

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'G' : NEW DELHI)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 1176/Del/2017  
Assessment Year: 2007-08

M/ SHREE SHREE RADHASWAMY VS. ITO, WARD 23(3),  
PLASTICS LTD., NEW DELHI  
KU-160, PITAM PRUA, C.R. BUILDING,  
DELHI - 110 034 NEW DELHI  
(PAN:- AABCS8540F)

**(APPELLANT)**

**(RESPONDENT)**

Assessee by : Sh. K.L. Aneja, Adv.  
Revenue by : Sh. Kaushlendra Tiwari, Sr. DR

**ORDER**

**PER H.S. SIDHU, JM**

This appeal has been filed by the Assessee against the Order dated 16.5.2016 of the Ld. Commissioner of Income Tax (Appeals)-17, New Delhi relevant to assessment year 2008-09.

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

- 1) Under the facts and circumstances of the case, the proceedings U/s. 148 against the assessee are without jurisdiction, void -ab -initio and as such the assessment is liable to be quashed.

The formation of belief about escapement of Income tax was without any subjective material. The assessing officer failed to examine the income tax return, while forming belief.

The worthy 1st appellate authority was in error by not appreciating the legal position going to the root, initiation of process U/s. 148.

2) The assumption of jurisdiction U/s. 148 against the assessee and the further proceedings without first disposing of the objection as filed by the assessee, made the assessment proceedings get vitiated and hence the assessment as made was null and void, not liable to be sustained. It may be annulled and set aside.

3) Without prejudice to the Ground No.1 and 2 above, the assessing officer and then the worthy 1st appellate authority failed to appreciate the evidence produced before the A.O. and then before the worthy Comm. (Appeal) under Rule 46A regarding the availability of cash on the said date of deposit causing such addition.

The worthy 1st appellate authority observation i.e. III find that the appellant company appears to be paper company" while the company on record has a turnover to the tune- of Crores on account of sale of its manufactured goods and on account of consignment sale of M/s. Haldia Petrochemical Ltd. (Bihar) and also having huge machinery duly reflected in final accounts such an observations are appears to be due to its pre-determined and biased opinion without examining the facts and documents on record.

4) Under facts and circumstances of the case the action of A.C. in invoking the provisions of 145(3) of the Income Tax Act is wrong and further making the addition of Rs. 9,87,828/- by enhancing the

alleged G.P. rate by 1%, it is without any basis, arbitrary, capricious and unjustified.

The action of the worthy CIT(Appeal) confirming the addition and rejecting the ground without analyzing the legal position, it is based on its wrong observations, and without any subjective material on record. Hence the addition is liable to be not sustained.

- 5) Without prejudice to Ground No.(5), the addition as made is highly excessive.
- 6) Assessee craves the privilege to raise any other legal grounds in due course of hearing

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

4. During the hearing, Ld. A.R. of the assessee, has filed a Paper Book containing pages 1 to 51 having the copy of Synopsis of the issues, copy of compation of income and accounts for the year ended 31.3.2007 together with audit reports, copy of proposal forwarded by AO to higher authorities seeking permission for issue of notice u/s. 148, integrating reasons recorded therein, copy of notice u/s. 148 dated 27.3.2014; appellants letters before the AO; appellants letter dated 26.3.2015 before the AO; copy of written submissions before CIT(A) in appeal; copy of application under Rule 46 before the CIT(A); copy of case laws referred to in written submission ebfore CIT(A) and copy of Tribunal order dated 1.2.2017 in the case of Sh. Harmeet Singh referred to in Synopsis. He stated that assessee has

filed all the necessary documentary evidences before the AO as well as before the Ld. CIT(A) which have not been considered by both the authorities. He further stated that the authorities below failed to appreciate the evidence produced before them under Rule 46A regarding the availability of cash on the said date of deposit causing such addition. It was further stated that Ld. CIT(A) observed that the assessee company appears to be paper company, while the company on record has a turnover to the tune of Crores on account of sale of its manufactured goods and on account of consignment sale of M/s Haldia Petrochemical Ld. (Bihar) and also having huge machinery duly reflected in final accounts such an observations are appears to be due to its per-determined and biased opinion without examining the facts and documents on record. In view of above, Ld. Counsel of the Assessee has requested that that the issued in dispute may be set aside to the file of the AO with the directions to decide the same afresh, as per law, after giving adequate opportunity of being heard to the assessee. He also undertakes that assessee will appear before the AO and fully cooperate with him and will not take any unnecessary adjournment and file all the necessary documents.

5. On the contrary, Ld. DR opposed the request of the Ld. Counsel of the assessee and relied upon the orders of the authorities below.

6. We have heard both the parties and perused the records, especially the orders of the authorities below. We find that Ld.

Counsel of the assessee has filed a Paper Book containing pages no. 1 to 51 having the copy of Synopsis of the issues, copy of computation of income and accounts for the year ended 31.3.2007 together with audit reports, copy of proposal forwarded by AO to higher authorities seeking permission for issue of notice u/s. 148, integrating reasons recorded therein, copy of notice u/s. 148 dated 27.3.2014; appellants letters before the AO; appellants letter dated 26.3.2015 before the AO; copy of written submissions before CIT(A) in appeal; copy of application under Rule 46 before the CIT(A); copy of case laws referred to in written submission before CIT(A) and copy of Tribunal order dated 1.2.2017 in the case of Sh. Harmeet Singh referred to in Synopsis. We further find that assessee has filed all the necessary documentary evidences before the AO as well as before the Ld. CIT(A) which have not been properly considered by both the authorities. We also note that both the authorities below did not appreciate the evidences produced before them under Rule 46A regarding the availability of cash on the said date of deposit causing such addition. In view of the above, in our considered opinion and In the interest of justice, the issues in dispute deserve to be set aside to the file of the AO with the directions to decide the same afresh, as per law, after giving adequate opportunity of being heard to the assessee, after appreciating the documentary evidence filed in the shape of paper book, as mentioned above. The Assessee is also directed to fully cooperate with the AO and did not seek any

unnecessary adjournment and produce all the documentary evidences before him. We hold and direct accordingly.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced in Open Court on this 29-11-2017.

**Sd/-**

**Sd/-**

**(L.P. SAHU)  
ACCOUNTANT MEMBER**

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

**Dated : 29-11-2017**

SR BHATANGAR

**Copy forwarded to:**

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.