

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.3733/DEL/2016  
Assessment Year 2009-10

ITO, Ward-59(2), New Delhi.	vs.	Shri Kamal Gupta, D-3, Arya Nagar Apartment, Plot No.91, I.P. Extension, Delhi.
TAN/PAN: AEBPG4819C (Appellant)		(Respondent)

Appellant by:	Shri Ved Prakash Mishra, Sr.D.R.		
Respondent by:	Shri Ved Jain, Adv. and Shri Ashish Goel, CA		
Date of hearing:	11	01	2021
Date of pronouncement:	11	01	2021

**ORDER**

**PER AMIT SHUKLA, JUDICIAL MEMBER:**

The aforesaid appeal has been filed by the Revenue against the impugned order dated 31.03.2016 passed by CIT (A)-XXXIV, New Delhi for the quantum of assessment passed u/s.144 for the Assessment Year 2009-10. In the grounds of appeal, the Revenue has raised following grounds;-

- “1. *The order of the Ld. CIT(A) is bad in law.*
2. *The Ld. CIT(A) erred in accepting the additional evidences, though the assessing officer in the remand reports strongly objected for admission of additional evidences because the assessee did not explain as to how his case was covered by the exceptions provided in Rule 46A (1) of the I. T.*

*Rules, 1962.*

3. *The Ld. CIT(A) erred in allowing relief on the basis of additional evidences for which, the Ld.CIT(A) had not given any reasons in the appellate order as to why the additional evidences were accepted by him.*

4. *The Ld. CIT(A) erred in deleting the addition of Rs. 17,87,372/- made on account of GP rate by accepting additional evidences and ignoring the objections raised by the assessing officer for admission of additional evidences.*

5. *The Ld. CIT(A) erred in deleting the addition of Rs.2,96,91,716/- made on account of sundry creditors by accepting additional evidences and ignoring the objections raised by the assessing officer for admission of additional evidences.*

6. *The appellant craves leave to add, allow or amend any/all the grounds of appeal before or during the course of hearing of the appeal.”*

2. The facts in brief qua the aforesaid issue are that, the assessee is engaged in the business of trading of books and stationery. As per the allegation of the Assessing Officer, the assessee was asked to produce the books of account along with the bills and vouchers. However, no such books of account and bills/vouchers were produced before him. In absence of such books of account and on the basis of material available on record, he found there is inconsistency in the business affairs of the assessee, which has been highlighted in the assessment order in detail and accordingly, Assessing Officer proceeded to make various additions; viz.,

*firstly*, addition on account of gross profit after rejecting the books of account and invoking Section 145(3) at Rs.17,87,372/-; *secondly*, disallowance of Rs.3,89,549/- expenditure on account of royalty and other expenses like finance charges, admin expenses, etc. at Rs. 6,01,254/-; *thirdly*, addition on account of sundry creditors of Rs.2,96,91,716/-; *fourthly*, unsecured loan of Rs.8,94,520/-; *fifthly*, addition on account of cheques issued but were not presented of Rs.18 lacs; *sixthly*, deduction u/s.80C; and *lastly*, estimated income from other sources at Rs.24,000/- . In the first appeal, most of the additions have been deleted. However, the Revenue before us has only challenged two additions, i.e., addition of Rs.17,87,372/- on account of estimation of gross profit and addition of Rs.2,96,91,716/- on account of sundry creditors only on the ground that Id. CIT (A) has erred in accepting additional evidences. Nothing has been challenged on merits of the addition and finding of the Ld. CIT (A).

3. On the perusal of the record and appellate order, we find that assessee had filed a petition for admission of additional evidence under Rule 46A. The copy of which has been placed in the paper book at pages 194 and 195, wherein assessee had stated as under:

*“1. The applicant has filed an appeal before your honour against the order passed by the Assessing Officer under Section 144 of the Act dated 30th December, 2011 for assessment year 2009-10.*

2. While framing the assessment the Assessing Officer has alleged that the assessee has not appeared on the last date of the hearing fixed for 30th November, 2011 and has not produced the books of account.

3. It has also been alleged by the Assessing Officer that the assessee has not filed proper confirmations from the trade creditors and has also failed to furnish evidences in support of the claim under Section 80C and Section 80D.

4. In this regard it is submitted that the assessee has been attending the proceedings from time to time before the Assessing Officer as is evident from the various letters filed before the Assessing Officer.

5. That the Assessing Officer at no stage of time during the assessment raised any objection regarding the confirmations filed by the assessee. Further the assessee has produced the books of account on 25th November, 2011. It has gone with the books of account before the Assessing Officer on 30th November, 2011 and on that day the Assessing Officer did not examine the same on the ground that he is busy in other matters and he will complete the assessment in the month of December, 2011.

6. That during the month of December, 2011 the assessee visited the Assessing Officer number of times but the Assessing Officer did not examine the books of account.

7. After one month i.e. on 30th December, 2011 the Assessing Officer passed the assessment order making various allegations and including non-production of books of account and other documents/evidences.

8. In this regard it is submitted that the assessee has submitted

*all documents/evidences which were available in the record. Further as regards other documentary evidences in respect of 80C and 80D there was never an occasion to file the same nor these were called for.*

*9. The assessee has got all these evidences and documents including the books of account and the same are being produced before your honour.*

*It is prayed that these may be admitted as additional evidences under Rule 46A in view of the facts stated hereinabove.”*

4. Ld. CIT (A) has forwarded submissions and copies of additional evidences filed by the assessee to the Assessing Officer for his comments. The Assessing Officer however vide his submission dated 18.06.2015 objected for the admission of additional evidences but also proceeded to give his comment and submissions on the issues raised on the merit of the additions also. The relevant remand report on merits has been duly incorporated in the impugned appellate order from pages 6 to 11. In so far as production of books of account and addition on account of gross profit, the assessee in response to the notice by the Assessing Officer whereby assessee was asked to produce the books of account along with bills and vouchers. In response assessee produced all the details and relevant books of accounts which were duly verified and examined by the Assessing Officer and no adverse inference has been recorded by the Assessing Officer as reported and admitted by him in his remand report. Apart from that, the assessee has also filed details of sundry

creditors, unsecured loan, etc. with confirmation and evidences. The Id. Assessing Officer had also issued notice u/s. 133(6) to various sundry creditors, in response to which confirmations were received directly from the said parties along with balances shown by the parties which has been tabulated by the Assessing Officer in his remand report. In response of such remand report, the assessee has filed detailed submission which has been duly considered by the Ld. CIT (A).

5. In so far as estimation of profit is concerned, the Id. CIT (A) has recorded a categorical finding that during the remand proceedings, Assessing Officer has specifically admitted that the appellant had produced books of account along with bills and vouchers which were examined and verified by the Assessing Officer and no adverse inference was drawn. Based on Assessing Officer's finding, Ld. CIT(A) rejected the estimation of the profit made by the Assessing Officer made in the assessment order and deleted the addition of Rs.17,57,372/-. Secondly, on the issue of disallowance of sundry creditors, the observation and the finding of the Ld. CIT (A) is as under:

*7.1 Ground No-7 relates to the additions of Rs. 3,23,86,236/- made by AO which include disallowances on account of sundry creditors, unsecured loans and cheques issued but not cleared. During the assessment proceedings, AO made additions under these heads on account of non production of books of account and other documentary evidence. However, during the remand*

*proceedings, AO issued notices u/s 133(6) of the Act in order to verify the genuineness of sundry creditors and in reply to these notices, confirmations from these creditors were received by him. However, some discrepancies were noticed by AO in the details of confirmations of sundry creditors and the difference was noticed by AO as under:-*

<i>Sl. No.</i>	<i>Name of the Assessee</i>	<i>Difference</i>
1.	<i>Corporate Stat. P. Ltd.</i>	<i>7650</i>
2.	<i>Inspiration Publication</i>	<i>3421</i>
3.	<i>Jiwan Books</i>	<i>-1760</i>
4.	<i>Kalika Enterprises</i>	<i>-123</i>
5.	<i>Maggo Enterprises</i>	<i>38400</i>
6.	<i>Saraswati House P. Ltd.</i>	<i>100</i>
7.	<i>Shant Paper Mart</i>	<i>19250</i>
8.	<i>Shree Parasnath Enterprise</i>	<i>-1439</i>

6. Once, the assessee has given the reasons in its petition for admission of additional evidence under Rule 46A, which have been duly forwarded to the Assessing Officer and thereafter, Assessing Officer has carried out his inquiry on these additional evidences and has verified the books of account from the bills and vouchers, confirmations, etc, then it cannot be held that there is a violation of Rule 46A. *Ld. CIT (A)* was well within his power not only to admit the additional evidence in these circumstances as mentioned in the petition but also called for the remand report by the Assessing Officer giving him full opportunity which has been availed by the Assessing Officer. It is further seen that the Revenue has not challenged the merits of the addition except for the fact that *ld. CIT (A)* has erred in admitting the additional evidences. We do not find any infirmity in the action of the *ld. CIT (A)* in

admitting the additional evidence but also his findings on merits as his finding are based on the remand report and the inquiry conducted by the Assessing Officer after he has duly verified the entire facts on record. Thus Revenue's grounds cannot be sustained.

7. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 11<sup>th</sup> January, 2021**

Sd/-  
**[B.R.R. KUMAR]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 11<sup>th</sup> January, 2021

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