

आयकर अपीलीय अधिकरण  
गुवाहाटी 'डीबी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI 'DB' BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
**[Virtual Court]**

डॉ मनीष बोराड, लेखा सदस्य  
एवं  
श्री संजय शर्मा, न्यायिक सदस्य  
के समक्ष

**Before**

**DR. MANISH BORAD, ACCOUNTANT MEMBER  
&  
SRI SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 149/Gau/2019  
Assessment Year: 2012-13**

***ITO, Ward-Itanagar & TPS.....Appellant***

***Vs.***

***M/s.M.M. Reedo Automobiles (P) Ltd.....Respondent  
[PAN: AAGCM 8448 P]***

**Appearances by:**

*Sh. P.S. Thuingaleng, ACIT, appeared on behalf of the Revenue.*

*Sh. Purshotam Gaggar, FCA, appeared on behalf of the Assessee.*

Date of concluding the hearing : July 28<sup>th</sup>, 2022

Date of pronouncing the order : October 18<sup>th</sup>, 2022

**आदेश**

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the Revenue pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax(Appeals), Guwahati-1, Guwahati [in

short Id. "CIT(A)"] dated 07.01.2019 arising out of the assessment order framed u/s 144 of the Act dated 31.12.2014.

2. The Revenue is in appeal before this Tribunal raising the following grounds:

*"1. Whether on facts and in the circumstances of the case, the Ld. CIT(Appeal)-I, Guwahati has erred in allowing the assessee to file fresh evidence under the Rule 46A without appreciating the fact that the assessee was given several opportunities for filing the details during the assessment proceedings.*

*2. Whether on facts and in the circumstance of the case, the Ld. CIT(A), Guwahati-I, Guwahati has erred in law and on facts in deleting the addition of Rs. 3,53,73,000/- out of total additions made Rs. 3,71,10,000/- towards Share Capital and Share Premium (Rs. 1,48,44,000/-+Rs.2,22,66,000/- + Rs. 17,37,000/-) as unexplained money."*

3. Brief facts of the case are that the assessee is a private limited company engaged in the business of automobiles. Nil income declared in e-return filed on 22-11-2012 filed for the AY 2011-12. Case selected for scrutiny through CASS (Computer aided Scrutiny Selection System) followed serving of notices u/s. 143(2) & 142(1) of the Act. During the course of the assessment proceedings certain details including production of books of account, bank details and other documents were called for. None appeared on the various dates of hearing even after sufficient opportunity being awarded to the assessee, which is discernible from the assessment order. The Id. AO accordingly framed the best judgment assessment u/s. 144 of the Act assessing assessee's income at Rs.3,75,56,400/-.

4. Aggrieved, assessee preferred appeal before the Id. CIT(A). Various additional evidences were filed before him. Based on these

details the ld. CIT(A) deleted the addition made by the ld. AO and partly allowed the assessee's appeal.

5. Aggrieved, the revenue is in appeal before this Tribunal raising the aforementioned grounds of appeal.

6. We first take up ground no. 1 through which the Revenue has contended that the ld. CIT(A) erred in entertaining the fresh evidence(s) filed under rule 46A of the I.T Rules without calling for any remand report from the ld.AO. It is also contended that the ld. CIT(A) has not followed the provisions of Rule 46A and therefore, all the issues needs to be restored to the file of the ld. AO for fresh examination.

7. Per contra, the Learned Departmental Representative stated that the ld. CIT(A) has co-terminus power to that of ld.AO and detailed finding on this issue has been given by the ld. CIT(A) and the same has been relied upon by him.

8. We have heard the rival contentions and perused the material placed on record before us. Revenue's grievance in ground no. 1 is that the ld. CIT(A) erred in allowing the assessee to file fresh evidence under rule 46A. Since Rule 46A of the I.T Rules, 1962 has direct bearing on the issue(s), the same is reproduced herein below:-

9. Rule 46A(1) reads as under:-

**46A.** (1) *The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—*

*where the [Assessing Officer] has refused to admit*

*evidence which ought to have been admitted ; or  
where the appellant was prevented by sufficient cause  
from producing the evidence which he was called upon  
to produce by the [Assessing Officer] ; or  
where the appellant was prevented by sufficient cause  
from producing before the [Assessing Officer] any  
evidence which is relevant to any ground of appeal ; or  
where the [Assessing Officer] has made the order  
appealed against without giving sufficient opportunity to  
the appellant to adduce evidence relevant to any ground  
of appeal.*

*(2) No evidence shall be admitted under sub-rule (1) unless the  
[Deputy Commissioner (Appeals)] [or, as the case may be, the  
Commissioner (Appeals)] records in writing the reasons for its  
admission.*

*(3) The [Deputy Commissioner (Appeals)] [or, as the case may  
be, the Commissioner (Appeals)] shall not take into account any  
evidence produced under sub-rule (1) unless the [Assessing  
Officer] has been allowed a reasonable opportunity—*

*to examine the evidence or document or to cross-  
examine the witness produced by the appellant, or  
to produce any evidence or document or any witness in  
rebuttal of the additional evidence produced by the  
appellant.*

*(4) Nothing contained in this rule shall affect the power of the  
[Deputy Commissioner (Appeals)] [or, as the case may be, the  
Commissioner (Appeals)] to direct the production of any  
document, or the examination of any witness, to enable him to  
dispose of the appeal, or for any other substantial cause  
including the enhancement of the assessment or penalty  
(whether on his own motion or on the request of the [Assessing  
Officer]) under clause (a) of sub-section (1) of section 251 or the  
imposition of penalty under section 271.]*

10. Now, on perusal of the assessment order, we find that notice u/s. 143(2) and 142(1) of the Act were duly served upon the assessee. Mr. Ajay Rai, General Manager of the assessee company appeared on the given date and submitted the copy of return and

audit report. When various details were called for by the ld. AO, Mr. Muthcu Mithi, Managing director gave a statement regretting for non-appearance and assured for future cooperation in the assessment proceedings. Thereafter, since there was no cooperation/appearance on behalf of assessee on various dates of hearing fixed by the ld. AO no details were filed before the ld. AO. It was only when the matter travelled before the 1<sup>st</sup> appellate authority (ld.CIT-A) those various additional evidences were filed.

11. Now on examination of these facts of the case in the light of Rule 46A, we find that the ld. CIT-A should not have given cognizance of the additional evidences filed by the assessee unless reasonable opportunity has been allowed to the ld. AO. The ld. CIT(A) was duty bound by provisions of Rule 46A to have recorded first finding why additional evidence can be entertained at the appellate stage and after admitting the same (additional evidence), the same should have been forwarded to the ld.AO for the remand report. The procedure adopted by the ld. CIT(A) in the instant appeal is not justified as it will lead to a wrong precedence. The AO is the person, who is primarily entrusted with the duty for making assessments. If there is reasonable hardship on the part of assessee for being unable to appear before the ld.AO, then in such a case/situation the ld. CIT(A) should have called for the remand report from the ld.AO.

12. In the instant case the ld. CIT(A) has not properly followed the provisions of Rule 46A and, therefore, we are of the considered view that all the issues raised in the instant appeal needs to be restored back to the file of the ld. CIT(A) with a direction to forward the additional evidences so filed by the assessee before him to the ld.

AO having jurisdiction over the assessee for obtaining remand report. Further, the ld. AO shall examine all the additional evidences so filed and if needed shall call the assessee to make necessary submissions & explanations regarding additional evidences. Thereafter, the said remand report is to be considered by the ld. CIT(A) for carrying out the appellate proceedings as provided under the law. Thus, ground no. 1 of the revenue is allowed.

13. As far as ground no. 2 is concerned, it is raised on merits. But since we have already allowed ground no. 1, therefore, the instant issue raised on merits stands restored to the file of the ld. CIT(A) for afresh examination after considering the remand report from the ld.AO, who will decide the issues accordingly on merits as per law. Thus, ground no. 2 of the revenue is allowed for statistical purpose.

14. In the result, the appeal of the revenue is partly allowed for statistical purpose.

Order pronounced in the open court on...18-10-2022

Sd/-

Sd/-

[Sonjoy Sarma]  
Judicial Member

[Manish Borad]  
Accountant Member

Dated: 18.10.2022

\*\*PP,SPS)

*Copy of the order forwarded to:*

1. ITO, Ward-Itanagar & TPS.
2. M/s. M.M. Reedo Automobiles (P) Ltd., Tali Complex, T.T. Marg,  
Opp. SBI, Itanagar-791 111.
3. CIT(A)- Guwahati-1, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Bench, Guwahati.

*True copy*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata