

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI S. S. VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1915/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2013-14)

Late Jagmohan Jalan 26, Shakespeare Sarani, Kolkata – 700 017.	Vs.	DCIT, Circle-32, Kolkata 10B, Middleton Street, Kolkata – 700 071.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AEXPJ 0179 A		
(Appellant)	..	(Respondent)

Appellant by : Shri Siddharth Agarwal, Advocate
Respondent by : Shri S. Dasgupta, Addl. CIT(DR)

सुनवाईकीतारीख/ **Date of Hearing** : **19/04/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **04/05/2018**

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee, pertaining to Assessment Year 2013-14, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-9, Kolkata, in appeal No.09/CIT(A)-9/Cir-32/2016-17/Kol, dated 31.08.2016, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 07.03.2016.

2. The Grievances raised by the assessee are as follows:

"1) For that on the facts and the circumstances of the case, Ld. CIT(A) erred in confirming the action of the Assessing Officer in making a disallowance of Rs.12,99,609/- under the head cash rebate.

2) That the appellant craves leave to add, alter or delete all or any of the ground of appeal."

3. At the outset itself, the Id. counsel for the assessee submitted before us that the assessee, during the appellate proceedings, had filed additional evidences in respect of rebate expenses before the Id. CIT(A) [Vide P.B 26 to 76]. These additional evidences were considered by the Id. CIT(A) but had not been sent to the Assessing Officer for his examination, hence there is violation of Rule 46A of the I.T. Rules. The Id. Counsel pointed out that the assessee could not submit these additional evidences before the Assessing Officer, because the Authorized Representative of the assessee had been feeling illness since a long period and to substantiate this the Id Counsel produced before us the certificate of the Doctor(pb7). Therefore, the assessee was prevented by the sufficient cause not to file these evidences before the Assessing Officer. On appeal by the assessee, the assessee submitted these additional evidences before the Id. CIT(A), who has acknowledged these evidences (vide Para 4 of his order) wherein he has stated as follows:

“4.....sample copies of credit notes issued by the assessee’s proprietorship concern M/s Avee Bearings are annexed herewith and collectively marked as Annexure ‘D’. The said documents may please be submitted as additional evidence as the assessee was prevented by sufficient cause to produce the same before the Assessing Officer due to the reasons mentioned hereinabove.”

The Id. Counsel submitted that it is abundantly clear from the appellate order that in spite of these additional evidences, the Id. CIT(A) did not send these to the file of the Assessing Officer to examine and call a remand report, thus violated the provisions of Rule 46A of the Income Tax Rules.

4. On the other hand, the Id. DR for the Revenue objected that no additional evidences were submitted by the assessee. Moreover, the certificate of the doctor showing that assessee’s AR was feeling illness, is

also dated 22.02.2016 whereas the hearing fixed before the Assessing Officer was on 05.02.2016, therefore, the Doctor`s certificate should not be relied.

5. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that there is a violation of Rule 46A of the I.T. Rules as the assessee has submitted additional evidences (Vide P.B. 26 to 76) to prove the genuineness of the cash rebate and the same has not been sent to AO for his verification. The Id. CIT(A) has himself mentioned and acknowledged the assessee`s submission in para No.4 of his order, stating that the assessee has submitted additional evidences marked as Annexure `D`. The assessee could not file these additional evidences before the AO, as the authorized representative (AR) of the assessee had been feeling illness since a long period. These additional evidences were not sent by the Id. CIT(A) for examination by the Assessing Officer, therefore, we are of the view that it is a violation of Rule 46A of the I.T. Rules, as without giving an opportunity to the Assessing Officer to examine these additional evidences, the Id. CIT(A) confirmed the addition in respect of cash rebate amounting to Rs.12,99,609/-. To send the additional evidences for the examination of the assessing officer and ask a remand report thereon is necessary and for that we rely of the judgment of Hon`ble Delhi High Court in the case of COMMISSIONER OF INCOME TAX vs. MANISH BUILD WELL (P) LTD.,(2012) 204 TAXMAN 0106 (Del-H.C), wherein it was held as follows:

"Since the CIT(A) himself refers to r. 46A and has also admitted that the confirmation letters adduced by the assessee before him were technically fresh evidence, it is not possible to accept the plea of the counsel for the assessee that the CIT(A), in examining the confirmation letters, was exercising his independent powers of enquiry under sub-s. (4) of s. 250. It is true that the CIT(A) as first appellate authority has coterminous powers over the sources of income constituting the subject-matter of the assessment, except the power to tackle new sources of income not considered by the AO, and can do what the AO can do and can direct the AO to do what he has failed to do but in this case, the CIT(A) did not exercise this right. This power, which is recognized in sub-s. (4) of s. 250, has to be exercised by the CIT(A) and there should be material on record to show that he, while disposing of the appeal, had directed further enquiry and called for the confirmation letters

from the assessee even in respect of receipt of monies from customers by way of cheques. Rule 46A is a provision which is invoked, on the other hand, by the assessee who is in an appeal before the CIT(A). Once the assessee invokes r. 46A and prays for admission of additional evidence before the CIT(A), then the procedure prescribed in the said rule has to be scrupulously followed. The fact that sub-s. (4) of s. 250 confers powers on the CIT(A) to conduct an enquiry as he thinks fit, while disposing of the appeal, cannot be relied upon to contend that the procedural requirements of r. 46A need not be complied with. If such a plea of the assessee is accepted, it would reduce r. 46A to a dead letter because it would then be open to every assessee to furnish additional evidence before the CIT(A) and thereafter contend that the evidence should be accepted and taken on record by the CIT(A) by virtue of his powers of enquiry under sub-s. (4) of s. 250. This would mean in turn that the requirement of recording reasons for admitting the additional evidence, the requirement of examining whether the conditions for admitting the additional evidence are satisfied, the requirement that the AO should be allowed a reasonable opportunity of examining the evidence etc. can be thrown to the winds, a position which is wholly unacceptable and may result in unacceptable and unjust consequences. The fundamental rule which is valid in all branches of law, including IT law, is that the assessee should adduce the entire evidence in his possession at the earliest point of time. This ensures full, fair and detailed enquiry and verification. It is for the aforesaid reason that r. 46A starts in a negative manner by saying that an appellant before the CIT(A) shall not be entitled to produce before him any evidence, whether oral or documentary, other than the evidence adduced by him before the AO. After making such a general statement, exceptions have been carved out that in certain circumstances it would be open to the CIT(A) to admit additional evidence. Therefore, additional evidence can be produced at the first appellate stage when conditions stipulated in the r. 46A are satisfied and a finding is recorded. The conditions prescribed in r. 46A must be shown to exist before additional evidence is admitted and every procedural requirement mentioned in the rule has to be strictly complied with so that the rule is meaningfully exercised and not exercised in a routine or cursory manner. A distinction should be recognized and maintained between a case where the assessee invokes r. 46A to adduce additional evidence before the CIT(A) and a case where the CIT(A), without being prompted by the assessee, while dealing with the appeal, considers it fit to cause or make a further enquiry by virtue of the powers vested in him under sub-s. (4) of s. 250. It is only when he exercises his statutory suomotu power under the above sub-section that the requirements of r. 46A need not be followed. On the other hand, whenever the assessee who is in appeal before him invokes r. 46A, it is incumbent upon the CIT(A) to comply with the requirements of the rule strictly."

Therefore, considering the principle of natural justice and fair play, we think it appropriate that the said issue should be remitted back to the file of the Assessing Officer to examine the additional evidences. Therefore, we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to adjudicate the issue afresh in accordance with law. We also direct the assessee to participate diligently in the assessment

proceedings and submit the necessary documents to prove his bona fide. Therefore, we allow this appeal for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 04/05/2018.

Sd/-
(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(A. L. SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 04/05/2018

(RS, SPS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- Late Jagmohan Jalan
2. प्रत्यर्थी/ The Respondent- DCIT, Circle-32, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.