

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

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

(E-Court Module)

ITA No. 2113/Del/2017 : Asstt. Year : 2007-08

ACIT, Central Circle-8, New Delhi	Vs	Sh. Anil Bhalla, Farm No. 4, Hyde Park, Prakriti Marg, Village-Sultanpur, Meharuli, New Delhi-110030
(APPELLANT)		(RESPONDENT)
PAN No. AEEP9416N		

ITA No. 3142/Del/2017 : Asstt. Year : 2013-14

Sh. Anil Bhalla, Farm No. 4, Hyde Park, Prakriti Marg, Village-Sultanpur, Meharuli, New Delhi-110030	Vs	ACIT, Central Circle-8, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AFEP9416N		

Assessee by : Sh. C. S. Aggarwal, Sr. Adv.

Revenue by : Sh. D. K. Mishra, CIT DR

Date of Hearing: 24.08.2020

Date of Pronouncement: 15.10.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the revenue and the assessee against the orders of the Id. CIT(A)-24, New Delhi dated 23.01.2017 and 17.03.2017.

2. In ITA No. 2113/Del/2017, following grounds have been raised by the revenue:

"1. The order of Id. CIT (A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition u/s 68 of the Act amounting to Rs.8,46,11,456/-.

3. On the facts and circumstances of the case, the CIT(A) has erred in relying on the order of Hon'ble Delhi High Court in case of Kabul Chawla as Section 153A does not restrict the assessment to seized document."

3. In ITA No. 3142/Del/2017, following grounds have been raised by the assessee:

1. That the learned CIT (A) has erred both on facts and in law in upholding the validity of the order of assessment.

2. That the learned CIT(A) has further erred in not admitting the additional evidence furnished by the assessee (on an application made under Rule 46A of I.T. Rules) despite the fact that the assessee had not been provided a fair and proper opportunity of being heard in the course of assessment proceedings and also to adduce evidence in support of the credit of Rs. 6 lacs, received as a loan. The contention of the assessee specifically raised having not been adversely decided, the learned CIT(A) ought to have admitted the additional evidence.

2. The learned CIT(A) has failed to comprehend that Rule 46A of the I.T. Rules does not debar an assessee to adduce an additional evidence but is an aid to determine the truth of the issue involved. (See 14 TTJ 470 (Del.)

3. That without prejudice and in the alternative the CIT(A) has failed to appreciate when a request was made to summon the creditor, the AO was duty bound to have exercised his power u/s 131 of the Income

Tax Act, as held by the Allahabad High Court in the case of Nathu Ram Prem Chand and as such the credits could not be held as unexplained without having summoned the creditor. (See 49 ITR 561)

4. That further the learned CIT(A) erred in sustaining the addition, disregarding that the assessee had led satisfactory evidence before him to establish the genuineness of the credit which was well explained.

5. That he also has failed to appreciate that income returned by the assessee was of a substantial sum of Rs. 2,30,08,530/- and in the absence of any adverse evidence to the contrary there was no justification not to have deleted the said addition by not accepting the claim of the assessee."

4. The facts relevant for the adjudication of the grounds raised by the revenue are as under:

A Search and seizure action was conducted on the Vatika group of cases on 16.01.2013. The assessee who is individual involved in the business affairs of Vatika group was also covered u/s 132 of the Income Tax Act, 1961. The Assessment was completed u/s 153A of the Income Tax Act, 1961. After examining the return of income, the A.O. made addition of Rs. 8,46,11,456/- in respect of loans and advances received during the year. The assessment pertains to the assessment year 2006-07. The assessment in question is not an abated assessment as per the provisions of Section 153A of the Act. The loans & advances have been duly reflected in the accounts of the assessee prepared as at March 31, 2007. There was no material seized in relation to such loans & advances received and the assessment order also do not refer to any seized material while assessing the loans & advances received during the year.

5. The Id. CIT (A) deleted the addition accepting the arguments of the assessee that as per the judgment of the Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Kabul Chawla 61 Taxman 412 wherein it was held that where no incriminating material were found during the search & seizure operation additions made u/s 153A are not legally valid. Similar has been confirmed by the Hon'ble Supreme Court in the case of Pr. CIT Vs. Meeta Gutgutia [2018] 96 taxmann.com 468 and also in the case Pr. CIT Vs. Kurele Paper Mills [2016] 380 ITR 571 (Delhi).

6. Since, the decision of the Id. CIT (A) is based on the judgments of the Hon'ble Jurisdictional High Court and the Hon'ble Apex Courts, we hereby decline to interfere with the order of the Id. CIT (A). In the result, the appeal of the department is liable to be dismissed.

7. In the appeal of the assessee, a ground was raised against rejection of additional evidences furnished by the assessee under Rule 46A of the Income Tax Rules before the Id. CIT (A). We find that the additional evidences consist of confirmation letter and banks statement of the creditors, in the absence of which an appropriate decision regarding the adjudication of the issue cannot be arrived. The Id. CIT (A) has not passed any speaking order regarding the applicability or otherwise of conditions mentioned under Rule 46A. Hence, the matter is being referred back to the file of the Id. CIT (A) to give a categorical finding regarding admitting or not admitting the additional evidences in accordance with the ratio laid down in

the case of Manish Buildwell Pvt. Ltd. 204 Taxmann 106 and ITO Vs. Pardeepa Rani 73 Taxmann 392.

8. Hence, we set aside the aforesaid impugned appellate order of Id. CIT(A) with the direction to pass a fresh order. If the Id. CIT(A) decides to admit Additional Evidences, he should clearly state the specific clause(s) of Rule 46A(1) of I.T. Rules that would apply while recording the reasons under Rule 46A(2) of I.T. Rules. Further, if the Id. CIT(A) decides to admit Additional Evidences, reasonable opportunity prescribed under Rule 46A(3) of I.T. Rules must be provided by the Id. CIT(A) to the AO.

9. In the result, the appeal of the revenue is dismissed and the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 15/10/2020.

Sd/-

(Sushma Chowla)
Vice President

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 15/10/2020

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR