

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'A' : NEW DELHI)

(Through Video Conferencing)

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.4266/Del/2018
(Assessment Year : 2014-15)

ITO, Ward – 47(5) New Delhi-110002 PAN : AAFPJ4657F	Vs.	Smt. Alka Jain 2234, Dharam Pura, Chandani Chowk, Delhi-110006
(APPELLANT)		(RESPONDENT)

Revenue by	Ms. Suman Malik, Sr. DR
Assessee by	Ms. Rano Jain, Adv.

Date of hearing:	16.02.2022
Date of Pronouncement:	15.03.2022

ORDER

PER ANUBHAV SHARMA, JM:

This appeal has been preferred by the revenue against the appellate order dated 26.03.2018 u/s 250(6) of the Income Tax Act, 1961 (hereinafter

referred to as “The Act”) passed by Commissioner of Income Tax (Appeals)- 16, New Delhi (here in after also referred as FAA), being appeal no. 10260/16-17 whereby the appeal was allowed.

2. The assessee is individual and return of income was filed on 24.10.2014 for AY 2014-15 declaring total income of Rs. 2,51,600/- from house property, business or profession and income from other sources heads. The case was selected for limited scrutiny to verify amount of sundry creditors claimed by the assessee in the balance sheet. Accordingly, notice u/s 143(2) was issued to the assessee on 31st August, 2015 and based upon the inquiry conducted by Ld. Assessing Officer, the assessment order dated 07.12.2016 was passed u/ 143(3) of the Act and sum of Rs. 2,30,56,317/- was added on allegations of bogus liability disallowed u/s 68 of the Act and an addition of Rs. 1,14,754/- was made, as allegedly assessee failed to reconcile the account of one M/s. Orient Links Pvt. Ltd.

3. The order of Ld. AO was challenged in appeal by the assessee primarily on the ground that Ld. AO had erred in making the addition of 2,30,56,317/- without making any inquiry and without exhausting all the available alternatives as per the provisions of the Act and also by declining to take documents on record and wrongfully rejecting the books of accounts.

4. The assessee had filed an application under Rule 46A of the Income Tax Rules, 1962 for admitting additional evidences and the same was allowed by the Ld. First Appellate Authority.

5. Based upon the additional evidences and rejoinder submitted by the assessee to the remand report, the Ld. First appellate Authority reached the conclusion that addition of creditors made u/s 68 of the Act is not

sustainable and also as the Ld. AO had never asked for books of accounts so how could he reject books of accounts without seeing it.

6. In this appeal against order dated 26/03/2018 of Ld. CIT(A) now the revenue has raised following grounds of appeal :-

“1. On facts and in the circumstances of the case, Ld. CIT [A] erred in deleting the addition of Rs. 2, 30, 56,317/- made by the AO on account of income from undisclosed sources u/s 68 of the Act as unexplained investment by ignoring the fact that the addition was made as the genuineness of transaction could not be established/proved by the assessee.

2. On facts and in the circumstances of the case, Ld. CIT (A) erred in deleting the addition of Rs. 1, 14,754/- made by the AO on account of difference in bank reconciliation ignoring the fact that the assessee has produced no evidence in support of his claim.

3. On facts and in the circumstances of the case, Ld. CIT [A] was not correct in admitting the additional evidences ignoring the fact that the conditions laid down under sub clauses (a), (b), (c) and (d) of Sub Rule 46A of Income Tax Rules, 1962 are not fulfilled.

4. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

7. It is submitted by the Ld DR and conceded by Ld AR that ground no. 1 and 3 are interconnected. As with regard to ground no 1 and 3, on behalf of the revenue, Ld. DR submitted that primarily there is a perversity in the impugned order of Ld. CIT(A) on the basis of taking additional evidences without giving sufficient opportunity of its rebuttal to the Ld. Assessing Officer. It was submitted that the Ld. First Appellate Authority had rushed up the matter in the Month of February when otherwise the tax authorities are engaged in other time barring work. It was submitted that the Ld. Assessing Officer had given sufficient opportunity to the assessee by issuing show cause notice to furnish details on desired questionnaires and also making inquiry exercising powers u/s 133(6) of the Act and based upon the failure of assessee to explain sundry creditors the additions were made. She thus supported the order of AO.

7.1 As with regard to ground no. 2 it was contended by Ld DR that in regard to addition of Rs.1,14,754/-, the Ld. CIT(A) had failed to give any finding and had summarily allowed all the grounds of appeal.

8. The arguments of both the sides were heard and record was thoroughly perused.

8.1 As with regard to the grounds no 1 and 3, the Ld. Counsel for the assessee took the Bench through the paper book to contend that the Ld. First Appellate Authority had duly considered the circumstances and the affidavit of husband of assessee which established the Ld. Assessing Officer had wrongly mentioned in the order that none had attended on behalf of the assessee and no evidence was produced while in fact the Ld. AO on the pretext that the ld. AO was busy in some other proceedings on the date of

hearing had not taken on record the reply. It was submitted that when application for additional evidence was moved before the Id. First Appellate Authority, a remand report was called from the Id. AO, who merely replicated assessment order and did not comment anything on the merits of the additional evidence and thereafter CIT(A), giving opportunity to AO had taken the evidence on record and which became foundation to his findings. He thus submitted Ld CIT(A) has committed no illegality in admission of additional evidence.

8.2 Ld. Counsel of the assessee has relied the order of ITAT, 'F' Bench, New Delhi in ITA no. 2054/Del/2014, M/s. Pranidhi Holdings Pvt. Ltd. Vs. ITO as upheld by the Hon'ble Jurisdictional High Court in the case of Pr. Commissioner of Income Tax- 7 vs. M/s. Pranidhi Holdings Pvt. Ltd. 2018 (4) PMI 403 (Delhi High Court) to contend that the Ld. First Appellate Authority was justified in admitting the additional evidence under the Provisions of Section 46A of the IT Rules, 1962 as Ld. AO had refused to admit evidence which ought to have been admitted and also as the assessee was prevented by sufficient cause from producing the additional evidences before the Income Tax Officer.

8.3 She also relied upon judgment of Bombay High Court in Commissioner of Income Tax vs. Suretech Hospitals and Research Centre Ltd. 2007(6) TMI 522 (Bombay High Court) justifying invoking of Rule 46A (4) of the IT Rules.

8.4 She relied the judgment in the Commissioner of Income Tax(Appeals) vs. M/s. Sangu Chakra Hotels Pvt. Ltd. 2016 (9) TMI 598 (Madras High Court) to contend that if after giving opportunity on additional evidence,

nothing is submitted in objections it will not be opened to the party aggrieved to raise any objection as to its admissibility at a subsequent stage.

8.5 Ld. Counsel also relied the judgment of Hon'ble P & H High Court in the Commissioner of Income Tax vs. Mukta Metal Works 2011(2) TMI 250 (P & H) to contend that additional evidence can be allowed in the interest of justice if the same is authentic and necessary for the decision of the issue raised before the Tribunal.

8.6 It was also contended on the basis of Pr. Commissioner of Income Tax- 7 vs. M/s. Pranidhi Holdings Pvt. Ltd (Supra) that the failure of AO to comment upon material produced before the CIT(A) *prima facie* resulted in the discharge of the initial burden which rests upon the assessee justifying deletion of the additions made u/s 68 of the Act.

9. On merits, as with regard to ground no 1 and 3, it was submitted by Ld AR, that on the basis of opening entries of the 14 sundry creditors, the additions have been made which could not have been done u/s 68 of the Act. It was submitted that the ld. First Appellate Authority has taken into consideration the details of the address and ledger accounts of the sundry creditors to give a finding and delete the additions.

10. As with regard to ground no. 2 of additions of Rs. 1,14,754/-, the Ld. AR candidly accepted that the Ld. First Appellate Authority has failed to make discussion and finding on it while completely allowing the appeal. He fairly admitted that the matter may be remitted back to the Ld FAA with necessary directions.

11. Now, the point for determination being first whether the ld. First Appellate Authority has relied additional evidence of assessee without giving sufficient opportunity of its rebuttal to the Ld. Assessing Officer and secondly the additions made u/s 68 of the Act by the Ld AO were illegally deleted by CIT(A) on the basis of inadmissible evidence of assessee.

12. In regard to the first point for determination para no. 5 of order of Ld FAA, is relevant and the same is reproduced below for convenience.

“5. The appellant along with the application for additional evidence also submitted a paper book. It is learnt from the note-sheet my Ld. predecessor has admitted additional evidence vide order sheet dated 17.08.2017. The letter requesting admission of additional evidence was sent to the AO ward 47(5) for comment. The AO in his remand report dt. 22.08.2017 has replicated the assessment order and pleaded not to admit the additional evidence. The AO also requested that in case the evidence is accepted another opportunity be provided. The AO was again send a letter dated 19.01.2018 for specific comment on the merit of the evidences. The AO did not respond further reminder letter dated 15.02.2018 is again sent to AO as a reminder and asked to furnish the report by 23.02.2018. However, AO choose not to be respond. Therefore, sufficient opportunity was provided to the AO who preferred not avail it. In interest of justice additional evidences filed by the appellant is admitted.”

12.1 The aforesaid observations of Ld FAA, makes it very apparent that it has given reasonable opportunity to the Ld. AO calling for response on not

only the question of admissibility of the additional evidence but also on the merits of the additional evidence, upon the additions made.

13. A presumption of truth is attached to the proceedings and records prepared before public authorities but the same is rebuttable. In the case in hand the Ld. Assessing Officer had observed in para no. 7 of his order that assessee had failed to produce the details/ documents or any other adequate supporting evidence with regard to the verification of creditors shown in balance sheet. This was rebutted by the assessee by filing an affidavit before the Ld. First Appellate Authority that on 23.09.2016 the husband of assessee had appeared before the Ld. AO who on the pretext of being busy with IDS work had not taken the evidence of assessee on record. The copy of the same being on record before the Tribunal at page no. 41 to 44 of the paper book. The affidavit of remained uncontroverted from the Ld AO, in any form. That being so there was no infirmity in admitting additional evidence by the Ld. First Appellate Authority, as assessee was not given due opportunity to file evidence on record before Ld. A.O.

14. In regard to the second point of determination it can be observed from the paper book that the details of all creditors (PB page no. 39 – 42) , copies of ledger accounts (PB page no. 45-89), bank's statement to prove payments made during the year (PB page no. 90-100), ledger account of all 15 creditors for the next year mark with the corresponding bank entries is placed at PB page no. 101-115, the copy of bank account statement for Financial Year 2014-15 showing respective payments have been placed on record at PB page no. 116-126. Then the copies of ledger accounts of all 15 creditors for FY 2015-16 with corresponding bank entries has been placed at page no. 127-141.

15. It can be observed particularly at page no. 111 of the paper book that the account of Adinath Enterprises shows an opening balance of 11,19,928/- with 15 purchases entries and payment of 17 lakhs between 01.04.2014 to 31.03.2015.

16. The Ld. First Appellate Authority had noticed in para no. 7.1 of its order that the two parties, Sai Nath Trader & Adinath Enterprises had transaction during the year. As observed earlier in case of Adinath Enterprises even purchases were made and in case of Sai Nath Traders to payment of Rs. 4 lakhs and 4,50,000/- were made.

17. Thus, the Ld. First Appellate Authority has validly observed on the basis of appreciation of additional evidence, in the form of aforesaid documents, that the creditors were not bogus liabilities.

18. Even otherwise merely on the basis of opening balances without making a substantive inquiry, the sundry creditors could not have been rejected. The order of assessment indicates that based upon the remarks on the envelopes issued to the creditors of the assessee, the Ld. Assessing officer has presumed them to be bogus liability treating them income of the assessee from undisclosed sources. The lack of attempt of inquiry by Ld. Assessing Officer is exhibited by observations in rejecting the books of accounts of the assessee without actually calling for them and which has been rightly made foundation by the Ld. First Appellate Authority, to hold that rejection of books of accounts was not in accordance with the provisions of the Act.

19. In the judgment relied by the counsel for assessee of in Pr. Commissioner of Income Tax-7 vs. M/s. Pranidhi Holdings Pvt. Ltd. 2018(4) TMI 403, Hon'ble Delhi High Court has held that when assessee has brought on record all the documents necessary to establish the creditworthiness of the creditors and the genuineness of the transaction and the AO has not preferred to file any comment then there is no scope of interference into the findings returned by the Ld. CIT(A). In the appeal in hand also, as in spite of opportunity by the Ld. First Appellate Authority, calling for comments on merits of the additional evidence, the Ld. AO failed to respond, now before this Tribunal, the revenue cannot succeed.

20. In view of the above this bench finds no reasons to interfere with the order of Ld. FAA and grounds no 1 and 3 are not sustainable.

21. As with regard to ground no 2 for additions to the extent of 1,14,754/- for failure of assessee to reconcile the amounts in record to the transactions the M/s. Orient Links Pvt. Ltd, as Ld AR has fairly conceded that there are no findings on this aspect by FAA, she has no objection if the matter is restored to the Ld. FAA for findings on this left over issue.

22. Consequently, ground no. 2 be considered as allowed, for statistical purpose. The issue with regard to validity of addition of Rs. 1,14,754/- is restored to Ld. FAA for deciding the issue afresh after granting adequate opportunity of hearing to both the parties and by passing a speaking order on the issue.

23. Accordingly the appeal of Revenue is partly allowed for statistical purposes.

Order pronounced and signed in open court on this day of 15th March, 2022.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 15.03.2022

Binita, SR.P.S

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**