

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH 'A', CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER  
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.1230/Chd/2018

निर्धारण वर्ष / Assessment Year : 2014-15

The A.C.I.T., Circle-7, Ludhiana.	बनाम	M/s Franklin Laboratories (India) Pvt. Ltd., 386/1, Maharani Jhansi Road, Ghumar Mandi, Civil Lines, Ludhiana.
		स्थायी लेखा सं./PAN NO: AAACF2313C
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Ajay Jain, CA

राजस्व की ओर से/ Revenue by : Smt.Chanderkanta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 04.07.2019

उद्घोषणा की तारीख/Date of Pronouncement: 25.07.2019

**आदेश/ORDER**

**Per Annapurna Gupta, Accountant Member:**

This appeal has been preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals)-3, Ludhiana [(in short 'CIT(A)'] dated 20.7.2018, passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), relating to assessment year 2014-15.

2. Ground No.1, 2 & 3 raised by the Revenue relate to the same issue of disallowance of interest u/s 36(1)(iii) of the Act and read as under:

1. *Whether on the facts & circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance of Rs.10,79,275/- made by the AO u/s 36(1)(iii) of the I. T. Act contrary to the decision in the case of Abhishek Industries Ltd. 286 ITR 1 ?*

2. *Whether on the facts & circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance of Rs.10,79,275/- made by the AO u/s 36(l)(iii) of the I. T. Act particularly when the assessee had charged interest on such advances in AY 2010-11 and 2011-12 ?*
3. *Whether on the facts & circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance of Rs.10,79,275/- made by the AO u/s 36(l)(iii) of the I. T, Act particularly when the purchases were not debited against advances from AY 2010-11 ?*

3. Brief facts relating to the issue are that during assessment proceedings the Assessing Officer (AO) observed that the assessee had given advances to his sister concern amounting to Rs.2,90,12,762/-. The assessee was asked to explain the expediency of the advance made and was further asked to show cause as to why interest made to the related party i.e. M/s Franklin Laboratories (India) Herbals, be not disallowed at bank rate for diversion of business profit to exempt unit. Due reply was filed by the assessee stating that the advance was given for commercial purposes for the purposes of making purchase of medicines used in the business of the assessee. The AO was not satisfied with the reply of the assessee for the reason that the assessee had made huge borrowings from bank on which interest had been paid and claimed as revenue expenditure and these borrowed funds had been diverted by the assessee to its related company as interest free advance whose income was exempt. Accordingly, the AO disallowed the interest computed @ 12% on the advance of Rs.2,90,12,762/- which amounted to Rs.34,81,531/-. He thereafter worked out the interest expenditure

relating to the taxable unit of the assessee, on proportionate basis which worked out to Rs.10,79,275/- and disallowed the same for the purpose of computation of the income of the assessee for the year.

4. Aggrieved by the same, the matter was carried before the Ld.CIT(A), where the assessee reiterated the contentions made before the AO and stated that the advance was commercially expedient and relied upon various case laws for the proposition that where the commercial expediency of the advance was established, no interest u/s 36(1)(iii) of the Act was warranted. The Ld.CIT(A) found, on the basis of documents before him, that the assessee had established the commercial expediency of the advances and, therefore, held that no disallowance of interest was to be made u/s 36(1)(iii) of the Act. He further noted that the assessee had sufficient own funds for making the advances and the presumption in such circumstances was that the advance was made out of the own funds warranting no disallowance of interest u/s 36(1)(iii) of the Act. For the aforesaid reasons, he deleted the disallowance of interest made by the AO.

5. Before us, the Ld. DR relied upon the order of the AO stating that undeniably, the assessee had made huge borrowings from bank on which interest had been paid and claimed as revenue expenditure, while it had diverted these funds to its related company as interest free advance and whose income was exempt. The Ld. DR

relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Abhishek Industries Ltd., 286 ITR 1 for upholding the disallowance. The Ld. DR further stated that the Ld.CIT(A) was not justified in deleting the disallowance of interest in the impugned year since the assessee had charged interest on such advances in assessment years 2010-11 and 2011-12. As far ground No.3 raised by the Revenue, no arguments made before us.

6. The Ld. Counsel for the assessee, on the other hand, stated that it was repeatedly contended by the assessee, both before the AO and the CIT(A), that the advances had been given for business purpose only. That it was pointed out that the advances had been given to sister concern of the assessee for setting up its manufacturing unit for the manufacture of medicines which were purchased by the assessee for use in its business. That the advances had been given for financial year 2009-10 for setting up of manufacturing unit of the sister concern and till the unit was set up the interest had been charged on the advances given. Thereafter once the sister concern started manufacturing medicines, the advance was for the purchase of medicine from the sister concern and no interest was, therefore, charged. The Ld. Counsel for the assessee contended that necessary documents by way of agreement entered into by the assessee with its sister concern for making advances was filed alongwith copies of ledger account of

the parties, demonstrating the above facts. Our attention was drawn to the submissions made before the Ld.CIT(A), reproduced at para 2.2 of the order as under:

*“It is submitted that the appellant is a company running the business of pharmaceuticals and Life saving Drugs. During the assessment proceedings, Ld. AO asked for the details of loans and advance of Rs. 2,90,12,762/- given by the appellant to its Sister concern M/s Franklin Laboratories (India) Herbals. The appellant duly submitted the ledger account of the party M/s Franklin Laboratories (India) Herbals along with the facts and figures why the amount was advanced by the appellant company to the party. Still, Ld. AO ignoring the facts and figures of the appellant company and documents submitted by the appellant company to Ld. AO, made addition of notional interest @ 12% on the amount of advance of Rs. 2,90,12,762/- made to party M/s Franklin Laboratories (India) Herbals by the appellant company. In this regard, it is submitted that the charging of notional interest on the advance of Rs. 2,90,12,762/- and thereby disallowing the interest of Rs. 34,81,531/- u/s 36(1) (iii) is unjustified and untenable on the following counts:-*

- 1) *As submitted by the appellant company during the assessment proceedings that the advance was given by the appellant company to the party M/s Franklin Laboratories (India) Herbals for the purpose of business only. It is to note that the party M/s Franklin Laboratories (India) Herbals is a related party of the appellant company in terms of the proprietor of this party is Mr. Ajay Sareen who is the Director in the appellant company. But, this thing had no impact on the transaction in question. As, the amount was advanced for the purchase of Medicines from the party M/s Franklin Laboratories (India) Herbals by the appellant company.*

*The appellant company initially gave some advance to the party M/s Franklin Laboratories (India) Herbals for the setting up manufacturing plant in FY 2009-10. As per the terms between the appellant company and the party, the appellant company charged interest of Rs. 1,78,625.35 on the amount advanced. The amount was never advanced interest free. Further, it is important to note that the party M/s Franklin Laboratories (India) Herbals started business operations in FY 2009-10 itself and the appellant company started to purchase Medicines totally for the manufacturing of finished article of drugs and pharma products from this medicines from FY 2010-11 along with the advance in respect of purchase of medicines, if some of the amount was there-after advanced for the set up and run of the business to the party M/s Franklin Laboratories (India) Herbals by the appellant company, the appellant company continued to charge interest on the amount advanced by it to the party. During the FY 2010-11, the appellant company charged interest of Rs. 25,07,333/- from the party M/s Franklin*

*Laboratories (India) Herbals. Further, it is submitted that the business of the party M/s Franklin Laboratories (India) Herbals was completely set up till FY 2010-11 and thereafter the appellant did not give any advance to the party M/s Franklin Laboratories (India) Herbals but only the advance for the purchase of medicines from the party M/s Franklin Laboratories (India) Herbals was given by the appellant. All these facts and figures are verifiable and compile-able from the ledger account of the party M/s Franklin Laboratories (India) Herbals from the books of the appellant company. Ledger account of this party M/s Franklin Laboratories (India) Herbals from the books of the appellant company for the FYs 2009-10 to FY 2013-14 i.e. year in question is enclosed. It is clear that the appellant initially gave advance to the party for setting up and initial running of his business and duly charged the interest on the advanced amount from the party. But thereafter the appellant company only purchased medicines from the party and it is submitted that in the course of business i.e. to purchase something the advancement of amount is inseparable and unavoidable. The appetent company makes its almost 95% purchase of medicines from the party M/s Franklin Laboratories (India) Herbals itself. Hence, advance payment for purchase of medicines is integral part of the business. In such event, making a negative inference about the advance given to the party M/s Franklin Laboratories (India) Herbals by the appellant company is not justified.*

- 2) *It is further submitted that the fact is clear that the advance given by the appellant company to the party M/s Franklim Laboratories (India) Herbals is not a loan or advance to divert interest bearing funds to related party but is simply a business advance. The advance was given in the course of business and in the business expediency only. It is a settled law that when an advance is given in business expediency, no disallowance of interest can be made by drawing provisions of section 36(l)(iii) of the Act. Hence, charging of notional interest @12% on amount of business advance/refundable security and further disallowing the interest claimed in P&L A/c is unwarranted.”*

7. The Ld. Counsel for the assessee further pointed out that it was also contended before the Ld.CIT(A) that none of the advances related to the impugned year. That the entire advances related to the preceding year and no interest had been disallowed in those years. Our attention was drawn to the submissions made in this regard at page 6 of the CIT(A)'s order as under:

“ 3) It is to submit that as we go through the ledger account of the party M/s Franklin Laboratories (India) Herbals in the books of appellant company for the year in question, it is clear that no amount of Rs. 2,90,12,762/- had been advanced during the year in question by the appellant company to it. It is the closing balance of the loan and advance in the name of party M/s Franklin Laboratories (India) Herbals as on 31.03.2014 amounting to Rs. 2,90,12,76/- . This balance of advance of Rs. 2,90,12,762/- is the result of business advances in previous years including the year in question. During the year in question, if we go through the figures in the ledger account, only an amount of Rs. 30,08,6521- (amount advanced net of purchases) only has been paid to the party M/s Franklin Laboratories (India) Herbals for the advance payment of purchases to be made and/or previous years purchases (if any). The closing balance of the year immediately preceding to the year in question of this party in the books of appellant company was Rs. 2,60,04,110.43. So, Ld. AO has not applied his mind anywhere to draw a right conclusion while making addition of notional interest on advance of Rs. 2,90,12,762/- in respect of party M/s Franklin Laboratories (India) Herbals, but has made a hasty decision of illogical addition ignoring facts. Addition made is unjustified. Further, it is submitted that when no advance has been given during the year in question, no disallowance of notional interest can be made by the assessing officer. Here in the case of appellant company amount advanced is much lower than the alleged amount of Rs. 2,90,12,762/- and that too is the amount of advance due to business necessity and in regular course of business as advance to supplier. We rely on the following judgment:-

*CIT vs. SRIDEV ENTERPRISES IN (1991) 192 ITR 0165  
OF KARNATAKA HIGH COURT*

*Business expenditure—Interest on borrowed capital—In previous assessment years assessee's claim regarding interest on borrowed capital allowed— will not be equitable for the Revenue to take a different stand in respect of the amounts which were the subject-matter of previous years' assessments, consistency and definiteness of approach being necessary*

Further, as the advance of Rs. 2,90,12,762/- has not been given during the year in question. Because, the opening balance of the party M/s Franklin Laboratories (India) Herbals was Rs. 2,60,04,110.43. Only net addition of Rs. 30,08,651.57 had been made during the year in question balancing the amount advanced and purchases made from the party by the appellant company. So, no notional interest can be calculated on the opening balance of loans & advances and resultant disallowance of interest expense will be void. It is also a well settled law that charging of notional interest is not a provision

*of law but is a procedure followed in assessment proceedings by the Department.”*

8. The Ld. Counsel for the assessee thereafter pointed out that on considering the factual contention made by the assessee, backed and substantiated duly with evidence, the Ld.CIT(A) found that the advances to be for business purpose of the assessee and accordingly deleted the disallowance of interest expenditure made. It was also pointed out that the Ld.CIT(A) had also noted the fact that the assessee had sufficient own interest free funds for making the advances calling for no disallowance of interest u/s 36(1)(iii) of the Act. Our attention was also drawn to the findings of the Ld.CIT(A) at paras 2.3, 3.5 & 3.6 of the order as under:

*“2.3 I have carefully considered the appellant's submission. I have also gone through the assessment order in detail. I have further considered various judicial pronouncements relied upon by the appellant as well as other material placed by him on record. On careful consideration of rival contention, I am of the opinion that there considerable force in the arguments of the Ld. A.R of the appellant with regard to the advances given for only business purpose. Looking to the agreement, copy of ledger account of Franklin Laboratories(India) Herbals, Bills of material purchased, it has been noticed that the appellant has given advances to its sister concern for business purpose. It was found that the appellant has entered into an agreement on 01/11/2009 for the purchase of materials and the appellant company would provide the funds for setting up the manufacturing unit. Further, it is also seen that these advances have been provided long back in FY 2009-10 which were accounted for in the books of appellant company and the Revenue has not disallowed any interest in earlier A.Y. 2010-11, 2011-12 & AY 2012-13. The appellant company has shown regular purchase of material from its sister concern. The opening balance of advances Rs. 2,60,04,110/- has increased to Rs. 2,90,12,762/- in the FY 2013-14 against which purchase of medicines of Rs.58,12,705/- has taken place, thus no fresh advances were given in the year under reference. The appellant has made payment only on account of purchase of material from its sister concern during the year under reference. The Ld. A.O. had failed to consider that the*

*appellant company has given the advances for business purpose. It is seen that the AO has made addition without going into facts of the case. In my considered opinion the AO. has not tried to connect or prove the nexus with the borrowed funds for business purpose or non-business purpose. In earlier years in the appellant's own case, no disallowance was made. Hence Disallowance made by the A.O. is not in accordance with Law.*

3.5 *In my considered opinion, there is considerable force in the claim of appellant that, the appellant company submitted that advances had been given out of commercial expediency and no specific borrowing had been made for giving these advances. The claim of the appellant cannot deny just for the assumption that the appellant had diverted his borrowed funds for non-business purpose. The Id. AO has not adduced any evidence on the contrary to negate the claim of appellant. In view of the above, I am inclined to agree with the contentions of the Id. A.R. Further, I am of the opinion that there is considerable force in arguments of the appellant, with regard to the availability of interest free funds with the appellant in the form of share capital and Reserve and surplus for making advance to its sister concern. Looking to the Balance Sheet, which has been placed on record, it has been noticed that the appellant has sufficient interest free funds in the share capital and reserve and surplus to the extent of Rs. 5,25,61,189/-. I am also opinion that that in this situation when the appellant is having interest free funds of his own, to cover the advances given by the appellant to its sister concern then the presumption should be drawn that the advances have been given out of interest free funds available with the appellant. As the appellant is having sufficient interest free funds of its own in the form of share capital and reserve and surplus to make advances under reference, it cannot be said that the appellant has used borrowed funds for the making impugned addition.*

3.6 *In view of the above stated facts and circumstances of the case. I am of the opinion that the assessing officer is not justified in making the addition of Rs. 10,79,275/- in this case on account of disallowance out of interest expenses by invoking provisions of section 36(1)(iii) of the Act on the ground that the appellant has given the advances out of borrowed funds for non-business purpose. Whereas the advances are given on account of commercial expediency. The addition of Rs. 10,79,275/- u/s 36(1)(iii) made by the assessing officer in this case is not accordance with law and facts of the case, therefore, directed to be deleted. In result, ground no. 3 of appeal taken by the appellant company is allowed.”*

9. The Ld. Counsel for the assessee, therefore, contended that the Ld.CIT(A) had rightly deleted the disallowance made by the AO.

10. We have heard the rival contentions and carefully perused the orders of the authorities below. The issue before us relates to disallowance of interest u/s 36(1)(iii) of the Act, as per which only interest paid in respect of capital borrowed for the purpose of business or profession is to be allowed as deduction. In the impugned case, the interest disallowed relates to advances made by the assessee to its sister concern M/s Franklin Laboratories (India) Herbals amounting to Rs.2,90,12,762/- which was entirely interest free. The Ld.CIT(A), we find, has after considering all evidences produced before him relating to the impugned advance, in the form of agreement entered into by the assessee with sister concern for making the advances, the copy of ledger account of the sister concern, bills of material purchased from sister concern, has given a finding of fact that the advances are for making the purchases of medicines from the sister concern, for utilization in the business of the assessee. The Revenue has been unable to controvert this factual finding of the CIT(A). In the light of the same, the Ld.CIT(A), we hold has rightly held the advances to be commercially expedient for the assessee . The order of the Ld.CIT(A) deleting the disallowance of interest ,therefore calls for no interference on our part since the interest is undisputedly paid for the business of the assessee only.

The reliance placed by the Ld. DR on the decision of the Hon'ble Jurisdictional High Court in the case of

Abhishek Industries Ltd. (supra), is we find misplaced since the ratio laid down in that case of disallowance of interest expenses where there are mixed funds available with the assessee, was based and proceeded on the premise that the advance was for non-business purpose, while in the present the advances have been held to be for business purpose. As for the Revenues contention that the disallowance was warranted since the assessee had itself charged interest on such advances in assessment years 2010-11 and 2011-12, we do not find any merit in the same also for the reason that firstly the assessee had explained the reasons for charging the interest in those years, as that the advance in those years was utilized for setting up the manufacturing unit of the sister concern and that subsequently once with the unit was set up, the advance was for the purpose of purchase of medicine from the sister concern and no interest was, therefore, charged on the same. The said explanation has not been shown to be incorrect by the Revenue. Even otherwise, as long as commercial expediency is established, there remains no reason for making any disallowance and it is entirely the prerogative of the assessee to charge or not to charge interest on such advances made. The AO cannot sit in the arm chair of the businessman and determine how the business is to be run.

In view of the above, we uphold the order of the Ld.CIT(A) in deleting the disallowance of interest amounting to Rs.10,79,275/-.

The ground of appeal Nos.1, 2 & 3 raised by the Revenue are, therefore, dismissed.

11. Ground No.4, 5 & 6 raised by the Revenue relate to disallowance of salary, wages made and read as under:

4. *Whether on the facts & circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance of Rs.70,20,654/- made out of salary & wages particularly when the assessee failed to demonstrate that the services in lieu thereof were received by it ?*
5. *Whether on the facts & circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance of Rs.70,20,654/- made out of salary & wages particularly when there was no ESI & EPF numbers of all persons whom the said payments were made ?*
6. *Whether on the facts & circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance of Rs.70,20,654/- made out of salary & wages particularly when the assessee failed to demonstrate either before the AO or CIT(A) that such sums had been received by the concerned persons?*

12. Brief facts relating to the issue are that during the course of assessment proceedings, the assessee was asked to produce wages and salary register. From the same, the AO observed that there were numerous payments against salary and wages where no payment proof by way of signature or thumb impression of the recipient was recorded. In the absence of any explanation filed by the assessee the said payments, amounting in all to Rs.70,20,654/- were held to be

bogus and the claim of the assessee to this extent disallowed by the AO.

13. Before the Ld.CIT(A), the assessee contended that the disallowance was unjustified because all the employees whose salary and wages were disallowed were regular employees of the assessee to whom payments had been made year to year and ESI and PF deducted on the same and even TDS deducted. It was also contended that the salary and wages paid to these employees only for some months was disallowed for want of thumb impression or signature, while in other months it was allowed, which meant that the said persons were not bogus. The assessee substantiated its submissions by filing documents in the form of salary and wages register, vouchers containing the signature or thumb impression of the employees whose salary and wages had been disallowed, ESI and PF returns filed during the year showing ESI and PF deducted on payments made to these employees and TDS returns showing TDS deducted on payments made to them. The assessee further filed an application under Rule 46A of the Income Tax Rules, 1961, for admission of the additional evidence in the form of payment proof of salary and wages. The same was forwarded to the AO for his comments, who objected to the admission of the same. Thereafter the Ld.CIT(A) forwarded the comments of the AO to the assessee, who contended that the evidences submitted were only clarificatory in nature supporting the evidences which

were already submitted during assessment proceedings. The CIT(A) after considering the reply of the assessee admitted the additional evidences holding them to be clarificatory evidences only and thereafter proceeded to decide the case on merits. The Ld.CIT(A) found force in the arguments of the assessee and, therefore, deleted the disallowance made by the AO. The relevant findings of the Ld.CIT(A) at paras 4.4 and 4.5 of the order are as under:

*“4.4 I have carefully considered the appellant's submission. I have also gone through the assessment order in detail. I have further considered various judicial pronouncements relied upon by the appellant as well as other material placed by him on record. I have considered remand report of AO in pursuance of assessee's application for admission of additional evidence U/r 46 A . Under the given facts and circumstances I find that additional evidence given by the assessing proceedings are of only clarifactory nature in continuation of the facts stated by the assessee in the course of assessment proceedings. Accordingly after considering all the facts of the request of the assessee for admission of additional evidence under rule 46 A is hereby accepted.*

*4.5 In view of the above stated facts and in the circumstances of the case. I am of the opinion that the assessing officer is not justified in making the addition of Rs. 70,20,654/- in this case on account of disallowance of Wages and salary expenses by invoking suspicion that these payments are bogus just because there were no signature or thumb impression of employees without getting into detailed understanding of the nature of expenditure. All these employees are duly registered with ESI/PF authorities and appellant keep on depositing the ESI/PF/TDs on regular basis. The same register was also produced before the A.O. in which the PF/ESI number of all employees was specifically written which shows that the expenditure claimed is completely genuine in nature. In result, ground no. 3 of appeal taken by the appellant company is allowed.”*

14. Before us, one of the contentions raised by the Ld. DR was that the Ld.CIT(A) had erred in deciding the appeal on merits by suo moto considering the evidences

filed by the assessee without confronting the same to the AO. The Ld. DR contended that after the AO had objected to the admission of the additional evidences, the Ld.CIT(A) after overruling the objections of the AO ought to have forwarded the evidences to the AO for his comments on the same. The Ld. DR relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs Manish Buildwell (P) Ltd.(2011) 245 CTR 0397(Del). . It was therefore pleaded that the issue be restored back to the CIT(A) to grant opportunity to the AO to verify the evidences and give his comments on the same and thereafter adjudicate the issue.

15. The Ld. Counsel controverted by stating that the evidences were not in the nature of additional evidences but were clarificatory evidences and therefore did not require being confronted to the AO. Ld.Counsel pointed out the finding of the Ld.CIT(A) in this regard and pleaded that the same having been duly taken note of by the Ld.CIT(A) was sufficient compliance with the requirements of Rues/Law.

16. We have heard the rival contentions. The issue to be adjudicated is whether the evidences filed before the Ld.CIT(A) by the assessee were to be confronted to the AO as per Rule 46A of the Income Tax Rules,1961 and if so whether the order passed by the Ld. CIT(A) in contravention of the Rules ,was against law. To appreciate the issue it is necessary to first point out the context in which it arose, being in relation to

certain payments of salary and wages found bogus by the AO in the absence of signatures before their names in the salary register where payment was recorded. The assessee had filed salary register and the salary vouchers before the AO . The evidences subsequently filed in appellate proceedings before the Ld.CIT(A) were ESI/PF returns and TDS returns showing statutory deductions made from these payments and salary vouchers with signatures of the specific employees whose salary/ wages were found bogus . The assessee has claimed the documents filed before the AO to be evidences of proof of payment of the specific instances of salary/wages disallowed. This has been accepted by the Ld.CIT(A),who as a consequence has held the evidences subsequently filed to be clarificatory in nature, in continuation of the facts stated by the assessee in assessment proceedings. The Ld.CIT(A) therefore admitted the subsequently filed evidences, despite objection of the AO to admission of the same and after considering them suo moto allowed the assessee claim of the expenses being genuine.

Clearly the Ld.CIT(A) found the evidences to be clarificatory only and therefore did not confront them to the AO.As per the Ld.CIT(A) they were not in the nature of additional evidences ,since evidence had already been filed during assessment proceedings and therefore it was not confronted to the AO as per the requirements of Rule 46A of the Rules.

We are not in agreement with the Ld.CIT(A) that the evidences filed during appellate proceedings were merely clarificatory. Undisputedly the salary register filed during assessment proceedings, and claimed and held to be a piece of evidence by the Ld.CIT(A), was the one from which it was noted that there were no signatures against salary/wages paid to certain employees. Therefore, we hold, it cannot be said to be evidence of payment of salary/wages at all. Having held so, the evidences subsequently filed were therefore not clarificatory evidences but were in fact additional evidences filed. As per Rule 46A of the Rules, these evidences could be taken note of by the CIT(A) only after giving the AO reasonable opportunity to examine and or rebut them. The Hon'ble Delhi High Court in the case of Manish Buildwell (supra) has categorically held that additional evidences filed by assesses and admitted for adjudication by CIT(A), as per Rule 46A, have necessarily to be confronted to the AO for the purposes of taking account of the same.

In view of the above, We therefore consider it fit to restore the issue back to the CIT(A), directing him to confront the additional evidences to the AO and thereafter adjudicate the issue in accordance with law after obtaining the comments of the AO.

17. Ground No.4, 5 & 6 raised by the Revenue are allowed for statistical purposes.

18. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the Open Court.

Sd/-  
दिवा सिंह  
(DIVA SINGH )  
न्यायकि सदस्य/Judicial Member  
दिनांक /Dated: 25<sup>th</sup> July, 2019

Sd/-  
अन्नपूर्णा गुप्ता  
(ANNAPURNA GUPTA)  
लेखा सदस्य/Accountant Member

\*रती\*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar