

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "E", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No. 180/DEL/2016		
	A.Y. : 2010-11		
ITO, WARD 18(1), NEW DELHI	VS.	NET HEALTCARE SERVCIES (P) LTD. 572, 2 ND FLOOR, GANDHI CLOTH MARKET, CHANDNI CHOWK, DELHI (PAN: AACCN6291P)	
(ASSESSEE)		(RESPONDENT)	

Revenue by : Ms. Rinku Singh, Sr. Dr.
Assessee by : None

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 30.10.2015 of the Ld. CIT(A)-42, New Delhi relevant to assessment year 2010-11.

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

i) Whether facts and circumstances of the case and in law the Ld. CIT(A) is justified in deleting addition of Rs. 20

lakhs and Rs. 2.81 crore by admitting additional evidence under rule 46A of Income Tax Rule, 1962 (the Rule) even when the assessee was not prevented by sufficient cause from producing books of accounts and evidence with regards to identity, genuineness and creditworthiness of investor of share application money?

ii) Whether in facts and circumstances of the case and in law Ld CIT(A) is justified in admitting additional evidence under Rule 46A of the Rule only on the basis of self serving and unproven claims by the assessee and ignoring ratio decidendi as laid down on the similar issue of non cooperation by the assessee during assessment proceedings by Hon'ble Delhi High Court in case of CIT v Gold Leaf Capital Corporation Ltd (2013) 353 ITR 163 (Delhi) and Hon'ble Supreme Court in the case of Salil Dutta v T.M and M.C. Private Ltd 1993-002 SCC-185-SC?

iii) Whether in facts and circumstances of the case and in law, the Ld CIT(A) is justified in deleting addition of Rs. 2.81 crore on account of unexplained share application money without considering his own finding that the assessee did not carryout of any business activity and had no source of income i.e. the assessee had no worth as well as following findings as evident from remand report dated 09.09.2015:

- no evidence of creditworthiness of investors investing Rs. 2.95 crore as share application money was filed;

- even audit report of investing companies (total investment of Rs. 95.66 lakhs) was not filed; and
 - Copies of bank A/c of investors indicated deposit of cash or cheque immediately before investment in share application money?
4. Whether in facts and circumstances of the case and in law, the Ld CIT(A) is justified in deleting addition of Rs. 2.81 crore u/s 68 of the Act by wrongly quoting the AO that the assessee had filed copies of audit reports, Board's resolutions and affidavit affirmed by the directors of the 15 investor companies during remand proceedings?
 5. Whether in facts and circumstances of the case and in law Ld. CIT (A) is justified in deleting addition of RS. 2.81 crore on account of unexplained share application money without making further enquiry as directed by Hon'ble Delhi High Court in case of CIT v Jansampark Advertising and Marketing P. Ltd (2015) 375 ITR 373 (Del) and without analyzing copies of bank account and document as provided by the AO alongwith remand report?
 6. Whether in facts and circumstances of the case and in law the Ld CIT(A) is justified in deleting addition of Rs. 2.81 crore on account of unexplained share application money by holding that creditworthiness was proved by mere production of details of Income Tax Return details or issues of cheques or by furnishing copy of bank account and ignoring ratio

decidendi laid down by Hon'ble Delhi High Court on the issue in the cases of CIT v N.R. Portfolio Pvt. Ltd (2014) 2 ITR-OL-68, CIT v Nipun Builders and Developers P. Ltd (2013) 350 ITR 407, CIT v Navodaya Castles Pvt. Ltd (2014) 367 ITR 306?

7. Whether in facts and circumstances of the case and in law, the Ld CIT(A) is justified in deleting addition of Income of Rs. 20 lakhs as estimated by the AO u/s 144 by taking into account facts and circumstanced of the case and due to non-production of the books of accounts by the assessee?
8. That the order of the CIT(A) is erroneous and is not tenable on facts and in law.
9. That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.
10. That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

3. The brief facts of the case are that the assessee filed the return of income on 01.04.2011 at Rs. NIL and it was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as "Act") and later picked up for scrutiny by issue of notice u/s 143(2) of the Act on 28.09.2011, which was claimed by the AO to have been

served upon assessee in person. On various subsequent dates, notices were issued but the assessee did not comply with. A questionnaire dated 04.04.2012 was then issued for hearing on 24.04.2012, but was not complied with. In response to the notice dated 20.12.2012 scheduling the hearing for 28.12.2012, the AR of the assessee appeared and filed a letter on 24.12.2012, whereby the new address of the assessee company and its new management was filed. It was also informed that the old management had sold of shares of the company to the new management. Subsequently, a detailed questionnaire was issued along with a notice u/s 143(2) of the Act on 26.12.2012, which was again not complied with. Under the circumstances, the AO issued a final show cause notice on 27.02.2013, in which the assessee was informed that any further non-compliance will lead to best judgement assessment. The AO also had informed that in such a case, the share application money of Rs. 2.95 crore would be deemed as income u/s 68 of the Act and the business income of the assessee will be assessed at Rs. 20 lakh. This notice was received back on 04.03.2013 with the remark "No such firm at such address". Thereafter, the notice was served by affixture by the Inspector. However, no further compliance was made. Under the circumstances, the AO treated the share application money of Rs. 2.95 crores received during the year as

unexplained cash credit u/s 68 of the Act vide his order dated 11.3.2013 passed u/s. 144 of the Income Tax Act, 1961. Secondly, in the absence of any books of account, the business income was estimated at Rs. 20 lakh and accordingly the income of the assessee was assessed at Rs. 3,15,00,000/-. Against the assessment order, the assessee filed the appeal before the Ld. CIT(A) who vide his impugned order dated 30.1.2015 has partly allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A)-42, New Delhi the Revenue is in appeal before the Tribunal.

4. Ld. CIT(DR) relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal.

5. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor its authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, we are deciding the present appeal *ex parte qua assessee*, after hearing the Ld. DR and perusing the records.

6.

add ld. counsel for not granting opportunity of cross examination by the AO and CIT(A) also add andoman nikobar decision and delete the same.

We have heard the Ld. DR and perused the records, especially the impugned order. With regard to ground no. 1 & 2 are concerned, relating to admission of additional evidence under Rule 46A of the Income Tax Rules, 1962 are concerned, we find that assessee was asked to file evidence in support of appointments/representation of Mr. Ashok Khandewal as counsel for the assessee. It is noted that assessee filed before the Ld. CIT(A) a copy of the letter dated 21.12.2012, which was received by the ITO W. 13(2) on 24.12.2013. In the said letter, the said counsel has mentioned that the assessee company had sold its shares to the persons mentioned in the share purchase agreement (new management) and informed the current address of the company and of its Directors. Thus, the fact that Mr. Ashok Khandewal was the assessee's authorised representative stands duly proved. In view of the above, as the said counsel failed to represent before the AO in response to various notices, which were provided to him by the assessee shows that the assessee was prevented by sufficient cause from producing the evidence, which was called upon to be produced before the AO. We further find that the AO has objected to admit the additional evidence on the ground that adequate opportunities were given to the assessee during the assessment proceedings and, hence, the assessee cannot take plea that he was

prevented by sufficient cause for filing the necessary evidence. However, it is evident that the AO has not examined the plea of the assessee that the non-compliance of the assessee was due to professional negligence on the part of its counsel as alleged by its Director in the affidavit affirmed, which was enclosed along with additional evidence. Keeping in view the above, as the said counsel failed to provide the correct new address of the company subsequent upon its acquisition by the new management as a result of share purchase agreement, a copy of which was placed before the AO, evidently, the assessee could not have complied with the notices issued at the old address. This is more so relevant as at no stage the new management would have come to know about the issuance of notice u/s 143(2) of the Act fixing the hearing, which was dispatched at the old address as per record. It is evident that the first notice at the given address was dispatched on 20.12.2012, which was handed over to the counsel of the appellant company, who was looking after the assessee's case in earlier years assuming that he was well versed with the matters. The said counsel thereafter did not appear before the AO, nor informed the assessee about developments in assessment proceedings. Therefore, the Directors of the company were prevented by sufficient cause from producing the evidence. Under the circumstances, Ld. CIT(A) has rightly held that it is a fit case to admit additional evidence under Rule 46A(I)(b) & (c) of the I.T. Rules, 1962. It is noted that AO has challenged such admission in the circumstances mentioned in clause(d), however, the assessee has not made the request under clause(d). Therefore, the

objections of the AO in this regard are misplaced and are over-ruled. Accordingly, the additional evidences were rightly admitted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issues in dispute and reject the grounds raised by the Revenue.

6.1 With regard to ground no. 3, 4, 5 & 6 relating to deletion of addition of Rs.2.81 crores on account of unexplained share application money are concerned, we find that AO has examined the additional evidences during the remand proceedings and, hence, verified that the assessee had filed a copy of ITR, Audit Report, bank statement, share application, Board's Resolution, Stamp Duty as per ROC record and affidavit affirmed by the Directors of the 15 investor companies, who had invested an aggregate amount of Rs. 2,95,25,000/- as share application money in the assessee company. The AO issued notice u/s 133(6), in which all the share applicants have confirmed having been given the cheques to the appellant and have further submitted a copy of ITR, Balance Sheet and the bank statement. The AO also deputed an Inspector for field enquiry, who has verified the documents in support of identity, genuineness and creditworthiness. The AO has also verified that the said share applicants have duly recorded such investments in their balance sheet also. Thus, the AO has confirmed that other than 3 persons, namely, M/s Ravi Sales Corporation, Shyam Lai and M/s Hind Pharma, in all other cases, there was no cash deposit in the bank account prior to

issuing the cheque as share application with the assessee company. It is also noted that in case of the above-referred 3 share applicants, namely, M/s Ravi Sales Corporation, Shyam Lai and M/s Hind Pharma, there were cash deposits just before issue of cheques to the appellant company. No satisfactory explanation with regard source of such cash deposit was given before the AO nor before me. The AO had issued summons to these 3 parties in the remand proceedings, who failed to comply before the AO. The assessee could not produce these parties nor could furnish any cogent reason for their non-appearance. Under the circumstances, genuineness of cash credits in respect of these three parties remains unexplained. In view of this, cash credits aggregating to Rs. 14 lakh received from these 3 parties are held as unexplained cash credit u/s 68. However, as in respect of other 12 parties, there is no adverse evidence on record to suspect their identity, genuineness or creditworthiness, and the AO has verified the authenticity of supporting documents filed by the appellant in this regard, the balance share application money received from such parties is held as explained. Accordingly, the assessee got part-relief by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Revenue.

6.2 Apropos ground no. 7 is concerned, relating to deletion of addition of Rs. 20 lacs, we find that AO was compelled to make some kind of estimation with regard addition to income in the absence of any

compliance made by the assessee before the AO during the assessment proceedings. As discussed above, we have upheld the action of the Ld. CIT(A) for allowing the admission of additional evidences on the grounds that the assessee was prevented by sufficient cause to produce evidences called for by the AO during the assessment proceeding on account of professional negligence by its AR, Mr. Ashok Khandewal, CA, who was handling the tax matters of appellant prior to its take-over by the new management. It is also seen that the AO had, vide notice dated 08.03.2013, required the assessee to produce books of account. The appellant has pleaded that even though the books of accounts were not produced before the AO due to the above mentioned reason, yet the audited financial accounts were enclosed with the return of income and are available on the assessment record. It was submitted that the assessee was carrying out no business during the current year and also in the immediately preceding year and its return for the immediately preceding year was accepted by the AO as such. Since the AO has not brought out any evidence on record to suggest that the assessee was carrying out any business activity during the year from whom, it had earned income and has not raised any query on the audited financial accounts filed by the appellant along with the return of income, the action of the AO of estimating the income is held to be baseless and arbitrary without support of any evidence gathered in this regard or based on any material available on record. In the one-line order on this issue, the AO has not discussed the basis for estimating the business income of Rs. 20

lakh. Therefore, such addition was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

6.3 Ground no. 8, 9, & 10 are general in nature, hence, need not be adjudicated.

7. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 05/02/2019.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Sd/-

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

Date 05/02/2019

SRBHATNAGAR

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches