

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 17/Asr/2022**  
Assessment Year: 2012-13

Sh. Mohammad Yaqoob Dar S/o Ali Mohammad Dar Gelli Kadal, Zonimar Nowshera, Srinagar, 190011, Jammu & Kashmir [PAN: BFJPD 3008L] <b>(Appellant)</b>	Vs.	Income Tax Officer, Ward 3(2), Srinagar      <b>(Respondent)</b>
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Appellant by : Sh. Amit Handa & Bhavesh Mahajan, CAs  
Respondent by : Sh. Rajiv Wadhera, Sr. DR

Date of Hearing: 09.11.2022  
Date of Pronouncement: 15.11.2022

**ORDER**

**Per Dr. M. L. Meena, AM:**

The present appeal has been filed by the assessee against the order dated 25.11.2021 passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi in respect of Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

- “1. That the Ld. CIT (A) has erred in law and on facts in not admitting the submissions made by the assessee on the technical ground, of not filling application under rule 46A of the Income Tax Rules 1961, whereas however the assessee has duly stated in affirmative in column 12 of form 35 (Appeal to CIT - Appeals) with respect to additional evidence being filed in terms of rule 46A and filed column 12.1 stating the list of additional documentary evidence. Also the assessee has under his submissions to the Ld. CIT (A) included a paragraph justifying the reasons for his inability to remain unaware of proceedings held by the LD. AO. Therefore, invoking rule 46A against the assessee is arbitrary and unjustified.
2. That the Ld. CIT(A) has not followed the principles of natural justice in considering the appeal of the assessee. The assessee submissions in additional documentary evidences have been duly recorded by the Ld. CIT (A) but the merits of the case are not taken into consideration. The Ld. CIT (A) has suo-moto powers under the Income Tax Act, 1961 and rules there under to decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the CIT (A) by the appellant. Also under rule 46A(4) of the Income Tax Rules, 1962 the CIT (A) himself has the power to direct the production of any document to enable him dispose of the appeal or for any other substantial cause. However instead of using the discretionary authority for giving rightful relief to the assessee, appeal dismissed on insubstantial grounds.
3. That the Ld. CIT (A) has erred in law and facts in not deleting the unwarranted additions to Income made by the assessing officer.
4. That the facts of the case warrant considering the additional evidences submitted by the assessee and therefore deletion of additions in income of Rs 26,26,820.00/- made by the Ld. Assessing Officer on account of unexplained investments and later confirmed by the LD. CIT(A).
5. The appellant craves leave to add, alter, delete, modify or withdraw any of the grounds at the time of hearing of the appeal.”

3. Apropos Ground No.2, the assessee challenged the order of the Ld. CIT(A) on account of Principles of natural Justice.

4. At the outset, the counsel for the assessee stated that the Ld. CIT(A) has not followed the principles of natural justice in considering the appeal of the assessee. The assessee submitted an additional documentary evidences which have been duly recorded by the Ld. CIT (A) but which are not taken into consideration while deciding appeal on the merits of the case. The Ld. Counsel has raised objection to the Ld. CIT (A) assumption of suo-moto powers under the Income Tax Act, 1961 and rules there under to decide any matter which was not arising out of the assessment proceedings/Assessment order appealed against. He contended that such an issue not raised in the grounds of appeal before the CIT (A) has been taken by the CIT(A) suo moto and being decided against the appellant without granting opportunity or rebuttal to the adverse observation resulting in enhancement of assessment is in violation of principles of natural justice. The Id. AR argued that while assuming the Id. CIT(A) is required co-terminus power, to allow rebuttal to the assessee on the information or document used against it.

5. The AR for the assessee has filed additional evidences under rule 29 of the ITAT rules in support of the grounds of appeal with a request that the evidence before the AO and the CIT(A) was not accepted and they passed the order ex-parte qua the assessee. He requested additional

evidences filed are to be considered to decide the issue disputed under appeal by admitting on record. He further requested that the case may be remanded back to the Id. CIT(A) with a direction to adjudicate the matter afresh after taking into consideration, the additional evidence filed by the assessee, on record comprising of pages 1 to 14.

6. Written submission filed by the assessee reads as under:

**“1. Facts of the case:** *The appellant is a retired government employee and his total income does not exceed the basic exemption limit. Notice u/s 148 was issued on 27-03-2019 for the A.Y. 2012-2013. The assessment was initiated under section 148 on account of financial transaction in purchase of immovable property at Pune. The assessee could not provide any details or furnish return since assessee is suffering from Chronic obstructive pulmonary disease (COPD). The assessment has been completed under section 144 at total income of 26,26,820/- making addition of 26,26,820/- on account of above referred financial transaction.*

*The assessee filed an appeal against the stated order of Ld. A.O. with the LD. CIT (Appeals) Jammu and submitted the requisite documents substantiating the stated claim of the assessee. And the assessee has also duly stated in affirmative in column 12 of form 35 (Appeal to CIT - Appeals) with respect to additional evidence being filed in terms of rule 46A. Further the assessee stated in his reply that the property has been purchased by the Son of the assessee (Farooq Ahmad Dar) who is a government employee and is regularly filing his return of income. The assessee is the Second/Joint owner of the property. The property has been funded from housing loan in the name of Farooq Ahmad Dar (son of assessee) amounting to Rs. 20,97,215/- and balance has been funded by the son of assessee (Farooq Ahmad Dar). Thus substantiating the fact that the property was actually bought by the assessee's son and so addition made on that account to assessee income is not justified.*

*The Ld. CIT (A) recorded the submissions made by the assessee but however dismissed the appeal without considering the submissions on the*

technical ground, of not filling application under rule 46A of the Income Tax Rules 1961.

**2. The Act of Ld. CIT (A) dismissing the appeal without considering the additional evidences on the ground of non filing of application under rule 46A is not justified due to following grounds:**

- a) The assessee has duly stated in affirmative in column..,12 of form 35 (Appeal to CIT - Appeals) with respect to additional evidence being filed in terms of rule 46A and filed column 12.1 stating the list of additional documentary evidence.

Also the assessee has under his submissions to the Ld. CIT (A) included a paragraph justifying the reasons for his inability to remain unaware of proceedings held by the LD. AO. So therefore invoking rule 46A against the assessee is arbitrary and unjustified. Assessee submissions attached at **page no. 1 to page no. 3 of the Paper book.**

- b) The Ld. CIT (A) has suo moto powers under the Income Tax Act, 1961 and rules thereunder to decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the CIT (A) by the appellant. Also under rule 46A (4) of the Income Tax Rules, 1962 the CIT (A) himself has the power to direct the production of any document to enable him dispose of the appeal or for any other substantial cause. However instead of using the discretionary authority for giving rightful relief to the assessee, appeal dismissed on insubstantial grounds.
- c) The assessee submissions in additional documentary evidences have been duly recorded by the Ld. CIT (A) in his order but the merits of the case are not taken into consideration. Thus Ld. CIT(A) has not followed the principles of natural justice in considering the appeal of the assessee.
- d) Reliance is also placed on pronouncement (***I.T.A.No.5138/Mum/2015, dt. 06.04.2016***)(AY. 2007-08) ***Avan Gidwani v. ACIT (Mum.)(Trib). Procedure- Rule 46A of the Income Tax Rules which regulates the admission of additional evidence by the CIT(A) cannot override the principles of natural justice.[R.46A]. Relevant Excerpt from the judgment:***

*"The assessee could collect various evidences only after passing of the assessment order. According to the assessee, these additional evidences are vital documents which are required to be considered in order to adjudicate the issue in a judicious manner. The principle "Audi alteram partem", i.e. no man should be condemned unheard is the basic canon principles of natural justice and accordingly we find merit in the contentions of the assessee that Rule 46A of the Income Tax Rules cannot be over ride the principles of natural justice. Hence we are of the view that the learned CIT(A) was not justified in refusing to admit the various additional evidences furnished by the assessee. Since the assessee was not given opportunity to contradict the findings given by the AO by not admitting the additional evidences, we are of the view that the Ld CIT(A) should re-adjudicate all the issues afresh by admitting the additional evidences."*

3. **The assessment of the appellant is upheld by the CIT(A) without considering the additional evidences.** *The perusal of the additional evidences clearly depicts that the additions on account of purchase of property made in the hands of appellate are not justified as explained here under:*

*a) During the course of assessment proceedings for the assessment year 2012-13, the Ld. Assessing officer has added an amount of Rs. 26,26,820/- u/s 69 of the Income Tax Act, 1961 on account of the purchase of immovable property, a flat in Gulmohar Hilioz at Pune as unexplained investments.*

*The Immovable property being residential flat has been purchased for Rs. 26,26,820/- from M/S Gulmohar Development vide purchase agreement dated 24th of November, 2011 by Mr. Farooq Ahmad Dar who is the son of the assessee. The assessee has been named as second/joint owner of the residential flat by his son out of his love and respect towards his father.*

*So the entire assessment is made on incorrect person. A copy of purchase agreement is enclosed herewith for your kind perusal at **page number 4 to Page 29 of the Paper book.***

*The purchase of residential flat has been majorly funded by the son of the assessee by raising a housing loan from state bank of India in his name amounting to Rs 21,48,000/- and the rest has been met by the savings of*

the assessee and assessee's son. A copy of Housing Loan agreement is attached statement is enclosed herewith at **page numbers 30 to 33 of Paper Book.**

And the home loan account in the name of Son Mr. Farooq Ahmad Dar is enclosed for your kind perusal **at page number 34 of the Paper Book.**

The Gulmohar development promotors and builders have duly issued the receipts for the payments made to them. All the payments made are through account payee cheques or drafts. The receipts are enclosed at **page number 35 to page 40 of the paper book.**

Further Mr. Farooq Ahmad Dar is a Central Govt. Employee and is filing his return of income regularly. A copy of Income tax return of Farooq Ahmad Dar is enclosed herewith for your kind perusal **at page number 50 of the Paper Book.**

The Ld. CIT (A) has upheld the purchase of residential flat as unexplained investments within the meaning of section 69 of the Income Tax Act, 1961, which is totally unjust and against the principle of natural justice.

4. **Reliance on additional evidences filed under rule 29 of the ITAT rules.**

Respected Sir, Besides the documents submitted before the Ld. CIT (A) as additional evidences, there are few other documents which were though not filed before Ld. AO and Ld. CIT (A) but however these documents provide necessary support to the explanations and contentions provided by the assessee and go to the root of the case. Separate request application and paper book is filed for accepting the same by the Hon'ble Bench. The detail of documents and justification for reliance by the assessee as under:

S. No.	Particulars	Page no. of separat	Justification
1.	Bank Statements of Assessee in J& K Bank	1-3	The bank statement of the assessee depicts that no transactions with respect to purchase of subject property made out of his account.
2.	Pension Statements of the assessee	4-7	The source of assessee's Income.
3.	ITR of son of Assessee Mr. Farooq Ahmad dar for the A.Y. 2012-2013	8-9	Income Tax return of Mr. Farooq Ahmad Dar who is the actual buyer of the property for the relevant A.Y. 2012- 2013
4.	ID Card of Mr. Farooq	10-11	The evidence of being in government service.
	Ahmad Dar issued by Ministry of Defence, DRDO		
5.	SBI Bank statement of Mr. Farooq	12-15	The Bank statement of Assessee's son, where from rest of payments other than through bank loan are made to the developer. Though these payments are duly reflected in payment receipts from Builder M/s Gulmohar development Promoters and Builders already attached in original Paper Book, the source of these payments are reflected in this account.

*In the light of above submissions, it is prayed to your honour to allow the grounds of appeal and delete the unjustified / adhoc additions made by*

*the Assessing officer and upheld by Ld. CIT (A) and the necessary relief may kindly be given to the appellant.”*

7. The Ld. DR stands by the impugned order.
8. Heard both the sides and perused the material on record. Admittedly, the appellant has purchased an immovable property being residential flat at Pune from M/s Gulmohar Development on 24 November, financed by his son Mr. Farukh Ahmed Dar who is a Central Government Employed. The appellant further submitted that the entire purchase consideration amount was funded by his son and the appellant's name was included in the property paper only for name sake. In support of the aforesaid contention the appellant has submitted purchase deed bearing registration number 10313/2011 dated 24/11/2011 registered at the Office of the Sub-Registrar, Haveli-7, Pune.
9. The Ld. CIT (A) has refused to consider the new/fresh evidences such as registered sale agreement dated 24/11/2011, copy of Bank statement of Mr. Farukh Ahmend Dar and loan sanction letter issued by SBI, Ahemad Nagar Branch being submitted during the appeal proceedings. The CIT(A) without giving specific reasons except as the appellant failed to submit these evidences before the AO for verification. In our view, CIT(A) was not justified in refusing to admit the additional

evidence, in view of principles of natural justice. The Ld. Counsel stated that these evidences could only be produced before the appellate" authority along with the application under rule 46 of the IT rule, 1962. We consider it deem fit to remand back the matter to the file of the CIT(A) to adjudicate the appeal, afresh after considering the additional evidences filed on record as above and granting proper opportunity of being heard to the appellant assessee. No doubt, the assessee shall cooperate in the fresh proceedings before the CIT(A). It is ordered accordingly.

10. In the result, the appeal of the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 15.11.2022*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr/PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy  
By Order