

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA Nos. 5533 to 5539/Del/2014
Assessment Years: 2005-06 to 2011-12

SMT. SUDHA NAGAR,
D-3/10, PASCHIMI MARG,
VASANT VIHAR,
NEW DELHI - 110 057
(PAN: AABPN9048C)
(APPELLANT)

VS. DEPUTY COMMISSIONER
OF INCOME TAX,
CENTRAL CIRCLE-21,
NEW DELHI
(RESPONDENT)

AND

ITA NOS. 5840, 5841 & 5843/DEL/2014
ASSESSMENT YEARS : 2008-09, 2009-10 & 2011-12

ACIT, CENTRAL CIRCLE-21,
ROOM NO. 344, E-2, ARA
CENTRE, JHANDEWALAN
EXTENSION, NEW DELHI -55

VS. SMT. SUDHA NAGAR,
D-3/10, VASANT VIHAR,
NEW DELHI

Assessee by : Sh. Mukesh Kumar Srivastava, Accountant
Revenue by : Ms. Aparna Karan, CIT(DR)

ORDER

PER H.S. SIDHU, JM

These are the Appeals filed by the Assessee and Cross Appeals by the Revenue against the respective Orders of the Ld. CIT(A)-XXV, New Delhi relating to assessment years 2005-06 to 2011-12. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by

this common order for the sake of convenience, by dealing with Assessee's ITA No. 5533/Del/2014 (AY 2005-06).

2. The following grounds raised in Assessee's ITA No. 5533/Del/2014 AY 2005-06. However, the grounds raised in other 06 appeals are not reproduced here for the sake of brevity, being common in nature, except the difference in the figures.

"1. That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in fact and in law in confirming the addition of Rs 2,95,000/- made by AO by treating the agricultural income earned by the appellant as unexplained income only on the basis that no proof of having agricultural income was in possession of the appellant without appreciating the fact that the appellant has already considered the said agricultural income in the return of income.

2. That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in fact and in law in confirming the addition of Rs

2,95,000/- made by AO by treating the agricultural income earned by the appellant as unexplained income though the learned Commissioner of Income tax (Appeals) himself acknowledged the fact in the impugned order that the appellant has sales receipts of agricultural goods sold, proof of ownership of agricultural land and expense incurred in support of agricultural income declared in the return of income.

3. That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in fact and in law in confirming the addition of Rs 2,95,000/- made by AO by treating the agricultural income earned by the appellant as unexplained income only on the basis of suspicion, surmises and conjectures that agricultural income shown in the return of income is a contrivance devised by the appellant to plough back unaccounted income into business without bringing in any material on record found during the course of search and seizure operation in support of his allegation.

4. *That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in fact and in law in upholding the validity of assumption of jurisdiction by the AO to assess the case of the appellant under section 144 of the Income tax Act, 1961 without issuing statutory notice under section 144 of the Income tax Act, 1961.*

5. *That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in fact and in law in upholding the validity of assumption of jurisdiction by the AO to assess the case of the appellant under section 144 of the Income tax Act, 1961 even though the AO has not mentioned the relevant note which informs an assessee that failure on the part an assessee to comply with the terms of notice 142(1) will entail ex-parte assessment in the notice under section 142(1) of the Income tax Act, 1961 issued by the AO.*

6. *That the appellant craves leave to add, amend or alter any of the grounds of appeal."*

3. The following grounds raised in Revenue's ITA No. 5840/Del/2014 AY 2008-09. However, the grounds raised in other two appeals are not reproduced here for the sake of brevity, being common in nature, except the difference in the figures.

- "1. The Ld. CIT(A) has erred in law and on facts of the case in deleting the addition of Rs. 70,17,500/- out of addition of Rs. 75,92,500/- made on account of unexplained entries appearing in bank account.*
- 2. The Ld. CIT(A) has also erred in law and on facts of the case in admitting the additional / fresh evidences under Rule 46A in respect of addition of Rs. 75,92,500/-.*
- 3(a) The order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*
- (b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal."*

4. 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.

5. We have heard both the parties and perused the relevant records. We find that Assessee is an individual and filed her return of income under section 139 of the I.T. Act, 1961 declaring income of Rs. 2,61,690/-. A search and seizure operation under section 132 of the I.T. Act, 1961 was conducted at the residential premises of the assessee on 17.9.2010. Consequent upon, notice under section 153A of the I.T. Act, 1961 was issued on 08.2.2012 requiring the assessee to file her return of income. In response to notice under section 153A of the Act, the assessee filed return under section 153A of Rs.2,61,690/- on 29.2.2012. The assessee has also shown agricultural income of Rs. 2,95,000/- in her return of income. From the records, it reveals that the assessee has submitted details / documents / explanation as required by the AO for the purpose of assessment of the case of assessee under section 153A/143(3) of the Act during the course of assessment proceedings. However, the assessment was completed vide an ex-parte order dated 26.3.2013 passed u/s. 153A/144 of the I.T. Act, 1961, assessing the total income at Rs. 20,89,990/- as against the returned income of Rs. 2,61,690/-, without providing sufficient opportunity to the assessee. Against the assessment order, the assessee appealed before the Ld. CIT(A) who during the appellate proceedings has considered the paper book alongwith the submissions, documents / evidencse etc. filed in accordance with section 250(4) of the Act by the aassessee was remanded to the AO for his comments and examination of the

same or to produce any evidence or document in rebuttal of the additional evidence, if any produced by the assessee by way of paper book etc. The AO furnished his remand report dated 23.6.2014 offering his comments on the various evidence, documents submissions etc. filed by the assessee. Having examined the records he expressed his reservations also on the admitting of the additional evidence produced before the Ld. CIT(A), because the conditions of Rule 46A has not been fulfilled in the case of the assessee. AO further contended that if at all the additional evidence were to be admitted they could not be done without depth enquiry/ investigation which might take a lot of time. However, he did not point out as to which of the evidence paper etc. were in the nature of additional evidence. After considering the Remand Report, the Ld. CIT(A) has rejected the aforesaid objection of the Assessee. However, in our considered opinion, the objection on the admission of additional evidence of the AO was valid one and needs to be enquired/investigated/verification in depth which was not done by him.

5.1 Keeping in view of the facts and circumstances of the case as explained above, we are of the considered opinion that the orders passed by the Revenue Authorities are against the principle of natural justice and, therefore, the issues involved in the Appeals filed by the Assessee deserve to be set aside to the file of the AO to decide the same afresh, under the law, after detailed enquiry / investigation/verification of the each and every evidence including the additional evidence filed u/R 46A before the Ld. CIT(A) and

provide adequate opportunity of being heard to the assessee. We hold and direct accordingly. The assessee is also directed to fully cooperate with the AO in the proceedings and did not take any unnecessary adjournment and also produce all the documentary evidences before him to substantiate its case. As a result, all the 07 appeals filed by the Assessee stand allowed for statistical purposes.

6. As regards 03 Revenue Cross Appeals are concerned, since we have already set aside the issues raised in all the 07 Appeals of the Assessee to the file of the AO for fresh adjudication in the aforesaid manner, hence, the 03 Cross Appeals filed by the Revenue have become infructuous and the same are dismissed, as such.

7. In the result, all the 07 Assessee's appeals are allowed for statistical purposes and 03 Appeals of the Revenue stand dismissed in the aforesaid manner.

Order pronounced on 01-12-2017.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 01-12-2017

SR BHATANGAR

Copy forwarded to:

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

Sd/-

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

AR, ITAT
NEW DELHI.