

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6405/Del/2018
Assessment Year: 2010-11

SUNITA GARG,
112, SWASTIK APARTMENTS,
SECTOR-13,
ROHINI,
DELHI - 110 085
(PAN: AAGPG3789G)

VS. ITO, WARD 39(4),
NEW DELHI

(APPELLANT)

(RESPONDENT)

Assessee by : Ms. Meenu Agarwal, Adv.
Revenue by : Sh. Pradeep Kumar Meel. Sr. DR.

ORDER

This appeal has been filed by the Assessee against the Order dated 30.7.2018 of the Ld. Commissioner of Income Tax (Appeals)-13, New Delhi relevant to assessment year 2010-11.

2. The grounds raised in the appeal read as under:-

1. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of Assessing Officer and confirming the additions u/s 68 on account of cash deposits in bank account of the appellant.*

2. *The learned CIT(A) failed to appreciate and ought to have held that cash deposited in bank account of assessee is due to sales made by the assessee during the disputed period.*

3. *That the learned CIT(A) failed to consider the reasons for not producing the documents before learned assessing officer before rejecting the plea to file documents under Rule 46A of the Income Tax Rules by the appellant*

4. *That the learned CIT(A) failed to appreciate the reason provided in appeal filed via form 35 for non-adherence to the notices sent by the learned assessing officer*

5. *That the learned CIT(A) rejected the application for submitting documents under Rule 46A on the basis that it was not in proper application, though the provisions of Rule 46A does not provide for any specific format.*

6. *The Appellant therefore prays that AO be directed to delete the additions made on account of cash deposits u/s 68 of the Income Tax Act, 1961 by considering the cash deposits are related to business of the appellant*

7. *Without considering the facts, assessment order was issued at an income at Rs. 16,26,615/- as against the NIL taxable income vide appellant order u/s. 250(6) of the Act and a demand of Rs. 8,38,831/- has been raised u/s. 156 of the Act.*

8. *The appellant craves leave to add, alter and / or amend all or any of the foregoing grounds of appeal.*

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

4. During the hearing, Ld. A.R. of the assessee, has stated that AO has passed the exparte order dated 30.11.2017 u/s. 147/144 of the Income Tax Act, without giving sufficient opportunity to the assessee. He further submitted that even the Ld. CIT(A) has also rejection the application for submitting documents under Rule 46A on the basis that it was not in proper application, though the provisions of Rule 46A does not provide for any specific format.

5. On the contrary, Ld. DR relied upon the orders of the authorities below.

6. I have heard both the parties and perused the records. I have also gone through the order passed by the revenue authorities as well as the contention raised by the assessee in the grounds of appeal. I find force in the arguments of the Ld. Counsel of the assessee that AO has completed the assessment vide exparte order dated 30.11.2017 u/s. 147/144 of the Income Tax Act, without giving sufficient opportunity to the assessee. I further find considerable cogency in the contention of the assessee's counsel that even the Ld. CIT(A) has also rejected the application for submitting documents under Rule 46A on the basis that it was not in proper application, though the provisions of Rule 46A does not provide for any specific format. Therefore, in the interest of justice, the issues in dispute are set aside to the file of the AO to decide the afresh under the law, after giving adequate opportunity of being heard to the assessee. The assessee is also directed to file all the necessary documents to substantiate his case and fully cooperate

with the AO in the proceedings and did not take any unnecessary adjournment.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 29-10-2018.

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated : 29-10-2018

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.

