the source for the investments in the fixed deposits. During

proceedings, the assessee has not furnished any documentary evidences to substantiate the sources of investment in the fixed deposit. Therefore, the Assessing Officer added back the same to the total income of the assessee and brought to tax. During the course of appellate proceedings, the AR of the assessee has filed a written submission along with a chart showing the source of investment and reinvestments in the fixed deposits. By filing copy of the bank account statement of the assessee in respect of account No. 075001600001025 with HDFC Bank from 25.01.2009 to 01.04.2013, the AR of the assessee has submitted before the Id. CIT(A) that the sources of these deposits were from the investments made by the assessee in the past years which were reflected in assessee's HDFC account. By considering the above submissions, the Id. CIT(A) has observed that the assessee has invested .1,37,00,000/- only in the FDRs and not the amount of .3,13,00,000/- as held by the Assessing Officer. Further, on verification of the bank statement of HDFC, the Id. CIT(A) has observed that the sources of the same has been originated from the maturity amount of old FDRs, the interest earned on the FDRs and the cash credits. Moreover, the Id. CIT(A) has noticed that against the total income in the current year of .1,37,00,000/-, the assessee has deposited .23,00,000/- in cash in his above said bank account. When the assessee was asked to explain the above cash deposit, it was submitted by the Id. CIT(A) that the assessee has taken some temporary advances from

the same are deposited with the bank at the time of consolidating the fixed deposits with the Bank, but not paid any interest on these temporary advances received, which used to be repaid as and when the funds were available out of the earnings. After considering the submissions of the assessee, the Id. CIT(A) has held that the assessee has not furnished any corroborative evidences to substantiate the genuineness of cash credits as claimed by the assessee and accordingly, the Id. CIT(A) has held that the said deposit of .23,00,000/- is an undisclosed income of the assessee for the relevant assessment year under consideration and confirmed to that extent and deleted the balance of .1,14,00,000/- [ .1,37,00,000 . .23,00,000/-] after verifying the bank statement, etc. However, the Id. DR has submitted that the Id. CIT(A) has not obtained any report on the bank statements and the Assessing Officer has no occasion to verify the bank statement, etc. and he contended that it is in violation of provisions of Rule 46A. In view of the above, we remit the matter back to the file of the Assessing Officer to verify and decide the issue afresh in accordance with law after allowing an opportunity of being heard to the assessee.

6. The sincere efforts made by the Id. CIT(A) for enhancing the assessment by detecting various additions emanating from various discrepancies during the course of appellate proceedings, deserves our

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the details towards the deletion of addition of  
.1,14,00,000/- and passing fresh order in accordance with law after  
allowing an opportunity of being heard to the assessee, the Assessing  
Officer is also directed to consolidate other additions made by the Id. CIT(A)  
and pass suitable assessment order/raise the demand of tax after giving  
effect to the appellate order.

7. In the result, the appeal filed by the Revenue is allowed for statistical  
purposes.

Order pronounced on the 03<sup>rd</sup> July, 2017 at Chennai.

Sd/-  
(SANJAY ARORA)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 03.07.2017

Vm/-

आदेश क॑ ँतलललल अ॑षत/Copy to: 1. अ॑ललथ/ Appellant, 2. ँथथ/  
Respondent, 3. आयकर आयु॑त (अ॑ल)/CIT(A), 4. आयकर आयु॑त/CIT, 5.  
ल॑लगीय ँतललध/DR & 6. गलडलईल/GF.