

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4905/Del/2018 : Asstt. Year : 2012-13

Income Tax Officer, Ward-47(4) New Delhi-110002	Vs	Narendra Jain, 3691/8, Gupta Tractor Market, Mori Gate, Delhi-110006
(APPELLANT)		(RESPONDENT)
PAN No. AAHPJ8569J		

**Assessee by : Sh. Ved Jain, Adv. &
Sh. Aman Garg, CA**

Revenue by : Sh. Jeetender Chand, Sr. DR

Date of Hearing: 25.10 .2022	Date of Pronouncement: 31.10.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-16, New Delhi dated 27.04.2018.

2. Following revised grounds have been raised by the Revenue:

"1. Whether Ld. CIT(A) has erred on facts as well as in law in admitting additional evidence filed by the assessee in 2nd round of appeal, on the directions of Hon'ble ITAT, without following the requirement of rule 46A(3) of the Income Tax Rules, 1962 which were required to be strictly followed whereby additional evidence must be furnished to Assessing Officer for verification and for submission of his comments before admitting such additional evidence, as held by jurisdictional High Court in case of CIT vs. Manish Build Well (P) Ltd. (2011) 16 taxmann.com 27 which was binding on CIT(A).

2. *Whether Ld. CIT(A) has erred on facts and in law by admitting additional evidence without furnishing the same to the Assessing Officer for his comments, which was not done by Ld. CIT(A) in 2nd round and thus his order was in contravention of decision of Hon'ble Kerala High Court in case of CIT vs. E.D. Benny (2015) 62 taxmann.com 302.*

3. *On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.1,80,23,832/- made by the AO and confirmed by CIT(A) in 1st round of appeal.*

4. *Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in not following the procedure prescribed under Rules 46A(3) even when it is a settled position of law that once assessee invokes Rule 46A and prays for admission of additional evidences before Ld. CIT(A), the procedure prescribed in said rules has to be scrupulously followed."*

3. The assessee is running a proprietorship concern with the name of M/s Micky Automobiles which is engaged in the business of Wholesale Trading of Tractor parts. The assessee filed return of income on 29.09.2012 declaring an income of Rs.6,76,730/-.

4. The assessment in this case has been completed on 26.03.2015 and the assessee filed appeal before the Id. CIT(A) against the additions made which have been adjudicated by order dated 31.10.2016. Aggrieved with the order of the Id. CIT(A), the assessee filed appeal before the Tribunal vide order dated 28.02.2017 referred the matter back to the file of the Id. CIT(A) with directions to examine the additional evidences filed before the Tribunal. Following the directions of the Tribunal, the Id. CIT(A) considered the additional evidences and duly a remand report has been sought from the Assessing Officer.

After receipt of the remand report and examining the facts, the Id. CIT(A) allowed the grounds raised by the assessee.

5. Aggrieved with the order of the Id. CIT(A), the Revenue filed appeal against the order raising the grounds of admitting the additional evidences filed by the assessee against the provisions of Rule 46A(3) of the Income Tax Rules, 1962.

6. From the record and the order of the Tribunal dated 28.02.2017, we find that the additional evidences have been admitted by the Tribunal and have been remanded back to the file of the Id. CIT(A) to examine the additional evidences and to take a decision in accordance with law. The Id. CIT(A) fairly acted in accordance with the directions of the Tribunal and adjudicated the matter after an independent inquiry and also after obtaining a remand report from the Assessing Officer. Hence, the issue of admitting of additional evidences under Rule 46A(3) raised by the revenue in this appeal is no more *res integra* and hence liable to be dismissed.

7. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 31/10/2022.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 31/10/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR