

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

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER

**ITA No. 6741/Del/2018
Assessment Year: 2010-11**

Mohd. Imran Saurav Gupta & Associates, C-12/114, 1 st Floor, D.B. Plaza, Raj Nagar, Ghaziabad, Uttar Pradesh. PAN No. AASPI9611B	vs	ITO Ward 2(3) Ghaziabad.
APPELLANT		RESPONDENT

Assessee by	Sh. Saubhagya Aggarwal, Adv. Sh. Saurav Gupta, Adv.
Revenue by	Shri S.L. Anuragi, Sr. DR

Date of Hearing	10.04.2019
Date of Pronouncement	25.04.2019

ORDER

This is an appeal filed by the assessee against the order of the Ld. CIT(Appeals) Ghaziabad dated 25.07.2018 for AY 2010-11.

2. The brief facts of the case are that the AO observed that the Mandi Samiti vide its letter dated 21.12.2017 has reported that turnover of the assessee in the F.Y. 2009-10 was Rs. 1,83,81,668/-. As per provisions of section 44AB of Income Tax Act, 1961 assessee was liable to get its accounts audited and required to maintain books of accounts but neither the assessee

got the accounts audited nor maintained books of accounts. In view of these facts, the show cause was issued on 22.12.2017 to the assessee vide addition of Rs. 14,70,533/- should not be made to the income by taking net profit rate of 8% on turnover of Rs. 1,83,81,668/-. Since the assessee failed to give any reply, therefore, addition of Rs. 14,70,533/- was made to the income of the assessee.

3. On appeal, the CIT(A) confirmed the action of the AO.

4. Before us, it was submitted that in the AY 2009-10 on similar facts the Tribunal had restored the matter back to the file of CIT(A) vide its order dated 07.11.2006 for fresh adjudication of the appeal of the assessee. It was the prayer of the Ld. AR that the matter should be restored back to the file of the CIT(A) to adjudicate the appeal of the assessee afresh.

5. The DR, on the other hand, vehemently objected to the above submission of the AR of the assessee.

6. I from perusal of the order of the CIT(A) find that the assessee filed before the CIT(A) application under rule 46A dated 26.08.2018 requiring the CIT(A) to admit the following as additional evidences:

1. *“Examination of facts revealed that appellant could not substantiate why these evidences were not placed before the AO and what is their relevance to the grounds of appeal by bringing out clear facts. It is seen that documents such as affidavit, copy of account etc. was available with appellant during the assessment*

- proceedings. Thus, there is no reason as to why the details were not furnished before AO.*
- 2. In respect of admission of fresh evidences, it is true that an appellate authority can receive additional evidence from either side for a fair decision on all relevant materials, but the normal expectation is that all the evidence should be available even at the first stage. It is for this reason that conditions are prescribed for admission of evidence in appeal stage. Rule 46A lists the circumstances, where evidence could be filed before the Assessing Officer due to non-availability of sufficient opportunity or otherwise prevented by sufficient cause, so that such cause must be indicated, while filing fresh evidence. The rule further provides that the first appellate authority should record reasons for admitting such evidence at appeal stage and gives an opportunity for the Assessing Officer to meet such additional evidence. The need for following this procedure was pointed out in *Haji Lal Mohd. Biri Works vs. CIT* [2005] 275 ITR 496 (All.). This procedure is required to be rigidly followed by the first appellate authority.*
 - 3. Where additional evidence is sought to be relied upon, the assessee is expected under Rule 46A to give explanation as to why it could not be filed before the Assessing Officer. The usual reason is normally that the Assessing Officer had not given the assessee an opportunity before drawing his final conclusion. But where no reason at all is given or explanation is not backed by facts on record, the rule may well be invoked and such additional evidence should not be accepted as was pointed out in *CIT vs. Ranjit Kumar Choudhary* [2007] 288 ITR 179 (Gauhati).*
 - 4. In the following cases it has been held that the mere fact that the evidence sought to be produced is vital and important does not provide a substantial cause to allow its admission at the appellate stage, especially when the evidence was available to the party at the initial stage and had not been produced by him without any sufficient cause. Reliance is placed on the judgments *CIT vs. Jaipur Udyog Ltd. (Raj)* 227 ITR 345, *Velji Deoraj & Co. vs. CIT**

(Bom.) 68 ITR 708, Jyotsna Suri vs. DCIT (ITAT, Del) 61 ITD 139, A.K. Babu Khan vs. CIT (AP) 102 ITR 757, DCIT vs. Vira Construction Co. (ITAT, Mum TM) 61 ITD 33, Ram Prasad Sharma vs. CIT (All) 119 ITR 867.”

7. The CIT(A) did not accept the evidence filed before him on the ground that the assessee failed to explain why these documents and evidences were not filed before the AO.

8. In the above background of the case, I am of the considered opinion that in order to render substantial justice to the assessee the additional evidence filed before CIT(A) should be looked into by the CIT(A) and the appeal of the assessee be re-adjudicated afresh. I, therefore, set aside the order of the CIT(A) and restore the matter back to the file of CIT(A) to adjudicate the appeal of the assessee afresh as per law after allowing reasonable and proper opportunity of hearing to the assessee. Thus, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 25/04/2019

Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER

Dated: 25.04.2019

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	24/04/2019
Date on which the typed draft is placed before the dictating Member	24/04/19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	25.4.19
Date on which the fair order comes back to the Sr. PS/PS	25.4.19
Date on which the final order is uploaded on the website of ITAT	25.4.19
Date on which the file goes to the Bench Clerk	25.4.19
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	