

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : NEW DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER

ITAs No.3676/Del/2019
Assessment Year: 2015-16

Sri Sri Creations Jewels & Handicrafts Pvt. Ltd.,
Unit No.1 & 2, GF DLF Tower-A,
Plot No.10, Jasola,
Distt. Centre, South Delhi,
New Delhi. – 110 025.

Vs. ITO,
Ward 24(2),
New Delhi.

PAN: AAJCS2015D

(Appellant)

(Respondent)

Assessee by	:	Shri Rohit Tiwari, Advocate
Revenue by	:	Ms Kirti Sankratyayan, Sr. DR
Date of Hearing	:	21.12.2022
Date of Pronouncement	:	23.02.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 21.02.2019 of the CIT(A)-8, New Delhi, relating to Assessment Year 2015-16.

2. First of all we would take up grounds No.4 and 5 of the assessee wherein the assessee has challenged the rejection of additional evidence by the Id. CIT(A) filed under Rule 46A of the Income-tax Rules, 1962 (for short, 'the Rules'). The Id. Counsel submitted that the Id. CIT(A) has erred in law and on facts in refusing to admit the additional evidence furnished by the assessee in violation of principles of

natural justice and in denying the assessee due and proper opportunity of hearing and representation of its case. The Id. Counsel also pointed out that there was no notice by the Id.CIT(A) intimating the assessee about the rejection of additional evidence before proceeding with the hearing and there is no plausible reason for the Id.CIT(A) in rejecting the cause shown by the assessee for non-furnishing of additional evidence before the AO during assessment proceedings and such application was not appreciated in the right perspective. The Id. Counsel vehemently pointed out that the Id. First appellate authority has erred in refusing to admit additional evidence by citing irrelevant and extraneous reasons, hence, the order of rejection may kindly be set aside and additional evidence filed by the assessee may kindly be admitted and considered for just and proper adjudication of this appeal. The Id. Counsel also submitted that the assessee should be allowed due opportunity to explain and substantiate its claim as per principles of natural justice.

3. Replying to the above, the Id. Sr. DR drew our attention to relevant part of the first appellate order and submitted that the Id.CIT(A) was right in dismissing the application for admission of additional evidence as the case was selected for limited scrutiny on a particular issue and the assessee should have complied with all the requirements at the very first instance during the first appellate proceedings.

4. On careful consideration of the above rival submissions and on careful perusal of the relevant para 4.2 and 4.3 of the first appellate order, we are in agreement with the tax jurisprudence narrated by the Id.CIT(A) that one cannot be allowed to do something indirectly which he/she is prohibited to do directly. However, in a case where the assessee while submitting additional evidence under Rule 46A of the Rules

is showing certain circumstances as mentioned in the said Rules, then, such evidence has to be admitted and considered for adjudication of grievance of the assessee. From the assessment order, we note that the case was selected for limited scrutiny and the AO issued notices to the assessee which was replied by the assessee vide letter dated 08.11.2017 and, again, on 27.11.2017 the assessee also filed certain documents which were not upto the satisfaction of the AO as per para 2.8 of the assessment order. Thereafter, the AO, without providing any further opportunity to the assessee, proceeded to hold that the AR has failed to produce any documents which were being asked during the course of assessment proceedings on a very limited issue of scrutiny of unsecured loans.

5. Under above circumstances, we are of the considered view that the assessee, is obviously duty bound to furnish all relevant documentary evidence under his command at the earliest possible and the assessee did so in the present case. Further, in a case where the AO is not satisfied with the completeness of the said documents, then, he should have asked the assessee to comply with the directions of the AO to his satisfaction. In such a situation, the assessee fails to provide any documentary evidence to the satisfaction of the AO, then, the AO is very well empowered to make addition to the taxable income of the assessee. Per contra, where the AO, without providing an opportunity to furnish all relevant documentary evidences to his satisfaction, then, the assessee should be allowed an opportunity to submit the remaining documents. In our humble understanding, the assessee has good cause for non-furnishing of documentary evidence before the AO during the assessment proceedings. Therefore, the additional evidence submitted by the assessee before the Id.CIT(A) deserves to be admitted for consideration. Hence, the

conclusion of the Id.CIT(A) in rejecting the admission of additional evidence is set aside and the additional evidences are admitted for consideration by the Id.CIT(A). The matter is restored to the file of the Id.CIT(A) to the first appellate stage with a direction to adjudicate the issue, after considering the entire documentary evidences filed by the assessee including the additional evidence as admitted by us in the earlier part of this order, without being prejudiced from the earlier first appellate order and after allowing due opportunity of hearing to the assessee.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23.02.2023.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated: 23rd February, 2023.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi