

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

ITA No. 1796/Bang/2016
Assessment year : 2012-13

Income Tax Officer, Ward-5(3)(5), Bangalore.	Vs.	Smt. Bhavya, No.64, 7 th Cross, 1 st Main, J. C. Nagar, Mahalakshmpuram, Bangalore - 560086. PAN : AQZPB4609H
APPELLANT		RESPONDENT

Revenue by	:	Dr. P. V. Pradeep Kumar, ACIT
Assessee by	:	Ms. R. Anitha, CA

Date of hearing	:	20.02.2018
Date of Pronouncement	:	28.02.2018

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of the CIT(A), *inter alia*, on various grounds which are as under:

1. *The order of the Commissioner of Income Tax(Appeals) - 5, Bangalore, is opposed to the law and not on the facts and circumstances of the case.*
2. *The Ld. CIT(A) has erred in allowing the appeal on the ground of cash deposit in the bank account and computation of long term capital gain without giving an opportunity to the AO. Hence the Rule 46A of the Income- tax Rules has been violated.*
3. *The CIT(A) ought to have appreciated that the assessee has never produced any evidence before the AU. Hence, it was mediatory for him to give an opportunity to the AO as per Rule 461\ of the Income-tax Rules and a remand report on the new evidence should have*

been called.

4. *For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order be restored.*
5. *The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.*

2. During the course of hearing, the learned DR has contended that before the AO, assessee did not file the relevant evidence but before the CIT(A) the assessee has filed the detailed evidence to justify the source of deposits in bank. The evidence filed by the assessee was never confronted to the AO and the CIT(A), relying upon the same deleted the additions. Therefore, there is a violation of provisions of rule 46A of the IT Rules. Hence, the order of the CIT(A) deserves to set aside and matter be restored to his file for readjudication of the issues after confronting the additional evidence filed before him to the AO.

3. The learned counsel for the assessee has contended that CIT(A) is armed with co-terminus power of that AO. Therefore, he has granted the relief after having examined the evidence filed by the assessee. Therefore, there is no error or defect in the order of the CIT(A).

4. Having carefully examined the orders of the authorities below in the light of rival submissions, we find that undisputedly the assessee has filed some additional evidences for the first time before the CIT(A) and CIT(A) has not called any remand report on the additional evidence filed before him.

5. Having relied upon the additional evidences, the CIT(A) deleted the additions, whereas as per Rule 46A of the IT Rules, the CIT(A) ought to have called for a remand report or confronted the additional evidences to the AO before admitting the same but the CIT(A) did not do the same. Therefore, the act of

CIT(A) is in clear violation of provisions of Rule 46A of the IT Act. Hence, we have no hesitation in setting aside the order of CIT(A). Accordingly, we set aside his order and restore the matter to his file with a direction to confront the additional evidences filed before him to the AO and after obtaining his comments on the additional evidence, he may dispose off the appeal on merit after affording opportunity of being heard to the parties of the appeal in accordance with law.

6. In the result, appeal of the Revenue is allowed for statistical purposes.

Pronounced in the open court on 28th February, 2018.

Sd/-
(JASON P BOAZ)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 28th February, 2018.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. Guard file |

By order

Sr. Private Secretary,
ITAT, Bangalore.