

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

ITA No.4608/Del/2017  
Assessment Year: 2012-13

M/s. Ram Chand Baboo Mal & Co., B-92, WHS, Kirti Nagar, New Delhi	<b>Vs.</b>	ITO, Ward-49(2), New Delhi
<b>PAN :AAEFR7713D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	None
Respondent by	Sh. Rohit Anand, Sr.DR

Date of hearing	04.10.2021
Date of pronouncement	14.10.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the assessee is directed against order dated 24/03/2017 passed by the learned Commissioner of Income-tax (Appeals)-17, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2012-13 raising following grounds:

- The order of the Ld. Commissioner of Income Tax (Appeals)-17 and Ld. Assessing Officer is erroneous on the facts and in the law. On the facts and in the circumstances of the case he ought to have accepted the returned income.*

2. *That the order of the Ld. Commissioner of Income Tax (Appeals)-17 and Ld. Assessing Officer is replete with prejudicial observations and same are not susceptible to any adverse conclusions.*
3. *That no opportunity was afforded to the appellant to lead additional / further evidence on the issues involved in respect of rule 46 of the Income Tax Rule.*
4. *That on the facts and in the circumstances of the Appellant firm the Ld. Commissioner of Income Tax (Appeals)-17 and Ld. Assessing Officer erred in computing the taxable income of the appellant under section 144 of the Income Tax Act. No weightage was given to the previous taxable incomes / profits & conduct of the appellant. The general trend of profits in similar segment of trade were also not given due weightage while computing the taxable income of the appellant firm.*
5. *That on the facts and in the circumstances of the Appellant firm the Ld. Commissioner of Income Tax (Appeals)-17 and Ld. Assessing Officer is not justified in treating the unsecured loans borrowed by the appellant as his income, invoking the provisions of section 68 of the Income Tax Act on the plea that a confirmations were not received before the appointed date. The fact that the balances at the end of the year also include the opening balances which were not received during the previous year was not given due weightage. The appellant prays that addition of Rs. 5291910/- on account of unsecured loans is not justified and on the merits to be deleted.*
6. *That on the facts and in the circumstances of the Appellant firm the Ld. Commissioner of Income Tax (Appeals)-17 and Ld. Assessing Officer erred in making addition of Rs. 68,39,139/- on account of sundry creditors on the plea that a confirmations were not received before the appointed date. The fact that the balances at the end of the year also include the opening balances which were not received during the previous year was not given due weightage. The appellant prays that addition of Rs. 68,39,139/- on account of sundry creditors is not justified and on the merits to be deleted.*
7. *That on the facts and in the circumstances of the Appellant firm the Ld. Commissioner of Income Tax (Appeals)-17 and Ld. Assessing Officer erred in making addition of Rs. 2,65,000/- on account of advances from customers on the plea that a confirmations were not received before the appointed date.*

*The appellant prays that addition of Rs. 2,65,000/- on account of advances from customers is not justified and on the merits to be deleted.*

**2.** Briefly stated facts of the case are that the assessee is engaged in trading business of timber and allied products. For the year under consideration, the assessee filed return of income on 28/09/2012, declaring total income of ₹ 2,20,510/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under Income-tax Act, 1961 (in short 'the Act') were issued and partly complied. The assessee only filed annual financial statement and VAT returns. Non-compliance of notices has been recorded by the Learned Assessing Officer on page-2 of the impugned assessment order. In view of non-compliance, the Assessing Officer in impugned assessment order passed on 26/03/2015, made addition under section 68 of the Act for unexplained sundry creditors (Rs. 68,39,139/-); unexplained unsecured loans (Rs. 52,91,910/-) and unexplained advances (Rs. 2,65,000/-). The assessee preferred appeal before the Learned CIT(A), however, before him also only part compliance was made. Non-compliance by the assessee of various notices issued by the Learned CIT(A) is recorded in para 4.2 of the order of the Ld. CIT(A). Before the Ld. CIT(A), the assessee filed additional evidence for admitting under Rule 46 of the Income-tax Rules, 1962 (in short 'the Rules'). Before the learned CIT(A), the assessee submitted that after receipt of first notice for scrutiny in August, 2013, the case was not taken up till January, 2015. The assessment proceedings were taken up after taking charge by the incumbent Assessing Officer in January,

2015 and completed on 09/03/2015 and no opportunity was given to the assessee to lead evidence on the issue involved. The assessee further submitted that most of the creditors were based at out stations and assessee was making diligent endeavour to get the confirmation from those parties. The Ld. CIT(A), however, rejected the request of the assessee for admitting additional evidences and dismissed the appeal observing as under:

*“I find that the appellant was given sufficient opportunity of being heard on various dates by the AO as mentioned in Para 4.1 (supra) but the appellant did not comply on most of the dates. The appellant's non compliance behavior even remained the same before me also as there was non-compliance on most of the occasions on the part of the appellant. Under these circumstances, the appellant could not demonstrate the circumstances under which they were prevented by sufficient cause from producing the evidences before the AO which are now being furnished before me. Since, the appellant's case does not fall under any of the circumstances as mentioned under Rule 46A(l)(a), (b), (c) and (d), therefore, the case laws relied upon by the applicant are not applicable on the facts of the present case. Hence, I am of the considered view that the additional evidences filed by the appellant are not found to be admissible under Rule 46A. Therefore, the same are not admitted.*

*4.5 Since, the appellant failed to prove the genuineness of the sundry creditors as well as the loan creditors by filing the relevant details/documents before the AO, therefore, the AO was justified to make addition on account of the same.”*

**2.1** Aggrieved, the assessee filed appeal before the Tribunal raising the grounds as reproduced above.

**3.** At the outset, we may like to mention that before the Tribunal a power of attorney dated 10/07/2017 issued in the name of Chartered Accountant, Sh. Rupal Jain, and others was filed along with the appeal set. First notice was issued by the

Registry of Tribunal on 17/02/2020 for hearing dated 01/04/2020, but no compliance was made. Meanwhile, the matter was adjourned from time to time due to non-functioning of the bench. The hearing was fixed on 02/02/ 2021, however, none attended. Again a fresh notice was issued on 03/02/2021 for hearing on 23/03/2021. On said date, none present on behalf of the assessee and matter was adjourned to 31/05/2021 on the request of Learned Departmental Representative. Again, a fresh notice was issued on 21/07/2021, fixing the hearing on 05/08/2021. On said date also no compliance was made. In view of the non-compliance by the assessee, a fresh notice was issued on 05/08/2021, fixing the hearing on 04/10/2021 and the Departmental Representative was directed to serve said notice upon the assessee. The Learned Departmental Representative has filed a report on 22/09/2021, wherein he submitted that the Assessing Officer had sent an inspector for service of the notice at the address of the assessee provided in form No. 36, i.e, prescribed for filing appeal before the Tribunal, however, could not find anyone at the address and, therefore, he served notice through affixture in presence of two witnesses. Despite service of notice by the Department, none appeared on the date of the hearing, nor any request for adjournment was received. In the circumstances, we were of the opinion that no useful purpose will be served further adjourning the matter and therefore it was heard *ex parte* qua the assessee after hearing arguments of the Learned Departmental Representative.

**4.** The learned Departmental Representative submitted that Ld. CIT(A) is justified in declining to admit the additional evidences as

the assessee is not fulfilling the conditions required under rule 46A for admitting of the additional evidences.

5. We have heard submission of the learned Departmental Representative on the issue in dispute. Before the Assessing Officer, the assessment was completed in *ex parte* manner and addition for unsecured creditor, unsecured loan and advances was made by the Assessing Officer. Before the Ld. CIT(A), the assessee filed additional evidence in support of its claim that creditors and unsecured loans are genuine. The Ld. CIT(A) declined the request of the assessee for admitting additional evidence in terms of Rule 46A of the Rules. The relevant provisions of the Rule 46A are reproduced as under:

***“[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.]”*

**5.1** Before the Learned CIT(A), the assessee submitted that regular assessment proceedings were started in January, 2015 and were closed on 09/03/2015 and, therefore, no further opportunity was given to the assessee to lead evidences on the issue involved. We have noticed the assessee has not complied either before the Assessing Officer or before the Learned CIT(A) on many occasions. But the issue-in-dispute is of verification of sundry creditors, unsecured loans and advances etc. Before the Tribunal also, the assessee has not preferred any application for admitting additional evidence and after filing the appeal, the assessee is not pursuing its appeal also. We find that Assessing Officer has not refused to admit evidence before him and so Rule 46A(a) is not applicable in the case of the assessee. In support of Rule 46A(b), the assessee did not file any evidence in support of sufficient cause for not producing the evidences before the Assessing Officer, except merely mentioning that assessment was completed within a short period from January, 2015 to March, 2015. The allegations of not providing sufficient opportunity [Rule 46A(d)] are also baseless in view of the list of notices not complied by the assessee as referred on page 2 of the assessment order. We do not find any infirmity in the order of the Ld. CIT(A) in not

admitting additional evidence. Accordingly, the grounds of appeal filed by the assessee are dismissed.

**6.** In the result, the appeal filed by the assessee is dismissed.

***Order pronounced in the open court on 14<sup>th</sup> October, 2021***

***Sd/-***  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

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

Dated: 14<sup>th</sup> October, 2021.

RK/-(DTDC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi