

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA Nos.383, 384 & 385/Hyd/2022		
Assessment Years: 2013-14, 2014-15 & 2017-18		
ITO, Ward-1 Manisankar Spectrum Opp:Children's Park Aditya Nagar, Nellore Andhra Pradesh-524 002	Vs.	Ramakrishna Reddy Rasam 24-2-1905/1, RKRI Towers Annamayya Circle Mini Bye Pass Road Nellore Andhra Pradesh-524 004 PAN : AEMPR4049C
(Appellant)		(Respondent)

Cross Objection Nos.26, 27 & 28/Hyd/2022 (In ITA Nos.383,384 & 385/Hyd/2022)		
Assessment Years: 2013-14,2014-15 & 2017-18		
Ramakrishna Reddy Rasam 24-2-1905/1, RKRI Towers Annamayya Circle Mini Bye Pass Road Nellore Andhra Pradesh-524 004 PAN : AEMPR4049C	Vs.	ITO, Ward-1 Manisankar Spectrum Opp:Children's Park Aditya Nagar, Nellore Andhra Pradesh-524 002 (Respondent)
(Appellant)		

Assessee by:	Shri E.Phalguna Kumar, CA
Revenue by:	Ms.Swapna, Sr.AR
Date of hearing:	24.11.2022
Date of pronouncement:	28.11.2022

ORDER

PER BENCH :

These appeals are filed by the revenue and cross objections are filed by the assessee, feeling aggrieved by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi, dated 25.05.2022 & 26.05.2022 for the AYs 2013-14, 2014-15 & 2017-18 respectively, on the following grounds. For the sake of convenience, we dispose-of these appeals by this common order.

2. ITA No.384/Hyd/2022 (Grounds of appeal)

1. The order of the learned CIT (A) is erroneous both on facts and in law"

2. The assessee did not file return of income u/s 139(1) nor u/s 139(4) nor u/s 148. The assessee also failed to furnish necessary information for completion of assessment u/s 147.

Though the assessee was afforded with sufficient opportunities during assessment proceedings, he failed to provide necessary information to the AO. It is only during the appeal proceedings that the assessee has furnished necessary information.

The Ld. CIT(A) erred in not providing an opportunity to the Assessing Officer to verify the information submitted by the assessee during appeal proceedings. The AO should have been provided with an opportunity under Rule 46A of the IT Rules 1962 to verify the veracity of the information furnished by the assessee during appeal proceedings and to submit remand report accordingly.

3. The assessee did not file return of income u/s 139(1) nor u/s 139(4) nor u/s 148. The Ld. CIT(A) erred in considering claim of deduction u/s 80C of Rs. 1,00,000/-, which is in contradiction to provisions of section 80A of the Act, as there is no return of income claiming such deduction.

4. Any other ground that may be urged at the time of hearing.

3. CO.No.26/Hyd/2022(Grounds of appeal)

1. *The order passed by CIT(A)NFAC is as per law only*
2. *At the stage of Asst only the Appellant has furnished full details and substantial evidences, which were mentioned in the Asst.Order but not considered. Only supplementary evidences were filed in 1st Appeal Stage. Hence what the AO mentioned in the grounds is factually not correct.*
3. *For allowing Sec.80-C Deduction at 1st Appeal stage there is no bar in Sec.80A as mentioned in the Grounds by AO.*

4. As all the appeals are identical, we reproduced the grounds in ITA 384/Hyd/2022 and the C.O.26/Hyd/2022 only, for the sake of brevity.

4.1. These are the appeals filed by the revenue and the Cross appeal filed by the assessee. In all these appeals, the assessing officer has issued the notice to reopen the assessment of the assessee on the basis of the tangible material and in process thereof, the Assessing Officer had issued the notice for reopening of the assessment as the assessee has not filed the return of income. Despite the receipt of notice for reopening, the assessee had not filed return of income as contemplated under section 148 of the Act.

5. None had appeared on behalf of assessee before the Assessing Officer, the Assessing Officer had completed the assessment by making addition of cash deposit in the bank account of the assessee as unexplained income u/s 69A of the Act for a sum of Rs.5,74,80,000/- for A.Y. 2013-14.

6. Feeling aggrieved, the assessee filed appeal before the Id.CIT(A) and before the Id.CIT(A), assessee had filed additional documents for the first time. That the Id.CIT(A) without granting the opportunity of hearing to the Assessing Officer and without seeking the remand report had allowed the appeal of the assessee. The relevant paragraph at page 6 of the order are as under :

“ Further, the appellant submitted additional evidence to prove the sources of his income, confirmations from purchasers for additional amount received, Municipal tax receipts and proofs for Sec 80C deductions claimed and also loan received and repaid through Bank. During the course of appellate proceedings the appellant submitted additional evidence as under:

- 1. Agriculture Income Certificates*
- 2. Confirmation Letters from plot purchasers for additional amount received towards amenities.*
- 3. Municipal tax Receipt*
- 4. 80C deduction claimed-proofs*
- 5. Brochures of Ventures and Plan Layout copies.*
- 6. Receipt and payments account as part of Bank accounts Analysis.*
- 7. All Bank Account Statements.”*

7. The Revenue is now in appeal before us on the grounds mentioned hereinabove. It was contended by the Id.DR that there is a violation of Rule 46A of the Income Tax Rules, 1963 and therefore, the order of Id.CIT(A) is required to be quashed.

8. Per contra, the Id.AR for the assessee had submitted that the matter may be remanded back to the file of Assessing Officer for fresh adjudication.

9. Before us, ld. DR has pointed out that section 250(4) of the Act does not override the duty cast on the part of ld.CIT(A) to afford opportunity to the Assessing Officer to say his/her view on the additional evidence produced by the assessee for the first time before the ld.CIT(A) as per Rule 46A of Income Tax rules. Before we deal with the requirement of law to grant opportunity to the Assessing Officer, it is essential to reproduce section 250(4) of the Act and Rule 46A of Income Tax Rules, 1963. Section 250(4) of the Act provides as under :

250. ³⁸ (1) The ³⁹[***] ⁴⁰[Commissioner (Appeals)] shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the ⁴¹[Assessing] Officer against whose order the appeal is preferred.

(4) The ³⁹[***] ⁴⁰[Commissioner (Appeals)] ⁴²may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the ⁴¹[Assessing] Officer to make further inquiry and report the result of the same to the ³⁹[***] ⁴⁰[Commissioner (Appeals)].

10. Rule 46A of Income Tax Rules, 1962 provides as under :

Production of additional evidence before the ⁸[Deputy Commissioner (Appeals)] ⁹[and Commissioner (Appeals)].

46A. (1) The appellant shall not be entitled to produce before the ⁸[Deputy Commissioner (Appeals)] ⁹[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 ¹⁰[Assessing Officer], except in the following circumstances, namely :—

(a)	where the ¹⁰ [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or
(b)	where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the ¹⁰ [Assessing Officer] ; or
(c)	where the appellant was prevented by sufficient cause from producing before the ¹⁰ [Assessing Officer] any evidence which is relevant to any ground of appeal ; or
(d)	where the ¹⁰ [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 ¹¹[Deputy Commissioner (Appeals)] ¹²[or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

¹³(3) The ¹⁴[Deputy Commissioner (Appeals)] ¹⁵[or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the ¹⁶[Assessing Officer] has been allowed a reasonable opportunity—

(a)	to examine the evidence or document or to cross-examine the witness produced by the appellant, or
(b)	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 ¹⁷[Deputy Commissioner (Appeals)] ¹⁸[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 ¹⁹[Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]

11. The Rule 46A along with other Rules were framed by the Board in accordance with the power conferred on it by section 295 of the Act and the Rules after being framed were laid before the Parliament. As the rules were duly framed by the Board and are statutory in nature, in our view, the power given to Id.CIT(A) are required to be exercised in accordance with the rules framed under the Act. From the bare perusal of Rules, it is abundantly clear that the Id.CIT(A) in case chooses to admit any additional evidence in that eventuality, he is under mandatory obligation to provide a reasonable opportunity to the Assessing Officer with a view to examine the evidence or document or permit to cross-examine the evidence produced by the assessee. Further, the law contemplates the Assessing Officer to produce any witness or document or evidence in rebuttal to the evidence produced by the assessee in the appellate proceedings.

12. In the present case, the ld.CIT(A) had allowed the appeal of assessee after relying on additional documents filed before him, without granting sufficient opportunities to the Assessing Officer and without calling for the remand report. In view therefore, he had failed to adhere to the salutary principle of Rule 46A of the Act. In view of the above, we cannot countenance the order of the ld.CIT(A) and accordingly, the same is liable to be set aside.

13. In view of the above, we are remanding the matter to the file of Assessing Officer with a direction to consider the documents referred by the ld.CIT(A) in page 6 of his order, which was reproduced hereinabove. The assessee is also directed to produce all the evidence before the lower authorities as called for. Needless to say, the Assessing Officer shall examine all the documents furnished by the assessee and also the other documents available on record in accordance with the law after affording sufficient opportunity of hearing to the assessee. Accordingly, the order of ld.CIT(A) is hereby set aside and thereby the appeal of Revenue is allowed for statistical purposes.

14. Now we are taking the C.O of assessee.

14.1. In view of the fact that we are remanding back the appeal of Revenue back to the file of Assessing Officer, therefore, the C.O. of the assessee become infructuous. However, the assessee is free to take any legal ground.

15. In the result, the appeal of the Revenue i.e., ITA 383/Hyd/2022 is treated as allowed for statistical purposes and the C.O., of assessee i.e., CO 26/Hyd/2022 is dismissed as infructuous.

16. Now, we take ITA Nos.384 and 385/Hyd/2022 and C.Os.27 and 28/Hyd/2022.

17. As we have remanded back ITA 383/Hyd/2022 hereinabove, accordingly we are remanding the other appeals i.e. ITA No.384 and 385/Hyd/2022 also and the other C.O.s i.e., C.O.No.27 and 28/Hyd/2022 are also dismissed as infructuous.

18. To sum up, all the appeals of Revenue are allowed for statistical purposes and all the C.Os. of assessee are dismissed as infructuous.

Order pronounced in the Open Court on 28th November, 2022.

Sd/-

**(RAMA KANTA PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(LALIET KUMAR)
JUDICIAL MEMBER**

Hyderabad, dated 28th November, 2022.

Copy to:

S.No	Addresses
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2	ITO, Ward-1 Manisankar Spectrum Opp:Children's Park Aditya Nagar, Nellore Andhra Pradesh-524 002
3	NFAC, Delhi
4	CIT(A), Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order