

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 5992/MUM/2016 : (A.Y : 2012-13)

ITO-1(3)(2),
Mumbai (Appellant)

Vs. M/s. Stroll Properties Pvt. Ltd.,
1-B, 1st floor, Court Chambers,
35, Sir Vitthaldas Thackersey Marg,
New Marine Lines, Mumbai 400 020.
PAN : AALCS1888E (Respondent)

Appellant by : Shri Ram Tiwari
Respondent by : Shri Jitendra Jain

Date of Hearing : 09/05/2018
Date of Pronouncement : 09/05/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the Revenue is directed against order of CIT(A)-3, Mumbai dated 22.07.2016 pertaining to Assessment Year 2012-13, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 27.03.2015 u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In its appeal, Revenue has raised the following Grounds of appeal :-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in admitting the additional evidence filed by the assessee without giving opportunity of being heard to the AO as per Rule 46A of the I T Rules, 1962, and considering the laid procedure rendering the said order as bad in law and procedure liable to be cancelled or set-aside to the Assessing Officer.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the submission of the assessee stating that assessee had purchased 2,50,000 shares from other party against purchase of 25,000 shares as reflected in the balance-sheet produced before the Assessing Officer, and also details in respect of persons from whom shares were shown as purchased.”

3. Briefly put, the relevant facts are that in the course of assessment proceedings, the Assessing Officer noted that the total amount of investment reflected by the assessee in shares of one M/s. Sweet Memories Pvt. Ltd. was of Rs.64,00,000/- out of which Rs.14,00,000/- represented cost of 7 lac shares acquired in the earlier period. The Assessing Officer thus noted that 25000 shares of M/s. Sweet Memories Pvt. Ltd. were acquired by the assessee in the instant year for a total sum of Rs.50,00,000/- meaning thereby that each share of the face value Rs.10/- was purchased @ Rs.200/-. The Assessing Officer noted from the account books of the investee company, M/s. Sweet Memories Pvt. Ltd. that during the year under consideration it had issued 25000 shares to the assessee at face value, i.e. Rs.10/-, without any premium. In this background, the assessee was show-caused to explain the difference of the excess amount of Rs.47,50,000/- stated to have been paid against the acquisition of 25000 shares in the year. The Assessing Officer records in the assessment order that, in reply, assessee submitted that the said shares were not acquired from the investee company, but from a third party, however, no details of either the purchase

or even the party from whom such shares were purchased were filed. In this background, the Assessing Officer treated the sum of Rs.47,50,000/- as unexplained and added it to the returned income.

4. Before the CIT(A), assessee raised various submissions, *inter-alia*, providing details of purchase of the stated equity shares. In particular, assessee submitted its bank statement evidencing the payment towards purchase of shares, extracts from the annual accounts reflecting the purchase and also the extracts from the annual accounts of M/s. Sweet Memories Pvt. Ltd. reflecting the details of shareholding pattern. The CIT(A), on the basis of the material furnished by the assessee, came to conclude that assessee had purchased 250000 equity shares of M/s. Sweet Memories Pvt. Ltd. from M/s. Natraj Commerce Pvt. Ltd. @ 20/- per share, which aggregated to Rs.50,00,000/-. The CIT(A), therefore, concluded that it was wrong on the part of the Assessing Officer to infer that only 25000 equity shares were acquired by the assessee in the year under consideration, and thereafter, he also considered the explanation of the assessee as sufficient and deleted the disallowance.

5. Before us, the foremost plea of the Revenue is that the CIT(A) has erroneously admitted additional evidence which was not before the Assessing Officer during the course of assessment proceedings. At the time of hearing, the learned representative for the respondent-assessee, at the outset, conceded to the said position and stated that the respondent-assessee has no objection if the matter is set-aside on this count.

6. Having perused the orders of the authorities below, we find that before the Assessing Officer the position which emerged was that assessee had acquired 25000 shares of the investee company during the year. It is also emerging from the assessment order that the requisite details of the purchase of shares, including the party from whom the shares have been purchased, was not before the Assessing Officer. Under these circumstances, when the matter came-up before the CIT(A), and assessee furnished the requisite details evidencing the acquisition of said shares of the investee company from M/s. Natraj Commerce Pvt. Ltd. for a consideration of Rs.50,00,000/-, it was incumbent upon him to adhere to the provisions of Rule 46A of the Rules governing admission of additional evidence. Pertinently, it is only at the level of CIT(A) that the assessee brought the requisite material to show the actual number of shares purchased of the investee company, M/s. Sweet Memories Pvt. Ltd. was 250000 and not 25000 as was the position before the Assessing Officer. We find that the CIT(A) considered an evidence, which was hitherto not available in the course of assessment proceedings, and, in our view, non-adherence to the procedure laid down in Rule 46A of the Rules for consideration of additional evidence renders the decision of CIT(A) erroneous. We, therefore, without going into the merits of the dispute, restore the matter back to the file of the CIT(A) to pass an order afresh. Needless to mention, in the ensuing proceedings, the CIT(A) shall allow the assessee a reasonable opportunity of being heard and only thereafter, pass an order afresh in accordance with law. We may clarify here that our decision to set-aside the order of the CIT(A) and remand the matter back to his file is no reflection on the merits of the dispute, which the CIT(A) shall be required to adjudicate as per law.

7. In the result, appeal of the Revenue is allowed, as above.

The above decision was pronounced in the open court in the presence of both the parties at the conclusion of the hearing on 9th May, 2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 9th May, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai