

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 7433 /DEL/2019
Asstt.Yr: 2011-12**

SandeepRathi
S/o Sh. Nar Singh,
Vill. Asandha, Tehsil
Bahadurgarh, Distt. Jhajjar,
Haryana-124507
PAN- ALIPR1253P

Vs Income Tax Officer,
Ward-4, Rohtak.

APPELLANT

RESPONDENT

**Assessee represented by
Department represented by**

**Ms. Rano Jain, Ld. Adv.
Ms. Sapna Bhatia, Ld.
CIT DR**

**Date of hearing
Date of pronouncement**

**13.09.2022
22.09.2022**

ORDER

PER N.K. CHOUDHRY, JM:

The Assessee has preferred the instant appeal against the order dated 29.08.2019 impugned herein passed by the learned Commissioner of Income tax (Appeals), Rohtak (in short "Ld. Commissioner") u/s 250(6) of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2011-12.

2. Brief facts relevant for adjudication of the instant appeal are that an addition of Rs. 76,84,000/- was made by the Assessing Officer as income of the Assessee from undisclosed sources on the ground that even after so many opportunities the Assessee could not file any source of cash deposits.

3. The Assessee being aggrieved also challenged the addition under consideration in addition to challenging other additions made by the Assessing Officer which are not in subject matter before us.

4. Before the Ld. Commissioner the Assessee vide letter dated 1.2.2015 filed an application under Rule 46A of the Income Tax Rules 1962 (in short "the Rules") on the ground *"that his bank account was used by his family friends who were allotted wine shop around Bahadurgarh as they did not have any bank account and the cash deposits were made out of their sale proceeds to purchase DD (Demand Draft) for paying license fee to Excise & Taxation Department. The Assessee also submitted affidavits of his family friends, along with their accounts filed with Excise Department in this regard."*

4.1 The Ld. Commissioner on the aforesaid aspects, sought a remand report from the AO, in response to which the Assessing officer vide letter dated 9.12.2015 reported that the Assessee did not respond to the letter dated 3.12.2015 by which he was asked to appear and explain the matter with regard to the issues raised in appeal, due to which the issue under reference could not be verified.

4.2 The Assessee vide letter dated 3.2.2016 again requested the Ld. Commissioner for another opportunity, which was accepted by the Ld. Commissioner and vide letter dated 3.2.2016 the Assessing officer was again asked to give an opportunity to the Assessee. As reported by Assessing Officer vide letter dated 12.4.2016, the Assessee again also, neither appeared nor responded to explain and substantiate his claim made in the application submitted under Rule 46A.

4.3 The Assessee subsequently, vide letter dated 21.2.2018 claimed before the Ld. Commissioner *“that the Assessee’s source of income is from his profession as an advocate and building material supplier. Further, as per Rule 46A application, money was deposited in his account by his friends who were allotted a wine shop and did not have their own accounts. This money was deposited to purchase DDs for*

making payment of license fee to the Excise Department; affidavits of Shri Rakeshkumar and Shri Ram Gopal were given along with their statement of account with Excise Department. However, the Assessing Officer did not verify the evidence but issued notices to the Assessee for attending the office and that the notices were not received by him. The Assessee also relied on the decision of Hon'ble Supreme Court in the case of Parikh & Co. Vs. CIT, wherein it was held that an affidavit is a valid piece of evidence. The Assessing officer also did not verify evidences from the Excise Department and the bank.”

4.3.1 The Ld. Commissioner again by writing a letter dated 21.2.2018, directed the AO to examine the reply of the Assessee dated 21.2.2018 and to make inquiries from Excise Department to verify the claim and to give opportunity of cross-examination to the Assessee in this matter.

4.3.2 The Assessing Officer vide reply/report which was received by the Ld. Commissioner on 26.8.2019, reported that vide this office letter No. 2551 dated 03.08.2018, the Assessee was given an opportunity to appear before the undersigned on 10.08.2018 at 11.30AM to produce the documentary evidence to justify his claim with regard to issues raised by him in the appeal. But on the stipulated

date and time neither the Assessee appeared in the office nor was any written submission received from him. The Assessee was given a number of opportunities earlier also vide office letters no. 10608, 17682 and 14871 dated 07.03.2018, 04.02.2016 and 03.12.2015 respectively. However, on these stipulated dates also, neither the Assessee appeared in the office nor any written submission was received from him. Hence, in the event of non-compliance by the Assessee, issues under reference cannot be verified. The appeal filed by the Assessee therefore, may kindly be decided accordingly.

5. Consequently, on the basis of the report of the Assessing Officer received on 26.08.2019, the Ld. Commissioner vide impugned order dated 29.08.2019 affirmed the addition under challenge.

6. We observe from the orders passed by the authorities below, that the conduct of the Assessee seems to be totally irresponsible and non-cooperative, which cannot be encouraged and hence we are inclined to dismiss of the Assessee however, considering the submission of Ms. Rano Jain, Ld. Adv to the effect *that after receiving remand report from the Assessing Officer on 26.08.2019 in response to letter dated*

21.02.2018, the Ld. Commissioner without providing copy of the remand report and any opportunity to the Assessee to controvert the findings of the Assessing Officer, proceeded further and decided the appeal pending before him, which shows denial of opportunity of being heard and violation of the principle of natural justice, and without going into the controversy/factual aspects of the case, we deem it appropriate to set aside the order passed by the Ld. Commissioner and to remand back the case to its file for decision afresh, suffice to say, by providing reasonable opportunity to the Assessee, of being heard and/or to defend the remand report filed by the Assessing officer on 26.08.2019.

6.1 We also deem it appropriate to direct the Assessee to appear and file the relevant documents as and when would be required by Ld. Commissioner for proper adjudication of the appeal and just decision of the case. In case of further default by the Assessee, the Assessee shall not be entitled for any kind of leniency and the Ld. Commissioner would be at liberty to take the decision in accordance with law, without being influenced by the observations made by us above.

7. In the result, Assessee's appeal stands allowed for statistical purposes.

Order pronounced in open court on 22/09/2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI