IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A', NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.877/Del/2015
Assessment Year: 2011-12

ACIT, Circle-20(1), New Delhi	**Vs.**	M/s. Parnav Vikas India Ltd., 12-A, Shivaji Marg, New Delhi
		PAN :AAACP1537C
(Appellant)		**(Respondent)**

Appellant by	Shri Manoj Kumar Mahar, Sr.DR
Respondent by	Shri K. Sampath, Adv. & Shri V. Rajkumar, Adv.

Date of hearing	08.01.2019
Date of pronouncement	16.01.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against order dated 03/11/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-XVII, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12 raising following grounds:

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of interest of Rs.14,55,303/- u/s 36(l)(iii) without appreciating the facts that*

the assessee has not established that the assets were purchased other than the loan funds.

2. *i) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.10,69,335,/- made by the AO on a/c of undervaluation of stock without appreciating the facts that the assessee has not bought any material on record to establish than these purchases were made before 31-03-2011.*

   ii) The Ld.CIT(A) has erred on the facts and circumstances in deleting the addition of Rs. 10,69,335/- ignoring the purchase were booked against bill No. 15 and 16 dated 31-03- 2011.

3. *i) In the facts and circumstances, the Ld.CIT(A) erred in deleting the addition of Rs. 13,50,000/-., the disallowance made by the AO out of the rent paid by the assessee on the basis of letter/documents produced by the assessee without referring the same to the AO for its verification.*

   ii) The Ld.CIT(A) has erred on facts and under the law in deleting the addition of Rs. 13,15,000/- admitted fresh evidence without following mandatory procedure under Rule 46A. In view of violation of Rule 46A matter had to be restored to the AO to examine a fresh.

4. *The Ld CIT(A) has erred in facts and under the circumstances in deleting the addition of Rs. 29,35,247/- by holding the expenditure as revenue in nature in respect of the expenditure for the purchase of new motors or equipments were treated as capital in nature by the AO.*

5. *The Ld.CIT(A) has erred in facts and under the circumstances in deleting the addition of Rs. 28,46,169/- made on ad-hoc basis by AO being 20% Of (Rs. 142,30,890/-) total reimbursed expenditure.*

The Ld. CIT(A) has erred in facts and under the circumstances in deleting the addition of Rs.10,69,335/- out of diesel expenses which is not double disallowance.

The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any ground of appeal.

2. Briefly stated facts of the case are that the assessee was engaged in manufacturing of "heat exchangers" and other component of "Car air-conditioning system" and their trading. For the year under consideration, the assessee filed return of income on 27/09/2011 declaring total income of Rs.8,53,40,862/- which was further revised on 29/09/2011, though the income remained same. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and complied with. In the assessment completed under section 143(3) of the Act on 29/01/2014, the Assessing Officer made certain additions/disallowances against which the assessee preferred appeal before the Ld. CIT(A), who partly allowed the appeal of the assessee. Aggrieved with the relief allowed to the assessee by the Ld. CIT(A), the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

3. The ground No. 1 of the appeal relates to disallowance of interest of Rs.14,55,303/-under section 36(1)(iii) of the Act. The Assessing Officer observed that during the year under consideration the assessee raised loans of Rs.11.67 crore and invested in new fixed assets including work in progress (WIP) and capital advances of Rs. 8.92 crore, which constitutes 76.44% of

the total funds raised. The Assessing Officer further observed that during the year under consideration interest expenses has increased by Rs.38.07 lakhs. The Assessing Officer was of the view that the proportionate interest expenses of Rs.29.1 lakh (38.07 x 76.44/100) relates to borrowing for capital assets. According to the Assessing Officer, all the additions to fixed assets have been made during the year and not on the last day of the financial year, the interest disallowance should be calculated for half the period only for the purpose of capitalizing and he computed and made disallowance of Rs.14,55,303/- under section 36(1)(iii) of the Act as under:

Incremental interest on fixed asset loans	*Rs. 38,07,701/-*
*Proportionate disallowance for half year period [Rs.38,07,701/- *76.44%)*1/2]*	*Rs.14,55,303/-*

3.1 Before the Ld. CIT(A), the assessee submitted details of addition to fixed assets having net amount of Rs.7,57,49,806/-; Term loans (Rs. 2.67 crores) and working capital loans (Rs. 9 crore) availed during the year under consideration, net operating cash flow during the under consideration amounting to Rs. 9.09 crores. The assessee contended that the working capital loan was used for intended purpose only. Regarding the Term loan, the assessee submitted that same was sanctioned in the month of January 2011 and was disbursed on 23/03/2011 and thus no part of the said loans have been utilized for purchase of the fixed asset. The contentions of the assessee that fixed assets have been

purchased out of the cash flow generated during the year under consideration. Further the assessee contended that no extension of the existing business was carried out during the year under consideration thus in view of the proviso to section 36(1)(iii) of the act, no disallowance could be made under section 36(1)(iii) unless interest has been paid in respect of the capital borrowed for acquisition of the asset for extension of the existing business. The Ld. CIT(A) agreed with the contention that interest paid was not in respect of capital borrowed for acquisition of the asset for extension of the existing business and accordingly, she deleted the addition. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *"5.4 The appellant is correct in stating that disallowance of interest paid on capital borrowed for acquisition of an asset would be in respect of extension of existing business. The case of the appellant is not covered by the proviso. The interest paid would be allowed as a deduction. The addition of Rs.14,55,303/- is therefore deleted. These grounds of appeal are ruled in favour of the appellant.*

3.2 Before us, the Ld. DR relying on order of the Assessing Officer submitted that the assessee has not specified the amount of interest corresponding to each loan. According to him, the interest on Term loan taken for the purpose of acquiring capital asset is liable to be disallowed till the date of the acquired assets was first put to use. He submitted that the issue of no extension of existing business was taken for the first time before the Ld.

CIT(A) and no opportunity has been provided to the Assessing Officer for rebutting this claim of the assessee.

3.3 The Ld. counsel of the assessee, on the other hand, relied on the order of the Ld. CIT(A) and submitted that no borrowed funds have been utilized for the purpose of acquiring the assets. According to him the fixed assets acquired during the under consideration have been purchased out of the cash flow of the assessee and no Term loan has been utilized for acquiring the assets. He further submitted that there is no extension of the existing business during the year under consideration and thus Ld. CIT(A), was justified in deleting the addition.

3.4 We have heard the rival submissions and perused the relevant material on record. We find that according to the Assessing Officer, the interest corresponding to the money borrowed for purchase of the asset till the date the asset is put to use, should have been capitalized by the assessee and cannot be allowed as revenue expenditure in view of the proviso to section 36(1)(iii) of the Act. For ready reference, the said section along with proviso is reproduced as under:

> ***"36.*** *(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*
>
> *(i) ……..*
>
> *(ii) ……..*
>
> *(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession :*
>
> ***Provided*** *that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for*

acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction."

3.5 Thus, according to the above provision, for allowance of interest expenditure, it is prerequisite that it should be paid in respect of capital borrowed for the purpose of the business or profession. In the instant case, before us there is no dispute on the issue whether the capital borrowed was used for the purpose of the business or not. The dispute is in relation to the proviso, which stipulate disallowance of such interest in respect of the capital borrowed for the purpose of the business. According to the proviso, if following two conditions are fulfilled, then the interest would be disallowable:

(i) the interest has been paid in respect of the capital borrowed for acquisition of the asset, and

(ii) the asset has been acquired for extension of the existing business.

3.6 If both these conditions are satisfied, then the quantum of interest disallowable would be for a period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use. In other words, the interest on borrowed capital for acquisition of the asset till it 1st put to use would be in the nature of capital expenditure and subsequent interest thereafter would only be entitled for revenue expenditure.

3.7 In the instant case, the Assessing Officer has invoked the proviso for disallowance of interest and thus we are required to examine whether both the conditions above of the proviso to section 36 (1)(iii) are satisfied.

4. Regarding first condition that interest was corresponding to the capital borrowed for acquisition of the asset, we find that the assessee has not given detail of interest along with loan and corresponding amount of interest. The assessee has admitted that Term loan was sanctioned for the purpose of acquiring capital asset and disbursed in the month of March, 2011, however, detail of interest corresponding to Term loan is not available on record. The contention of the assessee that capital assets were acquired out of the own accruals of profit and provided a cash flow statement before the Ld. CIT(A), a copy of which is available on page 57 of the paper book. The Ld. Assessing Officer has held that assets were acquired throughout the year and the profit was not accrued at the time of purchase of those assets. We find that cash flow generated from operations has been shown at Rs.9,08,89,324/-in the cash flow statement, but it is not clear from this statement that cash or money earned from all sources was available with assessee at the time of purchase of capital asset and no borrowed money has been utilized for the purpose of purchase of capital assets. In our opinion, in absence of this factual finding, the contention of the assessee that fixed assets were purchased out of own money, cannot be accepted. The assessee is required to provide availability of own money before

purchase of the fixed assets under reference and, thus, this issue need verification at the end of the Assessing Officer. Further, we find that Ld. CIT(A) has not given any finding on this issue. The ld. CIT(A) also did not forward the documents containing cash flow statement to the Assessing Officer calling for his remand report.

5. As regard the second condition, whether the assets have been acquired for the purpose of extension of the business, the assessee submitted that no new plant was set up during the year under consideration. On perusal of the submission of the assessee reproduced by the Ld. CIT(A) in the impugned order, we find that no evidences were submitted in this regard by the assessee. But the Ld. CIT(A) accepted the submission of the assessee and held that case of the assessee was not covered in respect of extension of existing business. In our opinion, the Ld. CIT(A) was required to call for evidence from the assessee whether there was any increase in the capacity of production as a result of purchase of capital assets or not and was required to satisfy the fact of acquiring of assets for the extension of the business on the basis of the evidences.

6. It is evident that the Ld. CIT(A) has decided the issue in dispute without verifying the documentary evidence for establishing that own funds have been utilized for acquiring asset and fixed assets have been purchased for extension of the business. In view of the above facts and circumstances, we feel it appropriate to restore this issue to the file of the Ld. CIT(A) for

deciding a fresh after providing opportunity of being heard to both the parties, with liberty to the assessee to file documentary evidence for justifying its claim. The ground of the appeal is accordingly allowed for statistical purposes.

7. The ground No. 2(i) and 2(ii) of the appeal relate to addition of Rs.10,69,335/- made by the Assessing Officer on account of undervaluation of the stock.

7.1 The Ld. DR contended that stock of diesel amounting to Rs.2,60,741/- and Rs.8,08,594/- was purchased on 31/03/2011 and assessee has neither shown consumption of said stock neither it has shown the same in the closing stock in its books of accounts and thus closing stock to that extent remained undervalued and therefore the Ld. CIT(A) was not justified in deleting addition.

7.3 On the contrary, the Ld. counsel of the assessee relied on the finding of the Ld. CIT(A). He submitted that the assessee used to receive diesel from its related concern M/s RPS Vikas casting private limited, who was having capacity of storing diesel in bulk quantity. The said concern used to supply diesel to the assessee from time to time and used to raise debit notes , which usually occurs on the last day of the month. He referred to pages 122 and 123 of the paper book, which are copy of debit notes issued by M/s RPS Vikas casting private limited for supplying stock of Diesel of 7604 litres and 24,000 litres respectively for the month of March 2011. The Ld. counsel submitted that the debit notes are in respect of diesel consumed during the entire month of

March 2011 and thus contention of the Assessing Officer that those quantities of diesel were purchased on 31st of March 2011 is not correct.

7.4 We have heard the arrival submissions and perused the relevant material on record. We find that assessee in the ledger account recorded receipt of diesels amounting to (7604 litres) Rs.2,60,741/- and (24,000 litres) Rs.8,08,594/-on 31/03/2011 from M/s RPS Vikas Casting Private Limited, which is one of the associated concern of the assessee. The assessee used to receive diesel from the said concern for its own consumption and the said concern has raised debit note to the assessee at the month-end. In the paper-book, the assessee has filed copy of ledger account of the said concern, which is available on page 103. The assessee has also filed details of diesel received and issued during the entire year from various parties, which is available on page 105 and 106 of the paperbook. On perusal of the said details, we find that diesel having quantity of 7648 litres was received from M/s RPS Vikas casting private limited on 10/03/2011 and quantity of 12,000 litres each was received from M/s RPS Vikas Casting Private limited on 15/03/2011 and 18/03/2011. In the said detail, the assessee has mentioned the quantity of diesel issued for "Non- BOM issuance". A copy of the debit notes issued by M/s RPS Vikas Casting Private Limited from the month of April, 2010 to March 2011 are also available on page 107 to 123 of the paperbook. On perusal of the documents, we are of the opinion that that the finding of the Assessing Officer that diesel

amounting to Rs.2,60,741/- (7604 litrs) and Rs.8,08,594/- (24,000 L) was purchased on 31/03/2011 is factually not correct. The diesel was received between 10/03/2011 to 18/03/2011 and consumption of the same has also been recorded in the details provided by the assessee. In such circumstances, the contention of the Assessing Officer that said stock is not recorded in closing stock is without any basis and not sustainable. However, we find that the assessee filed additional documents before the Ld. CIT(A), which is evident from the submission of the assessee reproduced in the impugned order. For ready reference, relevant part of the submission is reproduced as under:

> *"During the Year the appellant company has incurred diesel expenses amounting to Rs. 3.34 Crores. It is respectfully submitted that the diesels are used to generate electricity through generators. During the year assessee has purchased diesel either from the nearby Petrol Pumps/Filing Stations or from its sister concern RPS Vikas Casting Pvt. Ltd*
>
> - *It worth's mentioning here that RPS Vikas, being a bulk consumer is having an arrangement with Bharat Petroleum Corporation Limited(BPCL), which allows it to purchase it directly from the Company instead of local filing stations.*
>
> - *It may also please be noted that the direct purchase from BPCL costs on an average Rs.3/- less than the price need to be paid in retail purchase.*
>
> *Both the factories are next to each other and RPS Vikaspurchases bulk quantity of diesel and store it in its tank. For all the diesel used by the Assessee from the storage of RPS Vikas Ltd. time to time, it raises a debit note,_which usually occurs on the last date of the month. In the present case the Ld. Assessing Officer has treated the Debit Note raised in month of March by RPS Vikas as purchase invoice and treated the same as part of closing stock. The AO ignored the submissions of the Assessee that the "only entries in Ledger account were passed on 31.03.2011 because of late receipt of bills. There was no closing stock of Diesel in Hand. Since the accountir software is not integrated with inventory, such cases of bills booked later than receipts of goods were common".*

In support of the above submission we would like to invite attention of Your Goodself to the following documents –

- *Copy of Stock Ledger of Diesel showing NIL Stock on 31st March 2011, along with details of Stock in and Out.*
- *Copy of Debit Notes raised along with their respective SRV's/Bill Of Material, showing issuance of Diesel much before 31st March.*
- *Details of Unit Rate of Diesel per litre, showing that the Purchase from RPS Vikas is Cheaper by on an average Rs.3/- per litre in comparison to purchase from other parties.*
- *Sample Invoices of Diesel Purchase by RPS Vikas from BPCL.*

It is being humbly submitted that above documents make it crystal that, there is no closing stock of diesel as on 31st March, and therefore no addition on this count may please be allowed."

7.5 It is evident from the above that copy of a stock register, debit notes issued by M/s. RPS Vikas Casting P. Ltd. and sample invoice of diesel etc were not produced before the Assessing Officer and produced for the first time before the Ld. CIT(A). It is also evident that no remand report has been called for by the Ld. CIT(A) in respect of these additional evidences, which is against the principle of natural Justice.

7.6 In view of the above, we feel it appropriate to restore this issue to the file of the Ld. CIT(A) for deciding a fresh after affording opportunity of being heard to both the parties. Without being biased by our observation on the additional evidence. The ground of the appeal is accordingly allowed for statistical purposes.

8. In ground No. 3, the Revenue has challenged the finding of the Ld. CIT(A) in deleting addition of Rs.13,50,000/-on account of

the rent paid without observing the provisions of Rule 46A of the Income-tax Rules, 1962.

8.1 Before us, the Ld. DR submitted that the assessee claimed rent for property at Sainik farm which is a residential property, but undisputedly the property at Sunder nagar was used for director's residence and therefore in absence of business use of the property of Sainik farm, the rent paid was correctly disallowed by the Assessing Officer. He submitted that before the Ld. CIT(A) the assessee submitted that the property at 89, Sunder Nagar was under renovation and completion certificate of the said property came on 16/11/2010 and thus till then property at sanik Form was used for office purposes. According to the Ld. DR, the assessee claimed the fact of renovation and completion certificate of the property at sunder Nagar for the first time and the Ld. CIT(A) allowed this claim without providing opportunity to rebut the submission/evidences filed by the assessee, which is in violation of Rule 46A of the Income Tax Rules, 1962.

8.2 The Ld. counsel of the assessee, on the other hand, relied on the order of the Ld. CIT(A) and submitted that the Ld. CIT(A) has co-terminus power of the Assessing Officer and thus she is empowered to make enquiry on the issue in dispute and decide in accordance with law. According to him, there was no error in the order of the Ld. CIT(A) in deciding the issue on the basis of the documents made available by the assessee for first time before him and without providing any opportunity to the Assessing Officer of rebutting the same.

8.3 We have heard the rival submissions and perused the relevant material on record. The Assessing Officer examined the rent expenses paid along with rent agreement and found that the property 89, Sunder Nagar, New Delhi was corporate office of the assessee (which was also a residential property and has been occupied by the chairman and the other directors). In view of the observation, he rejected the contention of the assessee that property at "Sainik form" is a corporate office. According to him the property at "Sainik form" is a residential property , which has not been used for the purpose of the business and hence he disallowed the rental expenses Rs. 13.5 lakhs incurred for the property.

8.4 We find that the Ld. CIT(A) decided the issue based on the explanation of the assessee. Relevant finding of the Ld. CIT(A) is reproduced as under:

> *"8.3 The appellant has given an explanation that the properties were used for business purposes. The explanation is acceptable. The addition of Rs.13,50,000/- is deleted. The grounds of appeal are ruled in favour of appellant."*

8.5 We also find that before the Ld. CIT(A) the assessee submitted as under:

> *"During the Assessment Year assessee has paid Rent for the property situated at W-6/19, Western Avenue, Sainik Farms, New Delhi - 110062. The rent has been paid from the month of April 2010 to December 2010. The Ld. Assessing Officer has disallowed the expenses on account of Rent payments for the said property on the grounds that at any given time there cannot be two corporate offices, being the second property situated at 89, Sunder Nagar, New Delhi.*

In this regard it is respectfully submitted that property at 89 Sunder Nagar, was taken on rent and was being renovated as per the requirements of the Company. The completion certificate for the said property came on 16th of November; thereafter the assessee vacated the Office at Sainik Farm and shifted the corporate office to Sunder Nagar. The copy of Completion Certificate and other allied documents are being attached hereby to prove that the said property at Sunder Nagar was under renovation and therefore there is no question of Assessee having two corporate offices.

In the light of above submissions the disallowance of rent expenditure is totally uncalled for and may please be deleted."

8.6 Thus, it is evident that the Ld. CIT(A) has simply relied on the submission of the assessee even without verification of the evidence in support of such claim, much less providing the opportunity of any explanation to the Assessing Officer. We find that Hon'ble Delhi High Court in the case of CIT Vs Manish Buildwell Private Limited (245 CTR 397) has distinguished between the power of the Ld. CIT(A) in the capacity of a co-terminus power of the Assessing Officer and his appellate functions. The Hon'ble Delhi High Court has observed that in case of additional evidences filed, the Ld. CIT(A) should follow the procedure laid down in Rule 46A of the Income-tax Rules, 1962. The relevant finding of the Hon'ble High Court is reproduced as under:

" 21. *In our opinion, substantial questions of law do arise out of the order of the Tribunal in respect of its decision regarding the addition of Rs. 1,61,67,600 made under s. 68. We, accordingly, reframe the following substantial questions of law :*

"1. Whether on the facts and in the circumstances of the case and on a proper interpretation of r. 46A of the IT Rules, 1962, the Tribunal was right in law in taking a decision on the merits of the addition made under s. 68 without affording an opportunity to the AO of being heard as envisaged in sub-r. (3) of r. 46A ?

2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that since the CIT(A) possesses coterminous powers over the assessment apart from appellate powers, there was no violation of r. 46A committed by him ?"

22. *As we have with the consent of the learned counsel, heard them on merits, we proceed to decide the aforesaid substantial questions of law. 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 learned 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 of the IT Act.* ***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, as held by the Supreme Court in the case of CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC) 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 in the IT Rules, 1962 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. A seven-Judge Bench of the Supreme Court in Keshav Mills Co. Ltd. vs. CIT (1965) 56 ITR 365 (SC) had observed as under:*

> *"Proceedings taken for the recovery of tax under the provisions of the Act are naturally intended to be over without unnecessary delay, and so, it is the duty of the parties, both the Department and the assessee, to lead all their evidence at the stage when the matter is in charge of the ITO."*

23. *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, which is in consonance with the principle stated in the above judgment, 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. Rule 46A reads :*

> *"46A. Production of additional evidence before the Deputy Commissioner (Appeals) and Commissioner (Appeals).—(1) The appellant shall not be entitled to produce before the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances, namely :*
>
> > *(a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or*

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or

(c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or

(d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-r. (1) unless the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.

(3) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall not take into account any evidence produced under sub-r. (1) unless the Assessing Officer has been allowed a reasonable opportunity

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additinal evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty [whether on his own motion or on the request of the Assessing Officer under cl. (a) of sub-s. (1) of s. 251 or the imposition of penalty under s. 271."

We are highlighting these aspects only to press home the point that 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 suo motu 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.

24. *In the present case, the CIT(A) has observed that the additional evidence should be admitted because the assessee was prevented by adducing them before the AO. This observation takes care of cl. (c) of sub-r. (1) of r. 46A. The observation of the CIT(A) also takes care of sub-r. (2) under which he is required to record his reasons for admitting the additional evidence. Thus, the requirement of sub-rs. (1) and (2) of r. 46A have been complied with. However, sub-r. (3) which interdicts the CIT(A) from taking into account any evidence produced for the first time before him unless the AO has had a reasonable opportunity of examining the evidence and rebut the same, has not been complied with. There is nothing in the order of the CIT(A) to show that the AO was confronted with the confirmation letters received by the assessee from the customers who paid the amounts by cheques and asked for comments. Thus, the end result has been that additional evidence was admitted and accepted as genuine without the AO furnishing his comments and without verification. Since this is an indispensable requirement, we are of the view that the Tribunal ought to have restored the matter to the CIT(A) with the direction to him to comply with sub-r. (3) of r. 46A. In our opinion and with respect, the error committed by the Tribunal is that it proceeded to mix up the powers of the CIT(A) under sub- s. (4) of s. 250 with the powers vested in him under r. 46A. The Tribunal seems to have overlooked sub-r. (4) of r. 46A [sic-s. 250] which itself takes note of the distinction between the powers conferred by the CIT(A) under the statute while disposing of the assessee's appeal and the powers conferred upon him under r. 46A. The Tribunal erred in its interpretation of the provisions of r. 46A vis-à-vis s. 250(4). Its view that since in any case the CIT(A), by virtue of his coterminous powers over the assessment order, was empowered to call for any document or make any further enquiry as he thinks fit, there was no violation of r. 46A is erroneous. The Tribunal appears to have not appreciated the distinction between the two provisions. If the view of the Tribunal is accepted, it would make r. 46A otiose and it would open up the possibility of the assessees' contending that any additional evidence sought to be introduced by them before the CIT(A) cannot be subjected to the conditions prescribed in r. 46A because in any case the CIT(A) is vested with coterminous powers over the assessment orders or powers of independent enquiry under*

sub-s. (4) of s. 250. That is a consequence which cannot at all be countenanced.

25. *For the above reasons, we answer the substantial questions of law framed in para 21 above, in favour of the Revenue and against the assessee. The issue relating to the addition of Rs. 1,61,67,600 made under s. 68 of the Act is restored to the CIT(A) who shall comply with the requirements of r. 46A and take a fresh decision on the merits of the addition in accordance with law.*

(Emphasis supplied externally)

8.7 We note that in the instant case also the assessee made certain submissions that too without supporting any evidences. The Ld. CIT(A) has only relied on the submission that the property at Sunder Nagar was under renovation. She has not examined any evidence whether the property at "Sanik Farm" was utilized for the purpose of business of the assessee. Further, the Ld. CIT(A) even without enquiring into or examining correctness of the information submitted by the assessee, allowed the ground of the appeal of the assessee . We also note that the Ld. CIT(A) did not call for any remand report from the Assessing Officer on the said information submitted by the assessee. The situation in the present case is even worse than in the case of Manish build well private limited (supra) where the assessee filed the additional evidences. Thus, the action of the Ld. CIT(A) is in violation of the Rule 46A of the Income-tax Rules and principle of natural justice. Accordingly, we restore the issue in dispute to the Ld. CIT(A) for following the provisions of Rule 46A in respect of the submission/evidences of the assessee on the issue in dispute and

decide the same in accordance with law. The ground of the appeal is accordingly allowed for statistical purposes.

9. In ground No. 4 of the appeal, the Revenue has challenged the action of the Ld. CIT(A) in deleting the addition of Rs.29,35,247/- holding the expenditure for the purchase of new motors or equipments as revenue in nature.

9.1 The Assessing Officer made a list of expenses of Rs.40,32,249/- claimed under repair of plant and repair of the building. The said list has been reproduced by the Assessing Officer in para 6 of the assessment order. The Assessing Officer asked the assessee as why the said expenses may not be treated as capital expenditure. The assessee submitted that none of those items pertains to purchase of any fixed assets and same were for running of machines or repair and maintenance only. The Assessing Officer after analysing the expenses along with the bills observed that expenses amounting Rs.10,97,002/-incurred for 'Lexi nation', 'Molseive design', 'Eirich Terans' were in the nature of the revenue expenditure and the balance expenses incurred for purchase of equipments, motors and construction activity cannot be equated with repair of routine nature. He held the expenses of Rs.29,35,247/-in the nature of the capital expenditure and disallowed the same.

9.2 Before the Ld. CIT(A) the assessee claimed that total machinery installed as on 30/06/1995 was of Rs.2,10,29,814/- and thus expenditure on the machinery during the year under consideration was not a big expenditure and in the nature of the

spare parts, which has not improved capacity of the plant and machinery of the assessee. According to the assessee, expenses were not for purchase of new machinery but were for replacing part of the existing machines. The Ld. CIT(A) accepted the contention of the assessee and decided the issue in dispute observing as under:

> *"9.3 It is apparent from the bills that the expenditure is on account of repair to existing plant and machinery. There is no expenditure which can be termed as purchase of an entirely new machine of enduring and lasting nature. The expenditure is allowed as a revenue expenditure. The addition of Rs.29,35,247/- is deleted. The ground of appeal is ruled in favour of the appellant.*

9.3 Before us, the Ld. DR submitted that no evidence has been submitted before the Ld. CIT(A) that the item of expenditure on purchase of the machinery was in the nature of the spare parts for replacement of the existing machine and not added new capacity to the plant and machinery. According to the him, the Ld. CIT(A) has decided the issue without verifying the submissions of the assessee alongwith evidences and thus issue in dispute might be restored back to the file of the Assessing Officer.

9.4 The Ld. counsel, on the other hand, relied on the order of the Ld. CIT(A) and submitted that the expenses incurred are clearly in the nature of the revenue expenditure. He submitted that the Assessing Officer has held expenditure of Rs.4,97,886/- for purchase of the sand as capital expenditure, whereas the sand

was used in various repair works for installing motors etc. as replacement of existing machines.

9.5 We have heard the arrival submissions and perused the relevant material on record. The issue in dispute before us is in respect of the expenditure of Rs.29,35,247/- whether the same is replacement of the old parts, without enhancing the capacity of the machines. The identical issue has been decided in the case of CIT versus Sarvana spinning Mills Private Limited (2007) 7 SCC 298v by the Hon'ble Supreme Court. In that case it has been held by the Hon'ble Supreme Court that "each machine in a segment of a textile mill has an independent role to play in the mill and the output of each division is different from the other'. Dealing with the ring frame in a textile mill, the Hon'ble Supreme Court held that it is independent and separate machine. Further, the Hon'ble court held that any machinery in textile mill is a part of integrated process of manufacturing of yarn and has an independent role to play in the mill and integrally connected to the other machines in the mill for production of the final product, however this interconnection does not take away the independent identity and distinct function of each machine. The Hon'ble Supreme Court accordingly held that each machine in a textile mill should be treated independently as such and not as a mere part of an entire composite machinery of the spinning mill. On the issue of the current repairs, the Hon'ble Supreme Court held that in order to determine whether a particular expenditure amounts to "current repairs", the test is "whether the expenditure

is incurred to "preserve and maintain" an already existing asset and not to bring in new asset into existence or obtain a new advantage. The Hon'ble Supreme Court observed that entire textile mill machinery cannot be regarded as a single asset, replacement of parts of which can be considered to be of mere purpose of preserving and maintaining this asset. All machines put together constitute the production process and each separate machine is an independent entity and replacement of such an old machine with a new machine would construe the bringing into existence of a new asset in place of the old one and not repair of the old and existing machine. The Hon'ble Court observed that the new asset in a textile mill is not for temporary use, rather it gives the purchasor of an enduring benefit of better and more efficient production over a period of time and this replacement of the asset cannot be amount to current repairs.

9.6 In our opinion, in the instant case also, the issue in dispute need to be decided in view of the above finding of the Hon'ble Supreme Court in the case of Sarvana Spinning Mills Private Limited (supra). Since the Ld. CIT(A) has decided the issue in dispute without verifying the documentary evidences, we feel it appropriate to restore this issue to the file of the Ld. CIT(A) for deciding afresh in accordance with the law. The ground No. 4 of the appeal of the Revenue is accordingly allowed for statistical purposes.

10. The ground No.5 of the appeal is related to addition of Rs.28,46,169/ -made on ad-hoc basis by the Assessing Officer

being 20% of the total reimbursement expenditure of Rs.1,42,30,890/-. This addition has been deleted by the ld. CIT(A).

10.1 From the finding of the facts recorded by the lower authorities and submission of the assessee before the Ld. CIT(A), we find that the reimbursement expenses have been paid to M/s RPS Vikas casting Private Limited, which include amount of Rs.1,06,39,942/-for diesel, Rs.34,87,793/- for electricity and Rs.1,03,155/- for consultancy and minor repair. The majority of the expenses pertains to diesel expenses. The issue of diesel expenses and debit note raised by M/s RPS Vikas Casting Private Limited has been discussed in the ground No. 2 of the appeal, which has been restored to the file of the Ld. CIT(A) for deciding afresh. On the issue of the electricity expenses also the assessee submitted additional documents, which is evident from the submission of the assessee reproduced by the Ld. CIT(A) in the impugned order. The relevant part of the submission of the assessee is reproduced as under:

> *"It is respectfully submitted that following facts require consideration so far as the reimbursement on account of Electricity used by the Assessee from RPS Vikas is concerned-*
>
> - *There was a separate meter installed for the Electricity consumed by Assessee from the feeder of RPS Vikas.*
> - *A register was maintained at RPS Vikas for calculation of consumption of electricity by assessee.*
> - *The rate of electricity which has been paid to RPS Vikas is same as RPS Vikas pays to Utility Company of Haryana.*
> - *The electricity has been used from RPS feeder only for the period April to November From December assessee has its own sanctioned load enhanced, and thereafter it has not used the electricity from RPS Vikas.*

- *On the combined analysis of electricity consumption it can be seen that the electricity consumption is almost consistent.*

In support of the above factual submission we would like to invite attention of Your Coodself to the following documents –

- *Chart showing month wise consumption of Electricityby Assessee.*
- *Copy of Debit Note for Electricity Expenses*
- *Calculation of Electricity Expenses charged by RPS Vikas*
- *Copy of Register Maintained for meter reading*

It is being humbly submitted that above documents will make it clear that, there is no reason to make any ad hoc disallowance on mere surmises and conjectures of the Ld. Assessing Officer. There is proper control and accounting over every unit of power consumed. In the light of above submissions addition on this ground may please be deleted."

The balance of Rs 1.03.155/-is has been incurred on Consultancy fee of Rs 92016 and minor repairs of Rs 11139. There is no justification of making adhoc disallowance on the same."

10.2 In our opinion, the action of the Ld. CIT(A) in allowing the ground of the appeal on the basis of these documents, without affording an opportunity of being heard to the Assessing Officer, is in violation of the Rule 46A of the Rules. The issue of violation of the Rule 46A of the Rules has already been discussed by us in preceding paras. Thus, in view of the aforesaid, we feel it appropriate to restore this issue also to the file of the Ld. CIT(A) for deciding a fresh in accordance with law after affording opportunity of being heard to both the parties. The ground No. 5 of the appeal is allowed for statistical purposes.

11. The ground No. 6 of the appeal related to deleting the addition of Rs.10,69,335/-out of diesel expenses by the Ld. CIT(A)

which was claimed by the assessee as double disallowance. Since the issue of addition of Rs.10,69,335/- on account of undervaluation of stock of diesel has already been restored to the file of the Ld. CIT(A) for deciding a fresh while deciding the ground No. 2 of the appeal, accordingly we restore this issue also to the file of the Ld. CIT(A) for deciding a fresh after affording opportunity of being heard to both the parties. The ground of the appeal is allowed for statistical purposes.

12. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order is pronounced in the open court on 16th January, 2019.

Sd/-	Sd/-
[AMIT SHUKLA]	**[O.P. KANT]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 16th January, 2019.
RK/-[d.t.d.s]
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi