

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA**

Before **Shri Aby T. Varkey, Judicial Member** and
Dr.A.L. Saini, Accountant Member

ITA No.2049/Kol/2016
Assessment Year :2013-14

ACIT, Circle-40, 2 nd Floor, 3, Govt. Place (W), Kolkata-700 001	V/s.	Shri Ashok Kumar Chanda, 61, Bentick Street, Kolkata-69 [PAN No.ACNPC 7389 P]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Arindam Bhattacharjee, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Ahok Kr. Chanda, Assessee
सुनवाई की तारीख/Date of Hearing	06-03-2018
घोषणा की तारीख/Date of Pronouncement	16-03-2018

आदेश/ORDER

PER Dr. A.L. Saini, AccountantMember:-

This caption appeal filed by the Revenue, pertaining to Assessment Year 2013-14, is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-12, Kolkata, in appeal No.127/CIT(A)-12/Kol//Cir-40/2015-16, dated 26.07.2016, which in turn arises out of an order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’), dated 02.12.2015.

2.Revenue has raised following grounds of appeal:-

“The Ld. CIT(A)-12, Kol has erred in law and facts as well as circumstances by deleting the addition of Rs.51,24,369/- for Non-deduction of TDS u/s. 40(a)(ia). It was recorded in the order that assessee declared that he could not furnish the required certificate u/s. 201(1). CIT(A) has violated the rule u/s. 46A, not to send the submissions (certificate and the copy of return of M/s Century Plywood) to the AO. Moreover, the certificate is not in the name of assessee. It

may also be mentioned that the case of 'Ansal Land Mark Township (P) Ltd.' is yet to reach finality and the decision not appeal on facts.

The LD. CIT(A)-12, Kol has erred in law and facts as well as circumstances reducing the disallowance on foreign tour of Rzs.9,42,137/- to Rs.2,35,534/-. The assessee could not produce any supporting evidences regarding his foreign tour at the time of assessment proceedings. The Ld. CIT(A)-12, Kol has violated the rule u/s. 46A, not to send the submission to AO for verification."

3. At the outset, itself, Ld. counsel for the assessee has fairly conceded that there is a violation of Rule 46A of Income Tax Rule, 1962 in respect of both the grounds raised by the Revenue.

On the other hand, Ld. DR for the Revenue has also fairly agreed with the submissions of Ld. counsel for the assessee that Ld. CIT(A) has violated the provisions of Rule 46A of I.T. Rules, 1962 and considered the additional evidence without giving an opportunity to the Assessing Officer to examine them.

4. We note that in the appellate order, in para 3.2, the Ld CIT(A) accepted additional evidence from the assessee stating that "... The appellant has submitted the necessary proof by way of a certificate of accountant under proviso to sub section (1) of section 201 of the I.T. Act for certifying the furnishing of return of income". Therefore, it is abundantly clear that the assessee has furnished some additional documents before the Ld. CIT(A) and in turn the Ld. CIT(A) has not sent the said additional documents for verification of the Assessing Officer and therefore the Ld. CIT(A) has violated the provision of Rule 46A of IT Rules, 1962. We also note that assessee could not produce any supporting evidence, regarding his foreign tour, at the time of assessment proceedings, and the assessee has produced only these additional evidences before Ld. CIT(A) for the first time. Therefore, we are of the view that Assessing Officer has not been given opportunity to examine the additional evidence submitted by assessee. We are of the view that Ld. CIT(A) ought to have given an opportunity to the Assessing Officer to examining the

additional evidence and therefore Ld. CIT(A) has violated the provision of Rule 46A of the IT Rules, 1962. For that we rely on the judgment of Hon`ble Kolkata High Court, in the case of Mitra Logistics Pvt. Ltd. 357 ITR 657 (Kol-HC), wherein it was held that 'CIT(A) is required to record in writing reasons for admission of additional evidence'. We also rely on the Judgment of Hon`ble Delhi High Court in the case of Manis Buildwell P.Ltd, 204 taxman 106 wherein it was held if the assessee submits the additional evidence during the appellate proceedings, it is necessary to examine the circumstances where these additional evidence can be accepted and the Ld. CIT(A) should send these additional evidence to Assessing Officer for his examination and call for a remand report. In the assessee's case under consideration the Id CIT(A) did not send these additional evidences to the assessing officer for his examination and did not call remand report. Therefore, we are of the view that this issue is required to be examined at the end of Assessing Officer and hence, we set aside the order of Ld. CIT(A) and remit the matter back to the file of Assessing Officer to adjudicate the issue afresh after giving reasonable opportunity to the assessee of being heard. The assessee is at liberty to produce relevant documents before the Assessing Officer to substantiate his bona fide and his claim.

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

Order pronounced in the open court 16/03/2018.

Sd/-
(Aby. T. Varkey)
(Judicial Member)
Kolkata,

Sd/-
(Dr. A.L. Saini)
(Accountant Member)

*Dkp, Sr.P.S

दिनांक:- 16/03/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ACIT, Circle-40, 2nd Fl, 3, Govt. Place (W), Kolkata-700 001
2. प्रत्यर्थी/Respondent-Shri Ashok Kr. Chanda, 61, Bentick Street, Kolkata-69
3. संबंधित आयकर आयुक्त/ Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।