

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.4246/DEL/2019
Assessment Year 2013-14

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| ITO, Ward-2(5), Noida. | Vs. | Shri Vaibhav Mishra, 4/49, Vishal Kahand, Gomit Nagar, Lucknow. |
| TAN/PAN: BLDPM3364C (Appellant) | | (Respondent) |

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| Appellant by: | Shri B.S. Anand, Sr.D.R. | | |
| Respondent by: | Shri Alok Khare, CA | | |
| Date of hearing: | 21 | 11 | 2022 |
| Date of pronouncement: | 21 | 11 | 2022 |

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-I, Noida [‘CIT(A)’ in short] dated 29.11.2018 arising from the assessment order dated 18.03.2016 passed by the Assessing Officer (AO) under Section 144 of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. The grounds of appeal raised by the Revenue read as under:

1. *That the Ld. CIT(A) has erred in law and on facts by admitting additional evidences furnished by the assessee under the Rule 46A of the Income Tax Rules, 1962, ignoring the provisions contained under clause(a) and clause(b) of sub rule(1) of Rule 46A of the Income Tax Rules, 1962.*

2. *That the Ld. CIT(A) has erred in law and on facts by deleting addition of Rs. 1,93,11,000/-, made on account of*

unexplained investment in immovable property, by admitting additional evidences furnished by the assessee under the Rule 46A of the Income Tax Rules, 1962, ignoring the provisions contained sub rule (3) of Rule 46A of the Income Tax Rules, 1962 by not allowing the A.O. to examine the evidence or document or to cross examine the witness produced by the appellant or to produce any evidences or documents or any witness in rebuttal of the evidence produced by the appellant.

3. *That the Ld. CIT(A) has erred in law and on facts by allowing deduction u/s 54 of I.T. Act, 1961 which was not claimed by the assessee in his return of income.*

4. *That the appellant craves to leave, add alter and amend any of the grounds of appeal on or before hearing.*

5. *That the order of Ld. CIT(A) deserves to be set aside and the order of the AO be restored.*

3. When the matter was called for hearing, none appeared for the assessee. The matter was accordingly proceeded *ex-parte*.

4. Ld. DR for the Revenue pointed out that the CIT(A) has admitted the additional evidences filed by the assessee under Rule 46A of the Income Tax Rules without confronting the additional evidences to the Assessing Officer in gross infringement and letter and spirit of Section 46A which has resulted in serious prejudice in the interest of the Revenue.

4. On perusal of the first appellate order, it is noticed that the CIT(A) has taken the copy of sale deed evidencing purchase of property on record and has granted benefit of exemption under Section 54 of the Act. However, the copy of aforesaid sale deed was never provided to the Assessing Officer. Therefore, the relief was granted to the assessee by the CIT(A) without meeting the requirement of law.

5. We find merit in the contention of the Revenue. The additional evidence taken on record by the CIT(A) was necessarily required to be confronted to the Assessing Officer in terms of the Rule 46A(3) of the IT Rules. Hence, the action of the CIT(A) granting relief to the assessee without the comment of the Assessing Officer on the new evidence cannot be countenanced in law. Thus, we set aside the order of the CIT(A) and remit the matter back to the file of the CIT(A) for fresh adjudication of the dispute in accordance with law after giving opportunity to the Assessing Officer as well as the assessee.

6. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order was pronounced in the open Court on 21/11/2022.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: /11/2022

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**