

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI

Before Shri Ani Chaturvedi, Accountant Member
and
Shri Anubhav Sharma, Judicial Member

ITA No. 573/Del/2020
(Assessment Year: 2016-17)

ACIT,
Circle-43(1),
New Delhi

(Appellant)

Vs. Rakesh Joon,
B-44, Sector-3, Plot 5A,
Vishkrantika Apartment,
Dwarka, New Delhi
(Respondent)

PAN: **AFAPJ1126R**

CO No. 66/Del/2020
(In ITA No. 573/Del/2020)
(Assessment Year: 2016-17)

Rakesh Joon,
B-44, Sector-3, Plot
5A, Vishkrantika
Apartment, Dwarka,
New Delhi

(Appellant)

Vs. ACIT,
Circle-43(1),
New Delhi

(Respondent)

PAN: **AFAPJ1126R**

Revenue by: Shri M. Barnwal, Sr. DR

Assessee by : Shri Sushil Chadha, CA

Date of Hearing 06/07/2022

Date of pronouncement 12/07/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The appeal has been preferred by the Revenue and the Cross objection has been filed by the Assessee against the order dated 13.11.2019 of CIT(A)-

15, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 209/2018-19 arising out of an appeal before it against the order dated 24.12.2018 passed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by ACIT, Circle-43(1), New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are that the return of income for Assessment Year 2016-17 declaring income of Rs. 99,73,330/- was filed by the Assessee and the case was selected for scrutiny on following grounds:-

- a. Substantial increase in capital in year (Part-A-BS of ITR)
- b. Change in method of accounting (Part A-OI and Part A-P&L of ITR)
- c. Large squared up loans during the year (Form 3CD)

Based upon the response of the Assessee qua for explaining the source of increase in capital and how it had been offered to tax the Id AO concluded that the information available (balance sheet statements as on 31st March 2015 and 31st March 2016) depict that the capital to be Rs. 4,99,86,196/- as on 31st March 2015 and Rs. 11,93,32,065/- as on 31st March 2016. Therefore, the assessee has not been able submit any supporting documents to explain the substantial increase in the capital during the year for AY 2016-17. In this view, the source of substantial increase in capital remains unexplained.

3. The Assessee's appeal was accepted by the Id CIT(A) by following observations:-

4.3 The contentions of the AR have been considered and. the order of the AO has also been perused. It is seen that vide page no. 59 of the paper book filed by the AR of the appellant, It is seen that the capital of the appellant has been reconciled as under :

<i>Balance as on 31.03.2015 (as per income tax return)</i>		<i>49986196</i>
<i>Capital account HL Enterprises</i>	<i>52315968</i>	
<i>Capital Account NCR Guest House</i>	<i>2774970</i>	
<i>Gross Income for the year</i>	<i>10641525</i>	

<i>Inter unit investment</i>	<i>5409550</i>	
		<i>71142013</i>
		<i>121128209</i>
<i>Less : Drawing</i>		<i>1796144</i>
<i>Capital Account as on 31.03.2016 as per Income Tax Return</i>		<i>119332065</i>

4. The revenue has come up in appeal raising following grounds of appeal:-

"1. Whether CIT(A) is right in accepting fresh evidence and not giving an opportunity of being heard to the AO and deciding on the evidence."

5. On behalf of the revenue the Id DR submitted that in the para No. 4.3 the Id CIT(A) has referred certain piece of evidence, however, this additional evidence was admitted without any response or remand report from the Id AO. It was submitted that the Assessee had not produced the necessary balance sheet before the Id AO and the Id CIT(A) admitted them as additional evidence and without calling for remand report it has been deleted.

On the other hand Id counsel for the Assessee submitted that every material evidence was produced before the Id AO and only that evidence which was submitted before the Id AO was only laid before the Id CIT(A) and no additional evidence was submitted. He referred to various parts of the order of the Id AO to submit that the Id AO had taken into consideration that evidence but failed to appreciate which has been rightly done by the Id CIT(A) while setting aside the Id AO.

6. Giving a thoughtful consideration to the matter on record, the bench is of considered opinion that the order of the Id CIT(A) does not show if any additional evidence was taken on record. The Ld. AR of the assessee has placed on record before the Tribunal, the copy of paper book which was filed before the Ld CIT(A) with a certificate that the paper book contains the paper and documents as filed before the Assessing Officer during the assessment proceedings and no additional paper was filed before the CIT(A). There is no

reason to discredit the certificate of Ld AR which carries substantial penal consequences of contempt.

7. Further, it can be observed from the appellate order, that the Ld AO had failed to deal with the documents of the Assessee and that was the reason to reverse the findings. Ld CIT(A) in his para 4.2 of his order mentions the fact as to which all documents were filed along with written submissions. In Para 4.3 at page 4, while referring to the findings of Ld AO, the Ld CIT(A) has specifically mentioned *that " In the above finding, the AO has only stated that the response of the AR was not found tenable and how and why the documents submitted by the assessee were not accepted"*. The order of Ld. CIT(A) makes it apparent that it did not find fault in the findings of Ld AO on any legal aspect of interpretation of evidence but for failure to appreciate the documents of assessee at all. No fault can be found in the proceedings on ground of not calling comments of the AO. The ground raised by the revenue is not sustainable. **The appeal of Revenue is dismissed.**

8. Consequently, the Cross objection is dismissed being infructuous.

Order pronounced in the open court on 12/07/2022.

-Sd/-
(Anil Chaturvedi)
Accountant Member

-Sd/-
(Anubhav Sharma)
Judicial Member

Dated: 12/07/2022
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi