

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

**BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A. No. 6746/DEL/2015 (A.Y 2005-06)**

ITO Ward 61(1) New Delhi. (APPELLANT)	Vs	Amit Aggarwal QD-43, Ground Floor, Near TV Tower, Pitam Pura, New Delhi. PAN No. AAEP A6326P (RESPONDENT)
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C.O. No. 182/Del/2018

Amit Aggarwal QD-43, Ground Floor, Near TV Tower, Pitam Pura, New Delhi. PAN No. AAEP A6326P (APPELLANT)	Vs	ITO Ward 61(1) New Delhi. (RESPONDENT)
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Appellant by	Sh. Amit Katoch, Sr. DR
Respondent by	Sh. B.L. Gupta, Adv. Sh. Amit Aggarwal, Self

Date of Hearing	03.06.2019
Date of Pronouncement	04.06.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 27.10.2015 passed by the CIT(Appeals)-20, New Delhi for AY 2005-06. Grounds of appeal are as under:

“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the following additions:

1. *In the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing additional evidence under Rule 46A of the I.T. Rules, 1962, without considering the fact that proper and*

adequate opportunities were provided to the assessee by the Assessing Officer to produce details and evidence during the reassessment proceedings.

- 2. In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 40,00,000/- on account of purchase of office premises.*
- 3. In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 10,00,000/- on account of renovation of office.*
- 4. In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,80,000/- on account of salary from M/s Galaxy Toyota Ltd.*
- 5. In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,80,000/- on account of income from private practices.*
- 6. In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 16,00,000/- on account of investment in shares of M/s Praveen Tobacco Co. Pvt. Ltd.*
- 7. That the appellant, craves, leave to add, amend or modify the ground(s) of the appeal at any time.”*

2. The assessee is a Chartered Accountant and filed his regular return of income for AY 2005-06 on 29.10.2005 declaring an income of Rs. 93,890/- and the same was processed u/s 143(1) of the Income Tax Act, 1961. Tax Evasion Petition was received on 20.03.2012 by the Revenue. Accordingly, notice u/s 148 of the Income-tax Act dated 23.03.2012 was issued and served upon the assessee. The assessee submitted before the Assessing Officer for providing of reasons for reopening the case, but did not receive the same from the Revenue. The Assessing Officer made an addition of Rs. 75,99,300/-.

3. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

4. Ld. DR submitted that the CIT(A) erred in allowing additional evidence under Rule 46A of the Income Tax Rules, 1962 without considering the fact that proper and adequate opportunities were provided to the assessee by the Assessing Officer to produce details and evidence during the reassessment proceedings. The Ld. DR further submitted that the deletion of various

additions was also not correct on the part of the CIT(A). Thus, the Ld. DR relied upon the assessment order.

5. The Ld. AR submitted that the Assessing Officer has not provided adequate opportunity to the assessee during the assessment proceedings. Therefore, the CIT(A) has rightly admitted the additional evidence filed under Rule 46A. The Ld. AR submitted that the assessee has demonstrated the evidence in consonance with the additions made by the Assessing Officer and pleaded before the CIT(A) to delete those additions. The CIT(A) has also called for remand report, wherein the Assessing Officer has justified the additions made in the assessment order without taking into account the evidences produced before the CIT(A). The Ld. AR submitted that the cross objection filed by the assessee is not pressed at this juncture.

6. We have heard both the parties and perused all the material available on record. From the perusal of the assessment order and order of the CIT(A), it can be seen that the Assessing Officer received a Tax Evasion Petition with certain details and after considering the same made addition without giving proper opportunity to assessee to produce evidence during assessment proceedings. During the assessment proceedings, despite asking for the reasons for reopening u/s 148 the Assessing Officer has not provided the reasons for reopening. Because of this, the assessee could not represent his own case properly before the Assessing Officer and has not been given proper opportunity by the Assessing Officer. The CIT(A) rightly proceeded on the basis of merit of the case of the assessee after taking into consideration the remand report. Thus, ground no. 1 of the Revenue appeal is dismissed. As regards ground no. 2 the CIT(A) rightly observed that Revenue has failed to prove that the property belongs to the assessee for which addition of Rs. 40 lakhs was made by the Assessing Officer. There is no reason given by the Assessing Officer as to why the same addition has been made. Therefore, ground no. 2 of the Revenue appeal is dismissed. As regards ground no. 3 the CIT(A) rightly

observed that the existence of the office and its ownership itself is not proved by the Revenue, therefore, the question of expenses of renovation of such office premises does not arise. Thus, ground no. 3 is dismissed. As regards ground no. 4 on account of salary from M/s Galaxy Toyota Limited the Revenue could not establish that the assessee was an employee of the said company and was getting any salary/commission or any other payment. Therefore, CIT(A) rightly deleted this addition. Ground no. 4 is dismissed. As regards ground no. 5, addition on account of income from private practices the Assessing Officer has not given any clear finding as to how the same addition has been done. The CIT(A) rightly rejected the same. Ground no. 5 is dismissed. As regards ground no. 6 on account of investment in shares of M/s Praveen Tobacco Company Pvt. Ltd. the assessee filed details in respect of the shareholder who happens to be the son of Shri Roshan Lal Aggarwal, whereas the assessee is a son of Shri B.M. Aggarwal. Therefore, the very foundation of the addition made by the Assessing Officer is without any verification and is rightly rejected by the CIT(A). Ground no. 6 is dismissed. As regards to cross objection filed by the assessee is not pressed, hence the same is dismissed.

7. In the result, the appeal of the Revenue is dismissed and the cross objection filed by the Assessee is also dismissed.

Order pronounced in the Open Court on 4th June, 2019.

Sd/-
(G. D. AGRAWAL)
VICE PRESIDENT

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 04/06/2019

**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	03.06.2019
Date on which the typed draft is placed before the dictating Member	03.06.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	04.06.19
Date on which the fair order is placed before the Dictating Member for pronouncement	04.06.19
Date on which the fair order comes back to the Sr. PS/PS	04.06.19
Date on which the final order is uploaded on the website of ITAT	04.06.19
Date on which the file goes to the Bench Clerk	04.06.19
Date on which the file goes to the Head Clerk	