

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

**BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER  
AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.4580/Del/2015  
Assessment Year: 2009-10

DCIT Circle – II, Moradabad	Vs	M/s. Rohilkhand Chemicals & Protein (P) Ltd. Rampur Road, Moradabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Smt. Rashmita Jha, Sr. DR
Respondent by	None

Date of hearing:	20/03/2019
Date of Pronouncement:	07/05/2019

**ORDER**

**PER R.K. PANDA, AM:**

1. This appeal filed by the revenue is directed against the order dated 15.04.2015 of the CIT(A), Moradabad relating to A. Y. 2009-10.
2. Despite service of notice none appeared on behalf of the assessee at the time of hearing. It was further seen from the order

sheet entries that during the previous hearings also nobody was appearing before the Tribunal. We, therefore, deem it proper to decide the appeal on the basis of material available on record and after hearing the Ld. DR.

3. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 30.03.2010 declaring income of 'Nil'. The case of the assessee was reopened u/s 147 by issuing notice u/s 148. The reasons for reopening was that the assessee has credited an amount of Rs.49,80,000/- in its books as share premium during the Financial Year 2008-09. The assessee has received share premium of Rs.2490/-per share of face value of Rs.10/-and there is nothing on record to justify and satisfactorily explain the nature of its credit. In response to notice u/s148 it was submitted that the original return filed may be treated as return filed in response to notice u/s 148.

3.1 During the course of assessment proceedings despite opportunities granted on various occasions there was no proper compliance. Since the assessee failed to discharge the onus cast on it by furnishing the requisite details as called for, the Assessing Officer made addition of Rs.49,80,000/- as unexplained money credited in the books of accounts. The Assessing Officer further made addition of Rs.17,78,000/- being the cash deposit made by the assessee in the bank account for which no documentary evidence was furnished. Thus, the

Assessing Officer determined the total income of the assessee at Rs.67,58,000/-.

4. Before CIT(A) the assessee apart from challenging the addition on merit challenged the validity of the reassessment proceedings on the ground that the Assessing Officer has proceeded to complete the assessment without disposing of the objection of the assessee company.

5. Based on the arguments advanced by the assessee the Ld. CIT (A) held that notice u/s. 148 of the IT Act is invalid since the Assessing Officer has not disposed of the objections raised by the assessee. The relevant observations of the CIT(A) at page 5 and 6 of his order read as under :-

*“I have carefully considered the issue, grounds of appeal and detailed written submissions made by the AR for the appellant. Copy of reasons for reopening of the case as filed by the appellant indicate that the AO took action u/s 148 on the basis of a return filed on 10.11.2008 by the appellant with the Registrar Of Companies under the Companies Act, 1956 on 10.11.2008. In this, the date of allotment of share was mentioned as 20.03.2008. The claim of the appellant is that the information pertained to the financial year 2007-08.. The fact was also brought by the appellant before the AO during the course of assessment proceedings vide its reply dated 4.3.2015. It is seen that the AO has referred to this letter but has not disposed of the objection raised by the appellant. The AR in support of the submissions placed reliance on the judicial pronouncement, viz. Supreme Court’s decision in the case of GKN Driveshafts (India) Ltd. v. Income-tax Officer [2002] 125Taxman 963 (SC),. Torrent Power SEC Ltd. v. Assistant Commissioner of Income-tax [2014] 45 Taxman.com 443 (Gujrat)and Bombay High Court in the case of Pransukhlal Bros. v. Income-tax Officer-16(3)(1) [2015] 54 taxman.com 327 (Bombay). The facts that emerge from the reply/*

*explanation and copy of return filed with the Registrar of companies make it clear that the appellant had not issued shares during the financial year 2008-09 relevant to the AY under appeal. There remains no case to issue notice u/s 148 to verify the facts which were not longer in existence in the year under appeal. It is also seen that the Assessing officer has only referred to the letter of DI (I & CI), but has not made any independent enquiry to verify the correctness of information. The case laws quoted by the AR for the appellant make it clear that the AO was duty bound to first dispose of the objection raised by the appellant and this has not been done by the AO. In the totality of the circumstances and facts of the case, the issuance of notice u/s 148 is not maintainable. As such the notice issued u/s 148 of the Act, is cancelled. The assessment as made by the AO stands annulled.*

*Now coming to the merits of the case, it is noticed that the AO made two disallowances as per his findings mentioned in para 3(i) and 3(ii) of the assessment order, amounting to Rs. 49,80,000/ and Rs. 17,78,000/respectively. The first addition of Rs. 49,80,000/was made by the AO on account of issuance of shares during the year under appeal which as per return filed with the Registrar of companies falls in the financial year 2007-08 relevant to the AY 08-09. As such this addition is not sustainable. The 2<sup>nd</sup> addition made by the AO is of Rs. 17,78,000/. This addition has been made by the AO on the point that the assessee failed to explain transactions with documentary evidence. Perusal of para 3 of the AR's reply/ explanation make it clear that all entries were duly mentioned in the respective bank account. The Assessing officer has not brought on record any material evidence to justify his observations and show that entries in the bank account were not genuine. As such the addition is not sustainable. The appeal is allowed."*

6. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal by raising the following grounds of appeal :-

1. *The Ld. Pr. Commissioner of Income Tax (Appeal), Moradabad has erred in law and on the facts of the case in cancelling the notice U/s 148 and*

*annulling the assessment ignoring the fact that the Assessing Officer had issued notice U/s 148 after recording valid reasons on the basis of information received from R.O.C.*

2. *The Ld.Pr. Commissioner of Income Tax (Appeal), Moradabad has erred in law and on the facts of the case in deleting the addition of Rs. 49.80,000/- made on account of share premium received by assessee company on sale of 2000 shares @ premium of Rs. 2,490/- per share without appreciating the facts brought on records by the assessing officer.*

3. *The Ld.Pr. Commissioner of Income Tax (Appeal). Moradabad has erred in law and on the facts of the case in accepting the additional evidence by the assessee company regarding return of allotment filed with ROC. Kanpur and allowing relief of Rs. 49.80,000/- on account of share premium without affording an opportunity to the AO which is in contravention of Rule 46-A of IT. Rules, 1962.*

4. *The Ld.Pr. Commissioner of Income Tax (Appeal). Moradabad has erred in law and on the facts of the case in deleting the additions of Rs. 1,78,000/- & Rs. 6,00,000/- made on account of cash deposit & cash transaction respectively by observing that all entries were duly mentioned in respective accounts..*

5. *The Ld.Pr. Commissioner of Income Tax (Appeal). Moradabad has erred in law and on the facts of the case in accepting the additional evidence by the assessee company and allowing relief of Rs. 17.78,000/- on account of cash deposit & cash transaction without affording an opportunity to the AO which is in contravention of Rule 46-A of IT. Rules. 1962.*

7. We have heard the arguments made by Ld. DR and perused the material available on record. We find the assessee did not produce the details as called for by the Assessing Officer. There is nothing on record to suggest that the assessee has raised an objection after obtaining reasons for reopening of the assessment. We find the Ld. CIT(A) quashed the reassessment proceedings and deleted the addition on merit also on the basis of certain evidences filed by the assessee before him without calling for any remand report from the Assessing officer or giving any opportunity to the Assessing Officer which is in contravention to provisions of Rule 46 A of the IT Rules. Under these

circumstances we deem it proper to restore the issue to the file of the Assessing Officer with a direction to decide the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. The Assessing Officer shall verify as to whether the assessee had received any share capital and share premium for the impugned assessment year by obtaining necessary information from the ROC. He shall verify as to whether the assessee has filed any objection challenging the reasons. Needless to say the Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. He shall also keep in mind the latest decision of the Hon'ble Supreme Court in the case of DCIT Vs. NRA Iron & Steel (P) Ltd. and the decision of Hon'ble Delhi High Court in the case of NDR Promoters Private Limited reported in 410 ITR 379. The grounds raised by the revenue are accordingly allowed for statistical purposes.

8. In the result, the appeal filed by the revenue is allowed for statistical purpose.

Order pronounced in the open court on 07.05.2019.

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.K PANDA)**  
**ACCOUNTANT MEMBER**

*\*Neha\**

Date:- 07.05.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	01.05.2019
Date on which the typed draft is placed before the dictating Member	02.05.2019
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	
Date on which the fair order comes back to the Sr. PS/ PS	07.05.2019
Date on which the final order is uploaded on the website of ITAT	07.05.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	