

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. K. NARASIMHA CHARY, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.6967/Del/2019
(Assessment Year : 2012-13)

M/s. Pushpanjali Buildwell(P) Ltd. 204-205, Milap Bhawan 2 nd Floor, Bahadur Shah Zafar Marg, New Delhi PAN : AADCP9934E	Vs.	Income Tax Officer Ward-20(2), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Lalit Mohan, CA
Revenue by	Shri Kanv Bali, Sr. D.R.

Date of hearing:	01.12.2021
Date of Pronouncement:	09.12.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Assessee is directed against the order dated 15.07.2019 of the Commissioner of Income Tax (Appeals)-38, New Delhi relating to Assessment Year 2012-13.

2. Assessee is a company who filed its return of income for A.Y. 2012-13 on declaring taxable income of Rs. 13,892/-. The return

of income was initially processed u/s 143(1), thereafter, the case was selected for scrutiny and the notice u/s 143(2) and 142 (1) were issued and served upon the assessee. The AO has noted that the noticed issued u/s 143(2) and 143(1) remained uncomplied by the assessee. He, thereafter, framed assessment u/s 144 of the Act dated 13.03.2015 and determined the total income of the assessee at Rs. 77,54,750/-.

3. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A) who vide order dated 15.07.2019 in appeal no. 127/2017-18 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and raised the following grounds :-

“1. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding an addition made of Rs. 60,36,647/- on account of unsecured loans raised by the appellant company and held to be alleged unexplained credit u/s 68 of the Act.

1.1 That while upholding the addition, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the appellant had placed on record confirmation alongwith income tax particulars and, the loans had been raised by account payee cheques and interest thereon had already been duly credited to the account of the payees, the initial burden of the appellant stood discharged and therefore, addition sustained on the ground that the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee for that previous year.

1.2 That while making and upholding the aforesaid addition the learned Commissioner of Income Tax (Appeals) by reducing the repayment during the year from the aggregate loan raised during the year, without disputing opening balance of Rs. 28,34,947/- and during the year repayment of Rs. 3,00,300/- and fresh loan raised of Rs. 35,00,000/- only which fact alone itself shows that addition made is whimsical basis and, section 68 could not applied.

1.3 That while upholding the addition the learned Commissioner of Income Tax (Appeals) has failed to appreciate the submission made by the appellant and explanation tendered supported by the evidence and therefore addition sustained is *per se* illegal and untenable

2. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining an addition of Rs. 15,00,000/- out of sundry creditors outstanding at the close of the instant assessment year

2.1 That the finding of the learned Commissioner of Income Tax (Appeals) that “the assessee could not produce any details and evidence of the sundry creditors. The appellant has not produced anything during the appellate proceedings also” is not based on correct appreciation of facts and provisions of law and therefore untenable.

2.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that order of assessment has been framed without granting sufficient proper opportunity to the appellant company and therefore the same is contrary to principles of natural justice and hence vitiated, apart from being not in accordance with the conditions prescribed under section 144 of the Act.

4. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in not admitting the additional evidence under Rule 46A of the Income Tax Rules, 1961.

5. That both the authorities below have framed the impugned order without granting sufficient proper opportunity to the appellant and therefore the same are contrary to principles of natural justice and hence vitiated.

Prayer : It is therefore, prayed that, it be held that assessment made by the learned Assessing officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It be further held that additions made and sustained by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant be allowed.”

3. Before us, at the outset, Ld. AR submitted that he would like to argue ground no. 4 which is with respect to the non-admission of additional evidence u/s 46A of the Income Tax Rules.

4. Before us Ld. AR submitted that assessment order was passed by the AO u/s 144 of the Act. He submitted that when the matter was carried before Ld. CIT(A), Ld. CIT(A) called for remand report from the AO. One remand reported dated 04.05.2018 was received from the AO and another remand report was received on 16.01.2018 which are reproduced by Ld. CIT(A) in his order.

5. He submitted that despite calling for the remand report, Ld. CIT(A) did not consider the same and rejected the remand reports. He, however, submitted that the rejection of the remand reports was not in entirety but was on selective basis. To support his aforesaid contention, he submitted that based on the same remand report which has been rejected, Ld. CIT(A) deleted the addition of Rs. 2,04,214/- with regard to Ground no. 4 raised before him. He, therefore, submitted that Ld. CIT(A) should have either rejected the entire remand report or should have accepted the remand reports in entirety. He submitted that considering the remand report on selective basis was not permissible. He, therefore, submitted that the matter be remitted back to the Ld. CIT(A) with necessary directions. Ld. DR, on the other hand, supported the order of lower authorities.

6. We have heard the rival submissions and perused the material on record. In the present ground, assessee is aggrieved by the non-admission of the additional evidence under Rule 46A by Ld. CIT(A). We find that Ld. CIT(A) had called for remand reports from the AO but the same were not considered in entirety while deciding the issues in appeal. We are of the view that once the Ld. CIT(A) has called for the remand report from the AO, he

should have either accepted or rejected the entire remand report while deciding the issue but should not have considered it on selective basis. In the present case, we find that Ld. CIT(A) has accepted a part of the remand report while deleting the addition of Rs. 2,04,214/- raised in ground no. 4 before him. In such a situation, we are of the view that the entire issue needs to be examined afresh by Ld. CIT(A) in the light of the remand reports sent by AO. We, therefore, restore the issue back to the Ld. CIT(A) and direct him to decide the issues afresh after considering the material available on record, the submissions of the assessee and the remand reports. Needless to state that Ld. CIT(A) shall grant adequate opportunity of hearing of both the parties. Thus, the **ground of the assessee is allowed.**

8. Since, we have restored the issue back to the file of CIT(A), We are of the view that the other grounds raised by the assessee requires no adjudication at the moment and therefore, not adjudicated.

4. **In the result, appeal of the Assessee is allowed for statistical purposes.**

Order pronounced in the open court on 09.12.2021, immediately after conclusion of the hearing of the matter in virtual mode.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Date:- 09.12.2021
Binita

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI