

**आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**  
**AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 2177/Kol/2019**  
**Assessment Year: 2016-17**

<b>ACIT, Circle-1, Siliguri</b>	Vs	<b>M/s. Lotus Projects Pvt. Ltd.</b> Sunny Tower Sevoke Road Siliguri, Dist.- Darjeeling Pin-734001 PAN : AAACL5161G
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :	Shri Subash Agarwal, Adv.	
Revenue by :	Md. Ghayasuddin, CIT, D/R	

सुनवाई की तारीख /Date of Hearing : 26/05/2022  
घोषणा की तारीख /Date of Pronouncement : 16/06/2022

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE PRESIDENT :**

The present appeal is directed at the instance of the revenue against the order of the Learned Commissioner of Income Tax (Appeals)-4, Kolkata [hereinafter the “ld. CIT(A)”], dt. 09/04/2019, passed u/s 250 of the Income Tax Act, 1961 (in short “the Act”) for the Assessment Year 2016-17.

2. Though the revenue has taken six grounds of appeal, but a perusal of them would indicate that they revolve around a single issue, namely, the ld. First Appellate Authority has deleted the addition by entertaining additional evidence under Rule 46A of the Income Tax Rules, 1962, (hereinafter the ‘Rules’) without providing an opportunity of hearing to the revenue. Thus, according to the revenue, this order has been passed in contravention of sub-Rule (3) of Rule 46A and hence it is not sustainable.

3. The brief facts are that the assessee has filed its return of income electronically on 17/10/2016 declaring the total income at Rs.28,23,730/-.

The case of the assessee was selected for scrutiny assessment and notice u/s 143(2) of the Act was issued and served upon the assessee. According to the Assessing Officer, perusal of the accounts would indicate that there is enhancement in the capital account by Rs.6,79,46,050/- under the nomenclature of share capital with securities premium. The Assessing Officer was of the view that the assessee failed to submit the complete details and accordingly, he made an addition.

4. The ld. D/R while taking us through page no. 5 & 6 of the ld. CIT(A)'s order contended that the assessee has submitted fresh details. Those are mentioned in its written submission as Annexure 2 to 6. These evidences have been considered by the ld. CIT(A) and he deleted the addition.

During the course of hearing, when this aspect was confronted to the ld. Counsel for the assessee, he submitted that share application money was received from two persons, namely, Shri Dilip Kumar Agarwal and Shri Dinesh Kumar Agarwal. These two shareholders are directors of the assessee company and they have introduced capital in their family owned company. He was unable to controvert the objection of the ld. CIT D/R that fresh evidence was entertained by the ld. CIT(A) without providing an opportunity of hearing to the revenue as contemplated in sub-Rule (3) of Rule 46A. The ld. Counsel for the assessee submitted that if that be the situation, then let the matter be set aside to the file of the Assessing Officer. The assessee will submit these details afresh.

5. We have duly considered rival contentions and gone through the record carefully.

6. Sub-Rule (3) of Rule 46A provides that if on the request of the assessee any fresh evidence is being entertained under sub-Rule (1) & (2), then the revenue is to be given an opportunity to rebut such evidence either

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by leading fresh evidence or by cross-examining the evidence submitted by the assessee. The assessee did not dispute about the fact that this opportunity was not given to the revenue and, therefore, considering the lapse at the end of the Id. CIT(A) for considering fresh evidence under Rule 46A in contravention to sub-Rule (3), we deem it proper to set aside the finding of the Id. CIT(A) on this issue.

7. It is pertinent to observe that whenever any irregularity has crept in the proceedings, then, after removing the irregularity, the proceedings deserve to be instituted at that very level where such irregularity has crept in i.e., the issue deserves to be remanded to the Id. CIT(A) because violation has happened at the level of the Id. First Appellate Authority. However, it has to be appreciated that instituting the proceedings before the Id. First Appellate Authority would result in multiplicity of proceedings. The Id. First Appellate Authority will have to call for a remand report where these evidences will be examined by the Assessing Officer. Therefore, the proceedings would be instituted at two place i.e., one at the level of the Assessing Officer in the remand proceedings and one at the level of the Id. First Appellate Authority. In order to avoid that, we deem it proper to set aside the issue to the file of the Assessing Officer. There is one more reason for setting aside the issues to the Assessing Officer and that reason is that the impugned assessment order is very brief and runs into two pages. The Assessing Officer granted only five to six days time to the Directors to submit complete details. He issued a notice u/s 133(6) of the Act on 19/09/2018 and reply was to be submitted by 25/09/2018. The time gap available was only seven days, which is not sufficient time. Hence, he also did not provide sufficient opportunity. Therefore, we set aside this issue to the file of the Assessing Officer with a direction that the assessee will be at liberty to submit any details for explaining the fresh share capital introduced in its books of accounts.

8. The Id. Counsel for the assessee further contended that the Assessing Officer has made an addition of Rs.28,39,170/-. This was challenged before the Id. CIT(A). The allegation of the Assessing Officer is that this amount was not disclosed by the assessee. However the assessee has contended that it has deducted TDS and his amount has duly been accounted for in the accounts. The Id. First Appellate Authority has verified this aspect and deleted this addition. The Id. Counsel for the assessee submitted that there is no ground taken by the revenue about this issue. The assessee did not submit any fresh details *qua* this issue. It has submitted detail as Annexure-10 in its submission but that is part of the accounts which was already submitted before the Assessing Officer.

9. The Id. D/R on the other hand, contended that the grievance of the revenue relates to entertainment of additional evidence in violation of sub-Rule (3) of Rule 46A and this should also be considered under those very grounds of appeal.

10. We have heard rival contentions and gone through the records carefully.

10. The grievance of the revenue is that, on perusal of the TDS data it revealed to the Assessing Officer, that the assessee company had received payments worth Rs.28,39,710/-. The assessee did not disclose contractual income. However, before the Id. CIT(A) it was contended that revenue from operation at Rs.15,43,72,197/- has been shown by the assessee. This amount under the head tea processing fees has been included in the total receipt. The Id. First Appellate Authority has verified this aspect and deleted the addition. After perusal of the finding of the Id. CIT(A) we are of the view that the Assessing Officer failed to appreciate the transaction from the

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accounts and, therefore, the Id. CIT(A) has rightly deleted it. We do not find any error in the order of the Id. CIT(A) on this issue. *Qua* this issue the finding of the Id. CIT(A) is upheld.

11. Only issue which survives is the issue pertaining to the fresh share capital/premium received by the assessee from two promoters/directors of the company which is set aside to the file of the Assessing Officer.

12. In the result, appeal of the revenue is partly allowed for statistical purposes.

**Order pronounced in the Court on 16<sup>th</sup> June, 2022 at Kolkata.**

*Sd/-*

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

*Sd/-*

**(RAJPAL YADAV)  
VICE-PRESIDENT**

Kolkata, Dated 16/06/2022

*SC S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , Kolkata/DR,ITAT, Kolkata
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata