

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.7194/Del/2019
Stay Application No.87/Del/2019
Assessment Year: 2014-15**

**M/s Tandon Chemicals P. Ltd.
2513, Hudson Lane,
Kingsway Camp, New Delhi.
PAN: AABCT7042B**

vs

**Income-tax Officer,
Ward-25(1) , New Delhi.**

Appellant

Respondent

Assessee by

Shri Hitesh Ambani, CA

Ms Srishti Gupta, CA

Revenue by

Shri N.K. Bansal, Sr. DR

Date of Hearing

19.02.2019

Date of Pronouncement

27.02.2019

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 04.09.2018 in Appeal No.822/16-17 for the Assessment Year 2014-15 passed by the learned Commissioner of Income-tax (Appeals)-IX, New Delhi, {hereinafter referred to as "the CIT(A)"}, assessee preferred this appeal and pending disposal of the appeal, the assessee seeks stay of the demand till the disposal of the appeal.

2. Brief facts of the case are that the assessee company is engaged

in the business of manufacturing and trading of chemicals. For the AY 2014-15, they have filed their return of income on 30.09.2014 declaring the total income of Rs.1,50,400/- When the ld. AO sought information on the aspects of the credit balance of Rs.5,12,765/- outstanding as on 31.3.2014 in respect of M/s JMD Enterprises and the documentary evidence in respect of the veracity of the expenses incurred, the assessee failed to produce the same and, therefore, the AO made the addition of Rs.5,12,765/- on account of credit balance etc. as on 31.3.2014 and a sum of Rs.91,34,370/- by disallowing 20% of the expenses.

3. When the assessee preferred appeal before the learned CIT(A), they have filed the application under Rule 46A stating that the reason for non submission of books of accounts before the ld. AO was due to the mixing of bags with the old years, those books of accounts cannot be produced. However, ld. CIT(A) rejected the explanation offered by the assessee for non production of the books of accounts stating that,

- i. as a matter of practice, one will obviously never tend to mix up the records particularly in view of the fact that the assessment proceedings are under process;
- ii. to sort out respective bags, amongst other bags, it was not a tedious task and could have been done during the proceedings itself;
- iii. if it is a case of genuine hardship, the assessee would have stated the facts during the assessment proceedings and would have raised the issue before the leaned AO without waiting till the filing of the appeal; and
- iv. lastly, even considering that the assessee has not raised the issue before the AO, it could have raised the point of additional evidence while filing Form No. 35 and the assessee specifically

stating “No” against column no.12 of the said form wherein the details of additional evidence were to be given.

3. Consequently, learned CIT(A) upheld the assessment order basing on the record without considering the additional evidence sought to be produced.

4. Hence, the assessee filed this appeal stating that the learned CIT(A) drew the inference that the assessee had been consistently non compliant in presenting its case and the application under Rule 46A of the Income-tax Rules, 1963 (“Rule”) was a mere after thought and the assessee did not have any reason beyond their control to justify such an application. Assessee also sought stay of recovery proceedings initiated against the assessee till the disposal of the appeal.

5. It is the submission of the learned AR that the assessee did not stand to gain by withholding the evidence in their custody and it is not in the interest of the assessee to suffer the assessment order with huge additions and to face consequential appellate proceedings. It is submitted on behalf of the assessee that unless compelled by the genuine and strong reasons, nobody would suffer hardship, which is the case of the assessee in this case. The assessee further submitted that in spite of dismissing the application under Rule 46A on technical grounds, ld. CIT(A) should have appreciated the case on merits after affording an opportunity to the assessee to substantiate their case. For these reasons, learned AR prayed that the impugned order is liable to be set aside for violation of the principles of natural justice.

6. Per contra, ld. DR submitted that sufficient opportunity was afforded to the assessee by the ld. AO during the assessment

proceedings and the assessment order speaks the said fact. He submits that since the assessee failed to avail the opportunity granted to them, it is not open to them now. Learned CIT(A) also rejected the plea of the additional evidence at first appellate stage because none of the conditions prescribed under Rule 46A are not fulfilled in the present case. He, therefore, submits that the assessee is guilty of non cooperation with the assessment proceedings and, therefore, is entitled to any relief in this appeal.

7. We have gone through the record. It could be seen from the assessment records that though the notice u/s 143(2) was dated 18.9.2015, during the assessment proceedings the assessee was required to produce the evidences and the books of accounts on 19.12.2016, the matter was adjourned to 21.12.2016 and the order was pronounced on 23.12.2016. It is, therefore, clear that after requiring the record, the assessee was afforded hardly 4 days time and the reason recorded by the learned AO is that the case is time barring. All the endeavor of the authorities right from the ld. AO is to assess the proper tax liability of the assessee and such an exercise has to be done after affording a reasonable opportunity to the assessee to produce the record and to substantiate their case. It seems learned CIT(A) lost sight of the fact that only 4 days left at the disposal of the assessee after the first requirement of the evidences. The reasons recorded by the learned CIT(A) for refusing to entertain application under Rule 46A are general in nature to the effect that no business practice would allow the assessee's to mix up the record or that the finding out of the record does not take much time or that the assessee could have produced the record during the assessment proceedings themselves and

the assessee did not mention the details of the additional evidence in Form No.35. But above all, the fact remains that leaving only 4 days at the disposal of the assessee and refusing to entertain the additional evidence at the first appellate stage coupled with the fact that the assessee does not stand to gain by withholding the evidence available with them, does not inspire confidence in our mind to believe that a reasonable opportunity is afforded to the assessee put forth their case.

8. As rightly submitted by the learned AR, the assessee does not stand to gain by withholding the books of account if they are available with them. On the other hand, such an act has put them in a disadvantageous position and driven them to the appellate proceedings. When this Bench required the assessee to produce books of accounts to have a glance at the same, in one day the assessee produced the same before us. Since the matter requires cross verification at the level of the learned AO, we do not propose to deal with the books of account at the Tribunal level and as rightly objected by the learned DR, such a course is not just and convenient. Learned AO is well equipped to carry out such an exercise. We, therefore, while not inclined to look into the books of accounts, deem it just and proper to allow the request for additional evidence and to remand the matter to the file of the learned AO to take a fresh look after appreciating the books of accounts. With this view of the matter, we set aside the impugned order and remand the matter to the file of the ld. AO with a direction to frame assessment order afresh after going through the books and after affording an opportunity to the assessee to substantiate their case.

9. In view of our above finding, Stay Application filed by the

assessee becomes infructuous. The same is dismissed accordingly,

10. In the result, whereas appeal of the assessee is allowed for statistical purposes, the Stay Application is dismissed.

Order pronounced in the Open Court on 27th February, 2019.

Sd/-

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 27th February, 2019.

VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Draft dictated on | 22.02.2019 |
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| Draft discussed/approved by Second Member. | |
| Approved Draft comes to the Sr.PS/PS | |
| Kept for pronouncement on | |
| Date of uploading order on the website | |
| File sent to the Bench Clerk | |
| Date on which file goes to the AR | |
| Date on which file goes to the Head Clerk. | |
| Date of dispatch of Order. | |