

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

I.T.A. No.3807/DEL/2018		
A.Y. : 2009-10		
PRAMUKH NANDA A-406, SOMDUTT CHAMBERS-I, 5, BHIKAJI CAMA PLACE, NEW DELHI - 110 066 (PAN: AACPN4405E)	VS.	ITO, WARD 3(3), NEW DELHI
(ASSESSEE)		(RESPONDENT)

Assessee by : Sh. Suneel Aggarwal, CA
Revenue by : Sh. S.L. Anuragi, Sr. D.R.

ORDER

The Assessee has filed this Appeal against the impugned Order dated 19.2.2018 of the Ld. CIT(A)-2, New Delhi relevant to assessment year 2009-10.

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

1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the following action of the AO:

i. Assessing the total income at Rs. 1,327,400/- as against the returned income of Rs. 756,120/- by the appellant.

ii. The addition of Rs. 494,358/- being the unexplained expenditure to the total income of the appellant.

2. On the facts and circumstances of the case and in law the Ld. CIT(A) has erred in not considering the evidences, in support of the credit card payments made by the Company, filed before him along with the application under Rule 46A of the Income Tax Rules, 1962.

3. On the facts and circumstances of the case and in law the Id. CIT(A) has erred in not passing the speaking order and has merely relied on the CIT(A) order passed in the first appeal of the appellant in the instant case.

4. On the facts and circumstances of the Ld. CIT(A) has erred in not directing the AO to grant the full credit taxes paid of Rs. 311,432/- comprising of TDS Rs. 211,432/- and taxes paid on regular assessment Rs. 100,000/- by the appellant.

The appellant craves leave to add, alter, delete or modify any of the grounds of appeal on or before disposal of the appeal.

3. The 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. At the time of hearing, Ld. Counsel for the assessee has stated that AO has passed the exparte assessment order dated 23.12.2011 u/s. 144 of the Income Tax Act, 1961 (in short "Act") without providing sufficient opportunity to the assessee to substantiate his case. He also submitted that similarly the Ld. First Appellate Authority has also passed the impugned order without admitting the additional evidences filed by the assessee alongwith the Application under Rule 46A of the Income Tax Rules, 1962. He further stated that assessee has filed all the necessary documentary evidences for substantiating the claim in dispute before the Ld. CIT(A), but the Ld. CIT(A) has not passed any order on the same. Therefore he requested that Application under Rule 46A may be admitted and the issues in dispute may be set aside to the file of the AO to decide the same afresh, after considering all the evidences

filed by the Assessee and give adequate opportunity of being heard to the assessee.

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

6. I have heard both the parties and perused records, especially the impugned order. I find that AO has passed the exparte assessment order without giving adequate opportunity of being heard. I further note that similarly the Ld. First Appellate Authority has also passed the impugned order without admitting the additional evidences filed vide Application dated 7.7.2015 under Rule 46A of the Income Tax Rules, 1962, which are the copies of credit card bills; copy of bank statements of Cargo Motors (Gujarat) Private Limited evidencing the payment made by the Company and the copy of the Ledger account in the books of Cargo Motors (Gujarat) Private Limited evidencing of booking of all credit card bills for expenses incurred by the assessee on behalf of the company, which goes to the root of the matter. Hence, in my opinion the evidences filed under Rule 46A are very essential to be considered and examined by the Assessing Officer, therefore, I admit the same. Accordingly, in the interest of justice, the issues in dispute are remitted back to the file of the AO to decide the same, after considering all the evidences alongwith Rule 46A Application and give

adequate opportunity of being heard to the assessee for substantiating his claim. The Assessee is also directed to submit all the documents / evidences before the AO in order to substantiate his claim and did not take any unnecessary adjournment and fully cooperate with the AO.

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

Order pronounced on 01/01/2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 01/01/2019

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches

