

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3896/Del./2019
Assessment Year: 2015-16

Shri Rajeev Jindal, 2942/24A, Adarsh Motor Market, Kashmere Gate, New Delhi	Vs.	ITO, Ward-14(4), New Delhi
PAN :AAFPJ5468E		
(Appellant)		(Respondent)

Appellant by	Shri T.M Shiv Kumar, Adv.
Respondent by	Shri Amrit Lal, Sr.DR

Date of hearing	17.03.2020
Date of pronouncement	20.03.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 20/03/2019 passed by the learned CIT(Appeals)-16 New Delhi, [in short 'the Ld. CIT(A)'] for assessment year 2015-16 raising following ground:

1. *That the order passed by the Ld. CIT(A) is arbitrary whimsical and bad in law and nature and liable to be quashed because:*

- (a) *That the submission by the assessee of additional evidence were duly acknowledged by him and pursuant to that the Ld. CIT(A) directed the Ld. AO to conduct enquiries with reference to the evidences filed by the appellant.*
 - (b) *That pursuant to the direction given to the Ld. AO by the Ld. CIT(A), the Ld. AO conducted field enquiries as well as issued notices to all the creditors which remained unconfirmed while framing the assessment.*
 - (c) *The results of the field enquiries found that all the creditors are existent and the information sought by the Ld.AO on behalf of Ld. CIT(A) were given and were found matching with the balances those were appearing in the books of the assessee.*
 - (d) *The Ld. CIT(A) asked the AR of the assessee to submit rejoinder to the remand report submitted by Ld. AO to the Ld. CIT(A) and rejoinder was duly submitted.*
 - (e) *The factual report submitted by the Ld. AO u/s 250(4) was ignored and not considered just because the assessee could not submit the confirmations at the time of assessments is the prejudice of the mind of the Ld. CIT(A) by not only ignoring it but also not considering the same.*
 - (f) *The rejection of application for submission of the additional evidences by just mentioning that the appellant has attempted to cover the lapses during the assessment proceedings is nothing but has a lame excuse on the part of the Ld. CIT(A) to ignore the result of the enquiries conducted at her behest and ignoring the result of the enquiries is the misuse of the judicial process conducted at her behest by the Ld. AO.*
2. *That once the additional evidences accepted by Ld. CIT(A) and after acceptance thereof enquiries were conducted by her and after the results of the enquiries the rejection of the additional evidence is illegal and therefore, the order confirming the addition of Rs.3,17,23,335/- is liable to be quashed because:*
- (a) *per provision of Rule 46(3) of the IT Rules, 1962, the Ld. AO was allowed an opportunity to report his findings per enquiries conducted u/s 250(4) of the IT Act and his version was also incorporated in his findings therefore, rejection of admission of additional evidence per rule 46A of the IT Rules, 1962 is illegal.*
 - (b) *The Ld. CIT(A) has erred in not following the principle “Audi alteram partem”, which is the basic canon principles of Natural justice and that Rule 46A of the Income Tax Rules cannot override this principles of natural justice by rejecting the remand report called u/s 250(4) of the IT Act.*

3. *The Ld. CIT(A) was wrong and was not considerate to the fact that when the sale of the assessee is correct, opening and closing of stock in trade is correct, how the purchase which has been duly confirmed by all the creditors in the enquiries conducted by the same AO can be bogus and how it can be disallowed. The Ld. CIT(A) is incorrect in not considering it.*
5. *The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal.*

2. Briefly stated facts of the case are that the assessee an individual, is engaged in running a proprietary business namely M/s. R.K. Enterprises along with commission income from insurance business. The assessee filed return of income on 28/09/2015 declaring total income of ₹ 10,69,300/-. The return of income of the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied. The scrutiny assessment under section 143(3) of the Act was completed on 31/12/2017 after making certain additions/disallowances. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and submitted certain documents as additional evidences, which have not been admitted by the Ld. CIT(A). The Ld. CIT(A) upheld the additions/disallowances made by the Assessing Officer. Aggrieved with the finding of the Ld. CIT(A), the assessee is before the Tribunal raising the grounds as reproduced above.

2.1 In the grounds raised, the assessee is mainly aggrieved with not admitting additional evidence. The assessee is also aggrieved that in remand proceeding the inquiries carried out by the Assessing Officer have not taken into consideration by the learned CIT(A).

3. As far as the grounds related to rejection of additional evidences by the Ld. CIT(A) under Rule 46A of Income Tax Rules, 1962, is concerned, the brief facts are that during assessment proceeding the Assessing Officer observed sundry creditors of ₹ 8,97,51,952.87/- in the balance-sheet filed by the assessee for the proprietary concern. The learned Assessing Officer vide order sheet dated 11/09/2017 asked for confirmation along with documentary evidence in support of the genuineness of the transaction and existence and creditworthiness of the parties. Despite opportunities provided on 11/09/2017; 13/11/2017; 19/12/2017 and 28/12/2017 for filing copy of ledger account of the sundry creditors duly confirmed by them, the assessee did not file the information and, therefore, the Assessing Officer made addition of ₹ 3,17,23,335/- for credit balances of 13 parties, a list of which is reproduced as under:

<i>S. No.</i>	<i>Party Name</i>	<i>Amount (Rs.)</i>
1.	<i>Standard Electricals</i>	<i>194106</i>
2.	<i>Universal Trading Company</i>	<i>3981414</i>
3.	<i>K K Overseas</i>	<i>7952875</i>
4.	<i>Rudra Enterprises</i>	<i>8591096</i>
5.	<i>J D Trading co.</i>	<i>6150274</i>
6.	<i>Aggarwal Traders</i>	<i>127000</i>
7.	<i>Shri Krishna Electricals Company</i>	<i>940251</i>
8.	<i>Ashish Enterprises</i>	<i>650133</i>
9.	<i>Prakash Traders</i>	<i>2311602</i>
10.	<i>Classic Distributors</i>	<i>84574</i>
11.	<i>Hartech Auto Pvt. Ltd.</i>	<i>350000</i>
12.	<i>Shivom Associates</i>	<i>132061</i>

13.	<i>S N P Steels Pvt. Ltd.</i>	257949
	<i>Total</i>	31723335

4. According to the Assessing Officer, the assessee was required to take computer printout of the ledger account of the parties and get the same confirmed from them, which also could not be done by the assessee. Before the Ld. CIT(A), the assessee filed copy of ledger account of the parties along with confirmation and requested to admit the same as additional evidence in terms of Rule 46A of Income Tax Rules, 1962. According to the assessee due to last date of completion of the assessment was approaching, the Assessing Officer refused to accept those documents. The Ld. CIT(A) forwarded those documents to the Assessing Officer and called for his comments. The Assessing Officer objected to the admission of the additional evidence. The Ld. CIT(A) after taking into account submission of the assessee as well as objection of the Assessing Officer, denied to admit the additional evidences observing as under:

“Discussion & Decision

The AO in his remand report has objected to admission of additional evidence stating that the case of the appellant does not fall within the ambit of Rule 46A. The appellant, on the other hand has submitted that ledger accounts were produced on the last date of time limitation and were refused to be entertained by the AO. The claim of the appellant is extracted as under:

we enclose herewith the details with ledger accounts of the party, the ledger accounts of the parties were submitted but due to last date of completion of the assessment was approaching as such were refused by the Id. AO in response to the query so raised.

Here, it would be pertinent to examine the Rule 46A which mandates as under:

46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer], except in the following circumstances, namely:

- (a) where the &[Assessing Officer] has refused to admit evidence which ought to have been admitted; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the &[Assessing Officer]; or
- (c) where the appellant was prevented by sufficient cause from producing before the &-[Assessing Officer] any evidence which is relevant to any ground of appeal; or
- (d) where the 2Z[Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

From a perusal of the above, it is clear that additional evidence can be admitted only if AO has refused to admit such evidence or AO has passed an order without giving sufficient opportunity or where the AO was prevented by sufficient cause from producing evidence called for by the AO or relevant to any ground of appeal. It would be appropriate to examine whether the application of the appellant falls within the ambit of the clear-cut conditions laid down by the Income Tax Act Rules.

During the course of appellate proceedings, the appellant through his AR, submitted that the ledger accounts were produced but were not entertained by the AO.

The claim of the appellant was examined. From a perusal of the assessment record, it is noted that the appellant was accorded opportunity to produce confirmations from the creditors on 11.09.2017, 13.11.2017, 19.12.2017 and finally 28.12.2017. the appellant was allowed an opportunity on 29.12.2017 ;s well but the requisite information was not produced. The AO has recorded a categorical finding in this regard that:

During the assessment proceedings, the assessee was asked to file the ledgers of Sundry Creditors along with other documentary evidences in form of confirmation etc. on various

dates viz. 11.09.2017, 13.11.2017, 19.12.2017 and 28.12.2017. Despite affording so many opportunities, the assessee was not able to file even the ledger account of the parties which he is showing in his books of accounts. For this, the assessee has to do nothing more than taking a printout from his books of account in computer system and for this, even so many opportunities were not warranted. Even on 29.12.2017, in reply of show cause, the assessed filed only the already submitted details except a few new ones and did not file any response in respect of the balance details.

3.3.2 In the circumstances where the assessee is not providing even this level of basis details, I have no other option but to assume that the assessee is not giving these details deliberately in the fear that these may go against him.

3.3.3 Further, the assessee was confronted with the same however no explanation/ details were filed by the assessee. Hence, the amount of sundry creditors to the tune of Rs.3,17,23,335/- as per details given above remained unexplained and hereby added to the income of the assessee. I am also satisfied that the addition so made amount to concealment of income by furnishing inaccurate particulars of income.

From a perusal of the above factual recording of events in the assessment order, it is crystal clear that the appellant did not produce the requisite evidence despite at least, 5 opportunities accorded by the AO, the last being on 29.12.2017. So, the claim of the appellant that the AO did not accept the confirmations/ledger accounts of the creditors on the last date smacks of an attempt to circumvent the clear pre-requisites mandated under Rule 46A. Moreover, no proof of this claim has been produced by the appellant. If the AO refused his submissions, the appellant could have filed the requisite information in the DAK and produced the receipt number to authenticate his claim. This has not been done so. A bald claim or assertion has no locus standi in legal proceedings or quasi-judicial proceedings.

In the light of the facts detailed above, it is clear that the case of the appellant does not fall within the ambit of the conditions laid down in Rule 46A. The appellant has not been able to prove 'sufficient cause' that prevented him from producing evidence in the form of confirmations/ledger accounts of sundry creditors before the AO despite specific requisition made by the AO and despite opportunity(6) accorded in this regard. Nor has he been able to establish that his case falls within the ambit of conditions detailed in Rule 46A. He has also not been able to prove that sufficient

opportunity was denied to her by the AO. The Hon'ble Delhi High Court in the case of Munish Build Well as stressed the need to adhere to the conditions mandated under Rule 46A. The Hon'ble Court has held as under:

Once the assessee invokes Rule 46A and prays for admission of additional evidence before the CIT (A), then the procedure prescribed in the said rule has to be scrupulously followed. The fact that sub-Section (4) of Section 250 confers powers on the CIT (A) to conduct an enquiry as he thinks fit, while disposing of the appeal, cannot be relied upon to contend that the procedural requirements of Rule 46A need not be complied with. If such a plea of the assessee is accepted, it would reduce Rule 46A to, a dead letter because it would then be open to every assessee to furnish additional evidence before the CIT (A) and thereafter contend that the evidence should be accepted and taken on record by the CIT (A) by virtue of his powers of enquiry under sub-Section (4) of Section 250. This would mean in turn that the requirement of recording reasons for admitting the additional evidence, the requirement of examining whether the conditions for admitting the additional evidence are satisfied, the requirement that the assessing officer should be allowed a reasonable opportunity of examining the evidence etc. can be thrown to the winds, a position which is wholly unacceptable and may result in unacceptable and unjust consequences. The fundamental rule which is valid in all branches of law, including Income Tax Law, is that the assessee should adduce the entire evidence in his possession at the earliest point of time. This ensures full, fair and detailed enquiry and verification. On the other hand, whenever the assessee who is in appeal before him invokes Rule 46A, it is incumbent upon the CIT (A) to comply with the requirements of the Rule strictly.

Respectfully following the principles enunciated by the jurisdictional High court and examining the facts of the case vis-a-vis conditions laid down in Rule 46A, I hold that the additional evidence filed by the appellant does not fall within the ambit of the conditions laid down in Rule 46A and cannot therefore be admitted.

5. In the background of the above facts, before us the assessee has filed a paper containing pages 1 to 94. The learned Counsel of the assessee submitted that there was delay in getting the copy of ledger account of the sundry creditors in dispute confirmed from them and thereafter the assessee approached the

Assessing Officer. According to the learned Counsel, the Assessing Officer refused to accept the same on the ground of limitation of completing the assessment was approaching near. The learned Counsel submitted that in terms of rule 46A(1)(a) of Income-tax Rules, 1962, if the Assessing Officer has refused to admit the evidences, then assessee is entitled to produce the same as additional evidence before the Ld. CIT(A), and therefore the Ld. CIT(A) is not justified in not admitting additional evidence. The learned Counsel also submitted that the Ld. CIT(A) has also decided the issue of merit and while deciding the addition of merit the Ld. CIT(A) has taken into consideration the additional evidences filed by the assessee.

6. The learned DR, on the other hand, relied on the order of the lower authorities and submitted that the assessee failed to file the said copy of confirmation of the sundry creditors before the Assessing Officer despite several opportunities and therefore the Ld. CIT(A) is justified in rejecting the additional evidences filed by the assessee.

7. We have heard the rival submission of the parties and perused the relevant material on record. As the Ld. CIT(A) has not admitted the copy of ledger account of the sundry creditors and copy of the their confirmation filed by assessee as additional evidence under Rule 46A of the Income Tax Rules, 1962, it is relevant to reproduce said rule for ready reference:

“[Production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)].

46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner

(Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

- (a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or
 - (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or
 - (c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or
 - (d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- (2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.
- (3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—
- (a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or
 - (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.
- (4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]”

8. On perusal of the Rule 46A(1) of the Rules, it is evident that the assessee has been prohibited from producing the additional evidence except the four circumstances. The first circumstance is where the Assessing Officer has refused to admit additional evidence, which ought to have been admitted. In the instant case before us the assessee has pleaded that the assessee had filed such copy of confirmation of the some of the sundry creditors

before the Assessing Officer, however, there was some delay in collecting the confirmed copy of the ledger account from the 13 parties, which he could collect in last week of the December 2017 only. When the assessee approached with those copies of the ledger accounts, the Assessing Officer refused to accept in view of the limitation of completing assessment was approaching. In our opinion, in view of the refusal by the Assessing Officer for admission of those evidences, there was no option with the assessee except producing the same before the Ld. CIT(A). The Ld. CIT(A) has rejected admission of those evidences on the ground that the assessee did not file the said documents in the DAK of the said Assessing Officer. In our opinion, merely not filing those documents in the DAK counter of the Assessing Officer, the assessee cannot be denied substantial justice and examination of the said documents, which had been filed before learned CIT(A) immediately after filing of the appeal, following the rules provided in the Income-tax Rules.

9. In view of facts and circumstances of the case and in the interest of the substantial justice, we set aside the finding of the Ld. CIT(A) on the merit of the appeal and restore the matter to him with the direction to the admit the additional evidences filed by the assessee and thereafter decide the issue in dispute on merit after providing sufficient opportunity of being heard to both the parties i.e the assessee and the Assessing Officer. The relevant grounds of the appeal of the assessee are accordingly allowed for statistical purposes. As we have already set aside the finding of the learned CIT(A) on the merit of the addition, the argument of the Learned Counsel of the assessee that Ld. CIT(A)

has not taken into account inquiries carried out from those parties, is rendered academic only and we are not adjudicating upon the same. The grounds related to that issue are dismissed as infructuous.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th March, 2020.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 20th March, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi