

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI N.K SAINI, ACCOUNTANT MEMBER
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No:- 3477/Del/2014,
(Assessment Year: 2009-10)**

Monika Rohra, B-941, New Azadpur, Subzi Mandi, Delhi 110033.	Vs.	ITO, Ward -19(1), New Delhi.
PAN No: AAKPR9921M		
APPELLANT		RESPONDENT

Assessee by : Sh. Ved Jain (CA)
Revenue by : Sh. S. R. Senapati (Sr. DR)

Date of Hearing : 20.06.2018.
Date of Pronouncement : 22/06/2018.

ORDER

PER: KULDIP SINGH, JM

The Appellant, Monika Rohra, B-941, New Azadpur, Delhi 110033, (hereinafter referred to as 'the Assessee') by filing the present appeal, sought to set aside the impugned order dated 27.02.2014 qua Assessment Year 2009-10 passed by Ld. CIT(A)-XXII, New Delhi, on the grounds that:-

- "1. *On the facts and circumstances of the case, the order passed by learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
2. *That the entire order passed by the learned CIT(A) dismissing the appeal of the assessee stands vitiated by the observations made and facts taken into consideration by the CIT(A) which are irrelevant and de hors the issue before him and as such the same is liable to be quashed.*
- 3(i) *That the learned CIT(A) has erred in drawing adverse inference against the assessee on the basis of facts which have neither been verified nor investigated.*
- (ii) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in drawing adverse inference against the assessee on the basis of noting in the order sheet made by him about the firm, M/s Harish Fruit Traders.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order without giving assessee a proper an adequate opportunity of being heard in clear violation of principle of natural justice.*
- 5(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the books of accounts of the assessee under section 145(3) of the Act despite the fact that the AO has accepted the same.*
- (ii) *That the books of accounts have been rejected by the CIT(A) arbitrarily without giving assessee a proper notice.*
- 6(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs 13,63,576/- made by the AO on account of difference in opening balance in the name of SMC Securities & Systems.*
- (ii) *That the said addition has been confirmed despite the assessee filing all evidences to prove that only an amount of Rs.4,95,569/- relates to SMC Global Securities System & others relate to 9 parties.*
- 7(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in making addition of an amount of Rs.23,00,000/- taken by assessee as advance from Bhoj Raj Harish Kumar.*
- (ii) *That the addition has been confirmed by indulging into surmises and conjectures ignoring the explanation and evidences submitted by the assessee.*
- (iii) *That the addition has been made in total disregard to the fact that just by mentioning a wrong nomenclature in the books of accounts the advance or loan as the case may be does not lead to disallowance of the same and consequent addition thereto.*
- 8(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.1,00,000/- made by the AO on account of petty creditors.*

- (ii) *That the addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee in support of the same.*
- 9(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in treating agricultural income amounting to Rs.21,65,000/- as income from undisclosed sources.*
- (ii) *That the said addition has been confirmed by misinterpreting the evidences filed by the assessee and by indulging in conjecture and surmises.*
- (iii) *That the addition has been confirmed rejecting the fact that the assessee has been earning agricultural income for the last many years and has been accepted by the department even in proceedings under Section 143(3) of the Act.*
- 10(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee to allow set off of brought forward loss of Rs.51,90,884/- of earlier years.*
- (ii) *That the set off of brought forward loss has been disallowed by the CIT arbitrarily ignoring the fact that the assessee has led all evidences in support of its contention.*
11. *On the facts and circumstances of the case, the learned CIT(A) has erred I on facts and in law in rejecting the contention of the assessee to allow credit of TDS on an addition of Rs.2,63,324/- made by the AO on account of interest Uppal Chadha Hi-Tech Developers Pvt. Ltd.*
12. *That the appellant craves leave to add, amend or alter any of the ground appeal."*

2. Briefly stated the facts necessary to adjudicate the issues at hand are: the assessee filed a return of income as an agriculturist at the income of Rs. 1,99,480/. Assessing Officer framed assessment u/s 143(3) of the Income-tax Act, 1961 (for short the 'Act') and made addition of Rs. 2,63,324/- Rs. 13,63,576/-, Rs. 278264/-, Rs. 24,00000, Rs. 2165000 and Rs. 51,90,884/- on account of interest income received from M/s Uppal Chadha Hi-Tech Developers Pvt. Ltd., on account of difference in the

credit shown from M/s SMC Global Securities System, on account of false claims of set off as short term capital gain, on account of unsecured loans claimed from seven parties, on account of treating claimed agricultural income as income from undisclosed sources and on account of disallowance of claim of set off of loss respectively, after declining the contentions raised by the assessee.

3. Assessee carried the matter before the Ld.CIT(A) by way of filing the appeal, who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and order passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset, it is contended by Ld. AR for the assessee that an adequate opportunity of being heard has not been granted by the Ld. CIT(A), who has neither examined documents himself nor got verified, the same by the AO by calling remand report.

6. However, on the other hand, Ld. DR for the Revenue to repel the contentions raised by the assessee, drew our attention towards para 8.22

at Page No. 27 of the Impugned Order; and contended that an adequate opportunity of being heard given to the assessee before passing the impugned order.

7. Assessee claimed herself to be an agriculturist and earned agricultural income of Rs. 21,65,000/- during the year under assessment from the land measuring of 31.34 Acre taken on lease during the period 25.02.2006 to 24.02.2009 from some farmers in Krishna District in the state of Andhra Pradesh. Assessee brought on record 3 Lease deeds during the appellate proceedings.

8. Before Ld. CIT(A), the assessee moved an application for bringing on record additional evidence, which was dismissed by Ld.CIT(A) by returning the following findings:-

"8.22 The Appellant having admitted that the Lease Deeds filed before the Assessing Officer did not contain any signature of the Lessee, but has filed 3 Lease Deeds in the appellate proceedings which are all having signature of both the Lessor and the Lessee. Thus it is clear that either the Appellant has manipulated the claimed Lease documents after these were show Assessing Officer during the assessment proceedings, or the Appellant has filed some documents which were not filed before the Assessing Officer. In the first situation, where the Assessee manipulated the documents, the Appellant has obviously put the signatures of the claimed Lessee in the claimed Lease Deed, though when the claimed Lease Deed was put up before the Assessing Officer, it did not have any signature of the Lessee. The Lease period is claimed to have started on 25.02.06 and ended on 24.02.09. The assessment proceedings started much after the filing of Return by the Assessee for A.Y. 09-10 on 30.09.09. Thus the Appellant has manipulated the documents much after the claimed signing of Lease Deeds on 25.02.06 and also

much after the Lease period ended on 24.02.09. No credit can be given for such manipulation in the documents. In the second situation, where it is taken that the Appellant filed documents which were not produced before the Assessing Officer, the Appellant loses any right to produce such documents subsequently before the Commissioner (Appeals) unless the Appellant is able to show that one of the circumstances specified in Clause (a), (b), (c) or (d) of Rule 46A(1) existed. The Appellant has neither made any application under Rule 46A nor any of the circumstances specified as exceptions therein exist. In such a situation, any new documents or evidence cannot be accepted."

9. Bare perusal of the finding returned by Ld.CIT(A) shows that merely on the basis of the conjecture and surmises application for additional evidence has been dismissed by using words "Manipulation in the documents" without verifying the documents from the Lessor or attesting witnessing as the case may be. The Ld. CIT(A) stated to have taken note of the fact that during the assessment proceedings Lease Deed were having signature of Lessor only but the documents produced before Ld. CIT(A) during the appellate proceedings were having signature of both Lessor and Lessee. When the assessee has come up with specific document which Lease Deed to prove his agricultural income, the same cannot be thrown into the dustbin, merely on the basis of surmises.

10. Furthermore, assessee in order to prove the unsecured loans stated to be taken from friends and relatives brought on record that complete details/confirmations from the loanee but contention has been rejected merely on the ground that there was enough funds available with the

assessee as reflected in the Balance Sheet, there is no need for the assessee to take petty loans from the person and that the assessee is conceiving the department. This fact also goes to prove that issue has been decided on surmises without going into the merits of the case.

11. Even perusal of the para 5 of the assessment order shows that the Assessing Officer proceeded to conclude that assessee has not claimed any set off loss during the year but this fact is in contradiction with the computation of the income brought on record by the assessee lying at page 1 to 4 of the Paper Book. So, this fact is also required to be re-adjudicated by the AO, the findings being based on wrong facts.

12. Furthermore, addition of Rs. 13,63,576/- has been made by the AO on the ground that assessee has not filed fresh confirmation from M/s SMC Global Securities Systems. However, this fact has been clarified by the assessee to the AO by claiming that the assessee has inadvertently shown the payable amount in respect of 9 other parties in the name of M/s SMC Global Securities Systems rather the correct amount pertaining to M/s SMC Securities Systems is Rs. 4,95,569/-.

13. In view of what has been discussed above, we are of the considered view that assessment orders as well as impugned orders passed by Ld.

CIT(A) has been passed by relying upon incorrect facts as well as not providing adequate opportunity of being heard to the assessee, so we remand the present case to the AO to decide afresh after providing an opportunity of being heard to the assessee. Hence, appeal filed by the assessee stand allowed.

Order pronounced in the open court on 22/6/2018

Sd/-

(N.K SAINI)
ACCOUNTANT MEMBER

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Dated: 22.06.2018
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	20/6/2018
Date on which the typed draft is placed before the dictating Member	21/6/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	21/6/2018
Date on which the fair order is placed before the Dictating Member for pronouncement	22/6/2018
Date on which the fair order comes back to the Sr. PS/PS	22/6/2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

