

3. The Id. Sr. DR was required to address the order wherein the additions made by the Assessing Officer, challenged by the assessee in appeal, have been decided by the Id. CIT(A) in Para 8.3.1 and 8.4.1 holding as under:

"8.3.1 The AO during scrutiny found that the appellant has claimed Rs. 1,29,32,216/- as consumable in the lab and asked the appellant to produce the details of payments exceeding Rs. 50,000/- in the year along with the bills. The payment which were not supported by bills have been found out in the case of 6 persons amounting to Rs.13,76,630/-. The Assessing Officer asked the appellant to file the copies of bills once again through notice dated. 24.12.2018 but the appellant was not able to submit the same. The Assessing Officer therefore disallowed the amount as unexplained expenditure u/s 69C of the Act. During appeal hearing the appellant submitted that he was not given adequate opportunity to produce the details and submitted the invoices from the parties as additional evidence under Rule 46A. The same were forwarded to the Assessing Officer for acceptance and also for findings on the merits of the evidence. The AO had only submitted that the additional evidence should not be admitted. **The Assessing Officer is directed to verify the above evidence through sending notices u/s 133(6) of the Act to the parties and after giving an opportunity to the assessee, he is to decide the issue on the merit.**

(emphasis supplied)

8.4.1 The Assessing Officer found that the appellant had sundry

creditors for less than 6 months amounting to Rs. 9,51,319/- for whom the appellant had not produced the detailed address/PAN/confirmations etc. The Assessing Officer had issued notice on 24.12.2018 for compliance of the same on 26.12.2018 which was not complied by the appellant due to lack of time. The Assessing Officer then added the amount of Rs. 9,51,319/- to the total income of the appellant. During appeal hearing the appellant submitted that he was not given adequate opportunity to produce the details and submitted the invoices from the parties as additional evidence under Rule 46A. The same were forwarded to the Assessing Officer for acceptance and also for findings on the merits of the evidence. **The AO had only submitted that the additional evidence should not be admitted. The Assessing Officer is directed to verify the above evidence through sending notices u/s 133(6) of the Act to the parties and after giving an opportunity to the assessee, he is to decide the issue on the merit."**

(emphasis supplied)

4. Attention of the ld. Sr. DR was drawn to the statutory position wherein the power to remand the issue back was excluded by the Finance Act, 2001 w.e.f 01.06.2004. The relevant provision reads as under:

“Powers of the Commissioner (Appeals)

251 (1) In disposing of an appeal, the [***] [Commissioner (Appeals) shall have the following powers-

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment [***];

4.1 It is seen that the exercise of powers by the Id. CIT(A) in the present order is in conflict with the provisions and beyond the statutory powers vested in the First Appellate Authority.

5. Accordingly, in view of the said violation, the impugned order is set aside and the issue is restored to the file of the Id. CIT(A) with a direction to pass a speaking order in accordance with law after giving reasonable opportunity of being heard to the assessee after calling forth for remand report etc.

6. While so directing, it is made clear that the assessee in its own interest should ensure full and proper participation before the First Appellate Authority and not to abuse the trust reposed in him. At the same time it is made clear that in the eventuality of the abuse of the trust reposed the Id. CIT(A) shall be at liberty to pass an order in accordance with law on the basis of material available on record. Said order was pronounced in the open court at the time of hearing itself.

7. Accordingly, the appeal filed by the assessee is allowed for statistical purposes.

Said order was pronounced in open court on 28th October, 2022.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Dated: 28.10.2022

VL/PK