

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4412/Del/2012  
(Assessment Year: 2006-07)

ACIT, Central Circle-12, New Delhi	Vs.	Ravinder Kumar Jain, H-78, South Extension, Part-1, New Delhi PAN: AALPJ6435F
(Appellant)		(Respondent)

ITA No. 4446/Del/2012  
(Assessment Year: 2006-07)

Ravinder Kumar Jain, H-78, South Extension, Part-1, New Delhi PAN: AALPJ6435F	Vs.	ACIT, Central Circle-12, New Delhi
(Appellant)		(Respondent)

Revenue by :	Smt Sulekha Verma, CIT DR
Assessee by:	Shri M P Rastogi, Adv
Date of Hearing	12/07/2019
Date of pronouncement	09/10/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. Assessee has filed appeal against the order of the learned Commissioner Of Income Tax (Appeals) -XXXI, New Delhi dated 15/6/2012. The learned assessing officer has also filed appeal against the same order.
2. The revenue has raised the following grounds of appeal in ITA No. 4412/Del/2012 for the Assessment Year 2006-07:-
  - “1. *The order of the Ld. CIT (A) is not correct in law and facts.*
  2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,15,470/- made by the Assessing Officer treating the agricultural income as income from undisclosed*

*sources by admitting additional evidence in contravention of rule 46A of Income Tax Rules, 1962.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,26,100/- made by the Assessing Officer on account of unexplained cash found during the course of search by admitting additional evidence in contravention of rule 46A of Income Tax Rules, 1962.*
  4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,84,531/- made by the Assessing Officer on account of short term capital gains on sale of land in urban villages at the outskirts of Delhi by admitting additional evidence in contravention of rule 46A of Income Tax Rules, 1962.*
  5. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,97,63,872/- out of total addition of Rs. 2,06,63,872/- made by the Assessing Officer on account of unexplained credit entries in the bank account of the assessee by admitting additional evidence in contravention of rule 46A of Income Tax Rules, 1962.”*
3. The assessee has raised the following grounds of appeal in ITA No. 4446/Del/2012 for the Assessment Year 2006-07:-
- 1.1 *That CIT [A] should have deleted the addition of Rs 7,50,000 made on account of unexplained cash observed during the search operations on 10-11-*
  - 1.2 *That CIT [A] has erred in not accepting the findings of the CIT [A] where all the cash found with all the members was compared with the total explained cash available with the family and additional income offered to tax by them which has also been upheld by the ITAT.*
  - 1.3 *Without prejudice to the above ground, the learned CIT [A] has erred in not considering the additional income admitted by the assessee on account of cash discrepancy.*
  - 2.1 *That the learned CIT [A] has erred in confirming addition of Rs 1,25,000 as alleged payment to Mr. Ali Sher for permitting him to sell his agricultural land in an area where he has no land*
  - 2.2 *That the learned CIT [A] has erred in not accepting it as a deduction from sale price of the agricultural land sold during the year for determination of capital gain*
  - 3.1 *That the learned CIT [A] has erred in not deleting the addition of Rs10,00,000 from deposit side of Bank account received from the second Mr. Ashok Jain which was subsequently confirmed by the creditor- and the mix up is, due there being two persons with the same name*
  - 3.2 *That the learned CIT [A] has erred in not deleting the addition of Rs1,00,000 received for adjustment of basement rights with other*

*owners of the same property-which only goes to reduce the cost of acquisition*

4 *That the above grounds are independent and without prejudice to each other.”*

4. Brief facts of the case shows that assessee is an individual. The search u/s 132 of the income tax act was carried out on 10<sup>th</sup>/11/2005 at the residential premises of the assessee at H – 78, South Extension part 1, New Delhi and survey u/s 133A of the income tax act in the business premises of Mrs Bengali sweets, at H – 82, South Extension part 1, New Delhi and G – 19 S. Extension part 1 New Delhi in which the assessee is a partner. During the course of search, certain books of accounts were seized.
5. The assessee filed his return of income on 31/10/2006 declaring an income of INR 9 50147. In the return of income, the assessee has attached to note regarding additional income of INR 5 885666/- offered for taxation in his hands. According to the note he disclosed certain amount in the hands of various persons of his family and group concern. Assessment u/s 144 of the income tax act was passed by the learned assessing officer on 28/12/2007 determining total income of the assessee at Rs 29197790/- making several additions.
6. The assessee preferred an appeal before the learned CIT – A who partly allowed the appeal of the assessee deleting certain additions and confirming some of them. Such disallowances would be discussed while deciding the grounds of appeal of parties. Therefore both the parties are in appeal before us.
7. We 1<sup>st</sup> take up the appeal of the learned assessing officer. The 1<sup>st</sup> ground of appeal is general in nature and therefore same is dismissed.
8. In all the grounds where the learned CIT – A has deleted the addition the main contention of the revenue is that the learned CIT – A has admitted the additional evidences under section 46A of the income tax act. The contention is that consideration of the additional evidences by the learned CIT – A despite upholding the validity of the ex parte assessment order passed u/s 144 of the income tax act 1961.
9. The learned departmental representative vehemently submitted that when the learned CIT – A has noted that assessing officer has given sufficient opportunity to the assessee before passing the order u/s 144 of the income

tax act, therefore it is not proper for him to admit the additional evidences. Provisions of rule 46A of the income tax rules 1962 are referred to show that in these circumstances only the additional evidences can be admitted. The learned CIT DR vehemently relied upon the orders of the coordinate benches in case of ITA number 1146/del/2010, 1147/del/2010 and ITA number 1923/del/2011 for assessment year 2006 – 07 wherein in the case of the three different family members of the assessee the coordinate benches have set aside the whole issue back to the file of the learned assessing officer with a direction to decide the matter afresh. She therefore submitted that for this reason these appeals must also go back to the file of the learned assessing officer.

10. The learned authorised representative vehemently supported the order of the learned CIT appeal stating that for the purpose of adjudication of the issues on the merits the learned CIT – A was in his power to admit those additional evidences.
11. We have carefully considered the rival contentions and perused the orders of the lower authorities. Admittedly, the assessment order is passed u/s 144 of the income tax act. It is not in dispute that the learned assessing officer has given enough opportunities to the assessee to represent his case. However the assessee has miserably failed to produce such evidences as required by the learned assessing officer to frame the assessment on the merits before him. Learned CIT – A describes the conditions and circumstances under which the assessee could not submit the sufficient evidences before the learned assessing officer. However as in the case of the other member members of the assessee, the coordinate benches by 3 different orders have set aside the issue back to the file of the learned assessing officer to decide the issue afresh, we also find it just and proper to set aside the whole issue back to the file of the learned assessing officer accordingly.
12. In the result appeal of the learned assessing officer is allowed for statistical purposes.
13. Now we come to the appeal of the assessee in ITA number 4446/del/2012. As we already set aside the file of the learned assessing officer with a direction to the frame the assessment of fresh after giving proper

opportunity to the assessee, in the interest of justice we also set aside the issue raised by the assessee in his appeal also to the file of the learned assessing officer with a direction to decide the same afresh after giving proper opportunity of hearing to the assessee.

14. In the result appeal filed by the assessee is also allowed for the statistical purposes.

Order pronounced in the open court on 09/10/2019.

-Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 09/10/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi