

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD M JAGTAP, VICE PRESIDENT**  
**AND**  
**T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.28/Ahd/2022**  
**Assessment Year : 2005-06**

Balex Private Ltd. A-5, Nandavan Society, Sussen Textile Road, Vadodara-391240 PAN : AAACB7665B	Vs	The ACIT Circle-1(1)(1), Vadodara-390007
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Parimalsinh B Parmar, AR
Revenue by :	Shri S. S. Shukla, Sr. DR

सुनवाई की तारीख/Date of Hearing : **04/05/2022**  
घोषणा की तारीख /Date of Pronouncement: **06/05/2022**

**आदेश/O R D E R**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:**

This is an appeal filed by the assessee against the order dated 02.12.2021 passed by the Commissioner of Income Tax (Appeals) (in short "CIT(A)") of National Faceless Appeal Center, Delhi relating to the Assessment Year 2005-06.

2. The brief facts of the case is that the assessee is engaged in the business of manufacturing of Aluminium Sections. For the A.Y. 2005-06 the assessee filed its return of income on 29.10.2005 declaring a loss of Rs. 38,90,070/-. The assessment was completed under Section 143(3) of the Income Tax Act, 1961 (hereinafter called "the Act") on 19.11.2007 by determining the total assessed income as NIL. The assessee was also made addition on account of unsecured loan of Rs. 93,95,000/- and

also rejected book result of Rs. 6,05,998/-. The assessee challenged the matter before the Ld. CIT(A), the CIT(A) after considering the submission of the assessee called for a remand report and assessee's reply on the remand report granted partial relief by deleting the addition to the extent of Rs. 16,16,000/-. But, however, confirmed the addition of Rs. 33,35,000/- received by the assessee from Shanti Metals Pvt. Ltd.

3. On further appeal against the appellate order, the Coordinate Bench of the Tribunal remitted the matter back to the file of the AO by holding as under:

*"We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The issue in the present case is with respect to the addition made u/s.68 of the Act of the amount of Rs.33,35,000/- received by the assessee from Shanti Metals Pvt. Ltd. We find that ld.CIT(A) while confirming the addition has inter alia noted that though assessee has stated the amount received from Shanti Metal Pvt. Ltd. as loan but on the other hand, Shanti Metals Pvt. Ltd. has reflected the amount due from assessee as "Sundry Debtors", assessee had not filed the copy of bank statement of Shanti Metals Pvt. Ltd. showing source of Rs.33,35,000/-. On the other hand, before us, it is assessee's submission, that the assessee had furnished the details to prove the genuineness of transaction and if given one more opportunity, the assessee would present Shanti Metals Pvt. Ltd. before the AO and also furnish all the other necessary details required and also prove that the transactions with Shanti Metals Pvt. Ltd. was genuine and therefore no addition u/s.68 was required. Considering the aforesaid request of the assessee's ld.AR, in the interest of justice, we are of the view that the assessee be granted one more opportunity to prove the transactions. We therefore restore the issue back to the file of AO to decide afresh the issue of addition u/s.68 of the Act with respect to the amount received from Shanti Metals Pvt. Ltd. Needless to state that the AO shall grant adequate opportunity of hearing to the assessee. The assessee is also directed to cooperate by promptly furnishing all the required details and information called for by the AO and ensure the presence of the lender through its authorized representative, before AO. In case, the assessee fails to furnish the required details as called for by the AO, AO would be at liberty to decide the issue in accordance with law and on the basis of material available on record"*

4. Similarly on the addition of Rs. 6,05,998/- being 1% of the sales report of book by rejection of books of account. This issue also remitted by the ITAT to the file of the AO.

5. Pursuant to the remand order of the ITAT, a notice under Section 142(1) was duly dispatched on 03.12.2018 to the assessee. As there was no response another final notice dated 11.12.2018 fixing the case for hearing on 18.12.2018 was served by way of affixture mode on 27.12.2018. On this notice the Authorised Representative of the assessee on 28.12.2018 filed a letter asking for adjournment for 20 days. The same was refused being a remand from the ITAT. The AO confirmed the addition made in the earlier Assessment Order as the assessee has not produced required details and informations called in the notice issued under Section 142(1). Following the directions of the Tribunal, the AO completed the assessment based on materials available before him.

6. In the second round of the appellate proceeding before the Ld. CIT(A) National Faceless Appeal Center (in short "NFAC") the assessee for the first time filed additional evidences under Rule 46A. The same has been considered and appeal was dismissed by the CIT(A) as follows:

*"5.2 In this case, the Hon'ble ITAT had remitted the issue back to the file to A.O with the directions that the **"assessee may be granted one more opportunity to produce the entire books of account, voucher and such other details required by the A.O"**.*

*5.3 In the aforesaid order, The ITAT has clearly directed as follows:- **"The assessee is also directed to co-operate by promptly furnishing all the required details and information called for by A.O and ensure the presence of the lender through its authorized representative before A.O. In case, the assessee fails to furnish the required details as called for by the A.O, A.O would be at liberty to***

**decide the issue in accordance with law and on the basis of material available on record."**

5.4 Therefore it was the appellant's duty and responsibility to immediately respond to the AO's notices and submit all documentary evidences to the A.O to substantiate his claims. However the appellant had utterly failed to produce the necessary documents and evidences in complete defiance of the Hon'ble ITAT direction without any sufficient reason whatsoever.

5.5 In this backdrop, the appellant's contentions for admission of additional evidences cannot be accepted. It is clear from the assessment order that the A.O had given sufficient opportunities to the appellant to present his case vide notices dated 03.12.2018, 11.12.2018 and 27.12.2018. All such notices were duly served on the appellant. However, the appellant himself chose not to cooperate with the department by providing requisite details / documents. These facts prove that the A.O had given more than sufficient opportunities during the course of assessment proceedings for the appellant to substantiate his claims. Moreover, the appellant has also not submitted any sufficient cause which prevented him for producing the relevant evidences before the A.O. In view of the above reasons, the appellant's contention of admission of the additional evidence under Rule 46A is hereby rejected.

5.6 Further, since the appellant has failed to establish the genuineness of unexplained cash credit of Rs. 33,35,000/- from Shanti Metals Pvt. Ltd. The said addition is hereby confirmed and the appellant's appeal on this issue is dismissed. Similarly, in the absence of any documentary evidences, the addition of Rs. 6,05,998/- made on account of estimated net profit @ 1% of total sales is also confirmed and appellant's appeal is dismissed on this issue also."

7. Aggrieved against the same, the assessee is before us raising the following grounds of appeal:

"1.00 On the facts and circumstances of your appellant case and in law, ld. CIT(A) failed to honour the request of your appellant, for requirement of admission of additional evidence under Rule 46A of the Income Tax Rules, 1962 which are having bearing over the facts of the case, by simply giving reason of not furnishing the said details before ld. AO and as such the action of ld. CIT(A) made grave injustice to your appellant.

2.00 Your appellant submits that it has submitted reasons before ld. AO and also before ld. CIT(A) of its inability to submit relevant details as required by ld. AO in a short period of time which the ld. CIT(A) without giving due regard made the basis for confirming the additions made by ld. AO by ignoring the details submitted before him with a request to consider the same as evidence under Rule 46A of the Income Tax Rules, 1962.

3.00 Your appellant craves leave to add, alter and / or amend the grounds herein above raised."

Relying upon the grounds of appeal the assessee sought for admission of additional evidences under Rule 46A of the Income Tax Rules, 1962 which are having bearing over the facts of the case.

8. The Ld. AR further submitted during the set-aside assessment proceeding the address to where notices alleged to have been served remained vacant and therefore, the assessee could not reply to the notices issued by the AO. The assessee came to know about the issuance of notice when the Authorised Representative was served with the notice during his visit to the Income Tax Department for some other case. In fact, the last notice dated 11.12.2018 fixing case for hearing on 18.12.2018 when this was communicated by the Authorized Representative to the assessee, thereby a letter dated 28.12.2018 was filed seeking for time to represent the case. As the business operations had been closed down and there was no full time accountant to deal with the subject matter are the reason for seeking further time, which are bona fide in nature. In the above circumstances the additional evidences to be taken on record and appropriate orders to be passed and assessee is also undertaking to appear before the AO and cooperate with the assessment proceeding.

9. Per contra, the Ld. DR also has no objection in remanding the matter to the AO as a final opportunity only to entertain the additional evidences filed before the AO.

10. We have given our careful consideration, considering the explanation offered by the assessee we hereby set-aside the order passed by the CIT(A) and remand the matter back to the AO to

look into additional evidences filed by the assessee for the first time and pass appropriate orders in accordance with law. Needless to state the assessee should avail this final opportunity and cooperate with the AO for framing the fresh assessment order.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the Court on 06<sup>th</sup> May, 2022 at Ahmedabad.**

**Sd/-  
(PRAMOD M JAGTAP)  
VICE PRESIDENT**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, dated 06/05/2022

**Tanmay**

**TRUE COPY**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad