

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER  
AND  
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER  
Virtual Hearing**

**ITA No.83/Ind/2021  
Assessment Year: 2011-12**

Shri Rajesh Kumar Modi Indore (Appellant / Assessee)	<b>बनाम/</b> Vs.	ITO Dhar (Respondent / Revenue)
P.A. No. AISPM6839R		
Assessee by	Shri Vijay Bansal, AR	
Revenue by	Shri R.P. Maurya, Sr. DR	
<b>Date of Hearing:</b>	<b>22.02.2022</b>	
<b>Date of Pronouncement:</b>	<b>09 .03.2022</b>	

**आदेश / O R D E R**

**PER BHAGIRATH MAL BIYANI, A.M.:**

This is an appeal by assessee against the order dated 14.01.2020 passed by CIT(A)-I, Indore [**“Ld. CIT(A)”** for short] in Appeal No. IT-10491/2018-19/2/33, arising out of the assessment-order dated 19.12.2018 passed by ITO, Dhar [**“Ld. AO”** for short] u/s 148 read with section 144 of the Income-tax Act, 1961 [**“the Act”** for short] for Assessment Year 2011-12.

2. The assessee has raised following Grounds:

*“1. That the order passed by learned CIT(A) is arbitrary, bad in law and on facts.*

*2. That the learned CIT(A) has failed to provide sufficient and reasonable opportunity of being heard to the appellant and erred in confirming the additions made by the AO.*

*3. That the learned CIT(A) has failed to appreciate that the proper application u/r 46A was made for submission of additional evidences, erred in rejecting the same, without giving any reason thereof and has further failed to provide reasonable opportunity to the appellant before rejecting application u/r 46A of the Act.*

*4. The learned CIT(A) has failed to appreciate the facts and circumstances of the case and without appreciating the merits of the submissions made before him, erred in confirming the heavy addition of Rs.18,08,000/- under section 69A of the Act, without any lawful reason, which is quite unjust, illegal and against the facts of the case.*

*5. That the learned CIT(A) has failed to appreciate that the appellant has maintained regular books of account and all the transactions are duly recorded and supported with documentary evidences, erred in not considering the same and further erred in confirming the arbitrary addition made by the AO.*

*6. That the learned CIT(A) has failed to appreciate that the learned AO had initiated the proceedings, based on borrowed information and without any independent inquiry to verify the same, under section 147/148 of the Act, which is bad in law.*

*7. Appellant craves to leave, add, amend, alter or modify any ground before final date of hearing.”*

3. This appeal was required to be filed by 20.04.2020 but it was actually filed on 30.03.2021 and therefore the Registry has informed that the appeal is delayed by 344 days. The Ld. AR prayed that the

delay has occurred due to Covid-19 Pandemic, which may be condoned in view of **The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020** notified vide Gazette “CG-DL-E-29092020-222110 No. 63 New Delhi, dated 29.09.2020 issued by Secretary to Govt. of India read with subsequent amendments thereto, by which the time-limits for filing of appeal have been extended. The Ld. AR further placed reliance on the order of Hon’ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which *suo motu* extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted. We confronted the Ld. DR who did not show any objection. In view of this, the delay is condoned and the appeal is proceeded with for hearing.

4. Briefly stated the facts are such that Ld. AO initiated proceedings u/s 147 of the Act by issuing notice u/s 148 on 13.03.2018 on the basis that the assessee has made large cash deposits in his bank account which has escaped assessment. Thereafter, the Ld. AO issued statutory notice dated 21.08.2018 u/s 142(1) of the Act and fixed the hearing on 05.09.2018. However, the assessee neither filed return nor attended proceedings. Therefore the Ld. AO collected A/c Statement directly from the bank u/s 133(6) of the Act and based thereon assessed the total cash-deposits of Rs. 18,08,000/- as income of the assessee and passed assessment-order u/s 147 read with section 144 of the Act.

5. Being aggrieved by the order of Ld. AO, the assessee filed an appeal to Ld. CIT(A). During appellate proceeding, the assessee made detailed submissions but the Ld. CIT(A) dismissed the appeal of the assessee by observing as under:

***“3.1 During the course of appeal proceedings, the appellant has come up with the plea that the cash deposits were from business and filed written submissions along with additional evidence in the form of various documents as listed in the submissions.***

***3.2 The appellant has not denied that the notice u/s 148 of the Income Tax Act, 1961 and notice u/s 142(1) of the Income Tax Act, 1961 were received. The appellant has not given any reasons as why the ROI was not filed. There is not a single reason specified in the written submission about reasonable cause for not attending the assessment proceedings. It is also observed that the AO had to obtain information from the bank u/s 133(1) of the Income Tax Act 1961 for completing the assessment. The appellant has deliberately avoided the proceedings in order to buy time for cooking the documents and to avoid further inquiries. It is also noted that the appellant has failed to make a proper application u/s 46A of the Income Tax Act, 1961 for admission of additional evidences.***

***[underlined emphasis supplied]***

***3.3. In view of the above discussion the additional evidences and submissions, now filed are not admitted. The action of AO has been found justified in making addition of cash deposit of Rs.18.08 lacs as unexplained investment. The same is confirmed. All the grounds of appeal are dismissed.”***

6. Aggrieved by the order of Ld. CIT(A), the assessee is now in appeal before us.

7. At the very outset, the Ld. A/R requested that out of as many as seven grounds raised by the assessee, it would be most appropriate to first take up the Ground No. 3 because if that ground is found acceptable, there would be no necessity to adjudicate upon other

grounds. We found substance in this request and accordingly proceeded to start with Ground No. 3, which reads as under:

***“3. That the learned CIT(A) has failed to appreciate that the proper application u/r 46A was made for submission of additional evidences, erred in rejecting the same, without giving any reason thereof and has further failed to provide reasonable opportunity to the appellant before rejecting application u/r 46A of the Act.”***

8. Ld. A/R drew our attention to the Paper-Book filed by him and contended that on 13.01.2020, the assessee has filed two letters to the Ld. CIT(A), viz. (i) Detailed submission and additional evidences consisting of 75 pages, a copy of which is placed at Page No. 6 to 87 of the Paper-Book, and (ii) Application for submission of additional evidences under Rule 46A of the Income-tax Rules consisting of 2 pages, a copy of which is placed at Page No. 88 to 89 of the Paper-Book. The Ld. A/R submitted that both of these letters were simultaneously filed to Ld. CIT(A) on the very same date i.e. 13.01.2020. But the Ld. CIT(A), for the reasons best known to him, has though admitted in his order the filing of (i) i.e. the submissions and additional evidences, yet mentioned that the assessee has not submitted (ii) i.e. the Application under Rule 46A of Income-tax Rules, 1962. According to Ld. AR, there is a patent mistake on the part of Ld. CIT(A) in observing that the Application under Rule 46A was not filed, which was in fact filed. The Ld. A/R further submitted that this mistake on the part of Ld. CIT(A) might be an unintentional human error, for which the Ld. AR does not have any quarrel but the true fact is that the assessee has filed an Application in terms of Rule 46A, a copy of which is already placed at Page No. 88 to 89 of the Paper-Book. In his written-submission filed before us, the Ld. AR has also submitted that

the assessee is a trader of grocery items at a very small place and used to file his returns and make compliances regularly but due to sudden changes in business practices, liquidity crunch and heavy medical expenses in family, the business had to be closed and the assessee had to face the challenge of survival. Due to such compelling circumstances, the assessee was not able to make compliances before Ld. AO. The Ld. A/R has further submitted that the cash-deposits of Rs. 18,08,000/- have been made out of business-receipts during that year, which though has income element, but in any case the whole deposit of Rs. 18,08,000/- is not an income of the assessee. With these submissions, the Ld. AR submitted that not only there is a mistake on the part of Ld. CIT(A) in recording a finding that the Application under Rule 46A was not filed, but also in the interest of substantial justice, the matter should be remanded back to the Ld. CIT(A) for a proper disposal on merit.

9. Per contra, the Ld. DR supported the orders of lower authorities.

10. We have carefully considered the rival contentions and submissions of both sides as also the material held on record. We observe that the assessee has filed application dated 13.01.2022 to Ld. CIT(A) in terms of Rule 46A of the Income Tax Rules 1962 which is placed in Paper-Book and remain uncontroverted by Ld. DR. We also observe that in Para No. 3.1 to 3.3 of his order, the Ld. CIT(A) has repeatedly admitted that the assessee has filed submissions and additional evidences, though he has negated filing of Application under Rule 46A. In this regard, on a careful consideration of the aforesaid letter (i) in which the assessee has filed submission and additional

evidences, we have come across the closing para appearing at Page No. 7 of the letter / Page No. 12 of the Paper-Book, wherein the assessee has mentioned:

***“We may respectfully submit that though the submitted details and documents are only in support of bank transaction carried out by the appellant, and copy of the bank statement is already on records, therefore the same cannot be termed as additional evidence, still we are making a separate application for submission of additional evidences, if at all the same is considered to be an additional evidence.”***

This closing para clearly speaks that the assessee has separately filed an Application under Rule 46A. Being so, the factum of filing letter (ii) being the Application under Rule 46A is clearly borne out of the letter (i) admitted by Ld. CIT(A). Therefore, this fact is clearly established that the assessee has filed Application under Rule 46A. We also find substance in the argument of Ld. AR that the assessee is carrying on business at a smaller place and the deposits of Rs. 18,08,000/- is not income of the assessee, though a part of it may be. Therefore, we feel that the documents placed by the assessee by way of additional evidences before the Ld. CIT(A) would not only adjudicate the controversy between the assessee and revenue but also help the revenue to assess correct amount of tax. Therefore in order to impart substantial justice, particularly having regard to the fact that some mistake has occurred on the part of Ld. CIT(A) due to which the Application filed by the assessee under Rule 46A could not be taken note of by him, we think it appropriate to remit the matter back to the

Ld. CIT(A). The Ld. CIT(A) shall pass an appropriate order on merits and in accordance with law after giving reasonable opportunity to the assessee. Therefore, we allow Ground No. 3 of the assessee.

11. As we have allowed Ground No. 3 and remitted the matter to Ld. CIT(A), there is no need to adjudicate upon rest of the grounds.

12. In the result this appeal of assessee is allowed for statistical purposes.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 09.03.2022.

Sd/-  
(SUCHITRA R. KAMBLE)  
JUDICIAL MEMBER

Sd/-  
(BHAGIRATH MAL BIYANI)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 09 /03/2022

*Patel/Sr. PS*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**