

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 2084/Del/2014
Assessment Year: 2009-10**

Meenaketan Samal,
Shop No. 26, District Court
Compound, Phase-I, Noida.
PAN: AQIPS7409M
(Appellant)

Versus ACIT, Circle – 1,
New Delhi

(Respondent)

Assessee by: Sh. K. Sampath, Ld. Adv. &
Sh. Rajkumar, Ld. Adv.
Revenue by: Sh. Jitender Chand, Ld. Sr. DR

Date of hearing : 06/03/2023
Date of order : 08/05/2023

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Appellant/Appellant against the order dated 27.01.2014, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- Noida (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2009-10.

2. The Appellant being a proprietary firm in the name and style of Reliable Construction and Projects during the year under construction was engaged in civil construction work as contractor and declared gross total income of Rs.45,58,082/- which included business income of Rs.43,00,921/- and income from other sources of Rs.2,57,161/- and after claiming rebate u/s. 80C and 80G for Rs.1,55,500/- paid due taxes payable on the income of Rs.44,02,582/-.

Subsequently, the case of the Appellant was selected for scrutiny through CASS and statutory notices have been issued to the Appellant by which the Appellant was show caused as to why the income of the Appellant should not be assessed to the tune of Rs.71,76,731/- on account of contract business income of Rs.61,79,552/-, interest income of Rs.2,57,161/- and unexplained creditors of Rs.7,40,018/-. Further the Appellant was also show caused as to why the addition of Rs.2,75,906/- should not be made as credit card payment. The Appellant neither attended nor made any compliance to the notices, therefore, in the constrained circumstances, the Assessing Officer made the additions of Rs.85,36,213/- and Rs.2,75,906/- respectively on account of total profit from contract business and deemed income u/s. 69 of the Ac, by concluding as under:

“None attended in compliance to notices nor any reply was filed.

Therefore, I have no alternative except to pass assessment order ex-parte u/s 144 of the IT Act on the facts of the case available on record.

1. Income from contract business:- The assessee in the return declared gross receipt of Rs. 61795515/-. He failed to explain

expenses and net profit declared. Keeping in view the provision of section 44AD of the IT act net profit from contract receipt shown was assessed @ of 8% and thus net profit was determined at Rs. 49,43,641/-. The assessee had not declared receipt of Rs. 35,92,572/- in the return though TDS was deducted and the same is reflected in 26AS. In the return it has been claimed that books of accounts were audited. It is presumed and believed that the assessee has booked all expenses in P&L account and therefore receipt not shown at Rs. 3592572/- is assessed as income of the assessee. Thus, total profit from contract business was assessed at Rs. 85,36,213/-. Penalty provision u/s 271 (1)(c) of the IT act is also attracted.

Income from contract business Rs.85,36,213/-

2. As per AIR information credit card payment was reflected. The assessee failed to explain the source. Therefore, the amount of Rs. 2,75,906/- was assessed as Deemed income u/s 69 of the IT Act. Penalty provision u/s 271(1)(c) of the IT act is also attracted.

Addition Rs. 2,75,906/-“

3. Though the Appellant challenged the said additions as well as the assessment order passed u/s. 144 of the Act before the Id. Commissioner, however, except filing adjournment applications and appearing once on 16.01.2014 and filing rejoinder dated 15.01.2014, **neither attended the proceedings nor filed any reply.** We observe that first notice was issued in the appellate proceedings on 11.06.2012 and lastly on 16.01.2014 and within a period of one and half year though 13 opportunities have been given to the Appellant, however, the Appellant except appearing on one date, did not avail the same.

It is also a matter of fact that in the course of appellate proceedings, before the Id. Commissioner, the Appellant though furnished written submission vide letter dated 16.07.2013 which was sent to the Assessing Officer with a direction to verify the contention of the Appellant and to send the remand report on the issues raised, **however the Appellant in remand proceedings neither appeared nor filed any reply.** The Assessing Officer vide letter dated 30.09.2013 filed its remand report, wherein it has been categorically mentioned that the Appellant was again given sufficient opportunities of being heard and to produce documentary evidence to establish the contentions and claim made by him as per the provision of section Rule 46A of the Income Tax Rules, 1962 (in short "Rules"), **however, the Appellant did not attend on the fixed date nor filed any reply. Therefore, being habitual defaulter not ready to amend his past practice of avoiding the income tax proceedings.** The Appellant was provided copy of remand report and given an opportunity for its comments but the Appellant by filing rejoinder letter dated 15.01.2014 simply denied the findings of the Assessing Officer regarding non-cooperation without furnishing any specific evidence. The Id. Commissioner in the constrained circumstances partly allowed the appeal by taking into consideration the peculiar facts and circumstances of the case, by concluding as under:

“Coming to the appellate proceeding I find that here also **the Assessee has behaved in earlier fashion which is evident from frequent adjournments and several non-appearances** the details of which are as under:

No.	Date of issue Notice	Date fixed for hearing	Remark
1.	11.06.2012	27.06.2012	On request case was adjourned for 17.07.2012. However on 17.07.2012 none attended nor any application for adjournment was filed.
2.	26.11.2012	11.12.2012	None attended nor application for adjournment was filed
3.	16.01.2013	31.01.2013	None attended nor application for adjournment was filed
4.	04.02.2013	13.02.2013	On request case was adjourned for 26.02.2013. However on 26.02.2013 none attended nor any application for adjournment was filed.
5.	27.02.2013	11.03.2013	None attended nor application for adjournment was filed
6.	01.04.2013	09.04.2013	None attended nor application for adjournment was filed
7.	21.05.2013	31.05.2013	None attended nor application for adjournment was filed
8.	14.06.2013	19.06.2013	On request case was adjourned for 19.06.2013 with the remarks vide order sheet entry making it clear that "in case of further non-compliance the case will be decided on merit based on facts available on record without any further opportunity".
9	20.06.2013	11.07.2013	On request case was adjourned for 16.07.2013
10	30.09.2013	07.10.2013	None attended nor application for adjournment was filed
11	22.11.2013	10.12.2013	On request case was adjourned for 15.01.2014.
12	15.01.2014		On request case was adjourned for 03.02.2014.

13	16.01.2014	Sh. Rajesh Arora (CA) appeared and filed rejoinder dated: 15.01.2014 and requested that the appeal be decided on the basis of information already submitted earlier.
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Taking all the above into consideration **I have reasons to conclude that assessee is a habitual defaulter with respect to income tax proceedings which cannot be accepted. In view of appellant's casual approach and repeated non-compliance on several occasions as mentioned above I am forced to believe that the appellant is not serious about pursuing the appeal in hand.** It is a case where despite having been given sufficient time and opportunity **the assessee has completely failed to furnish books of accounts, bills and vouchers and other relevant details and evidence** which were otherwise required for determination of taxable income. **It is also a fact that even during the appellate proceeding the appellant did not bother to produce books of accounts, bills/vouchers, bank account and other evidences.** Therefore, I am fully convinced that in the given circumstances AO was fully justified in completing the assessment ex-parte u/s. 144 of the I.T. Act. Moreover, I also find that the income determined by the AO in the absence of necessary evidence as discussed above appears quite reasonable and without any infirmity in the given circumstances and therefore, I uphold the additions made by the AO as above and confirm the assessment order passed by the AO in this regard. Regarding appellant's claim for deduction u/s. 80C & 80G AO is directed to verify the claim and decide the same as per relevant provisions of Income Tax Act.”

(highlighted by us)

4. Before us, the Appellant at the outset against the rejection of its application under Rule 46A of the Rules, allegedly filed along with certain documents i.e. Medical certificate, Affidavit of the Appellant, Balance Sheet and P & L account (31-03-2009), Form 26AS for A.Y. 2009-10, Breakup of expenditure through Credit Card and Donation receipt for claiming deduction u/s 80-G/80C of the Act, before the Ld. Commissioner, claimed that the Appellant was confined to bed due to spinal injury and was under continuous medical treatment and therefore, could not be able to attend the case proceedings, which compelled the Assessing Officer to complete the proceedings u/s. 144 of the Act. Due to ill health of the Appellant, the evidences/information required by the Assessing Officer could not be produced during the assessment proceedings, which are relevant to grounds of appeal of the present case. The Appellant in support of its case also filed a medical/fitness certificate issued by Astha Hospital Greater Noida (page 7 of the paper book) wherein, the Appellant was under treatment from 21st Sept. 2011 to 4th Jan., 2012. The Appellant ultimately prayed to admit the additional evidence u/r 46A(1)(b) and (c) of Rules and remand back the case for decision afresh to the file of either of the authorities below.

5. On the contrary, the Ld. DR refuted the claim of the Appellant and supported the impugned order and claimed that order under challenge does not suffers from any perversity or impropriatory or illegality. The Ld. DR further submitted that conduct and attitude of the Assessee is unwarranted, hence he is not entitled for any leniency.

6. Heard the parties and perused the material available on record. Let us peruse the provisions of Rule 46A of the Rules, which reads as under:

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

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

- (a) *where the [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 [Assessing Officer] ; or***
- (c) ***where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or***
- (d) *where the [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 [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.*

(3) *The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [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 [Deputy Commissioner (Appeals)] [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 [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]

(Highlighted by us for clarity)

6.1 The Appellant by filing an application u/r 46A taking refuge of sub-clause (b) & (c) of such Rules, which prescribes certain exceptions to produce before the Ld. Commissioner or as the case may be, any evidence, whether oral or documentary, other than the evidence produced by the Appellant during the course of proceedings before the Assessing Officer, where the Appellant was prevented by sufficient cause from producing the evidence, which he was called upon to produce by the Assessing Officer or where the Appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal.

6.2 Let us see, as to whether the Appellant has shown sufficient cause by which the Appellant was prevented from producing the evidence which he was called upon to produce by the Assessing Officer.

6.3 We have given thoughtful consideration to the Appellant's contentions raised qua admission of additional evidence and the decisions of the Authorities below qua issue under consideration. In the instant case, assessment proceedings have been started by issuing notice u/s. 143(2) of the Act on dated **14.09.2010** and finally culminated into passing of the assessment order dated **26.12.2011** u/s. 144 of the Act. Though the Appellant by filing medical certificate claimed that it was under treatment from 21.09.2011 to 04.01.2012, but failed to demonstrate what has happened from **14.09.2010 to 20.09.2011 (12 Months time)** and also failed to demonstrate as to why it has not filed documentary evidence to establish the contentions and claims made before the Id. Commissioner as well, as per provisions of Rule 46A.

6.4 We observe as it appears from the impugned order that first notice for the date of hearing was issued on 11.06.2012 and thereafter 12 notices have been issued on various dates and lastly on 16.01.2014. It is not the case of the Appellant that the Appellant was undergoing treatment from **05.01.2012 to 16.01.2014 and upto 22.01.2014 as well** when the impugned order was passed. It is also a fact that the Appellant was though provided sufficient opportunities of being heard and to produce the documentary evidence to establish the contentions and claims made before the Id. Commissioner as per the provisions of Rule 46A of the Rules, however, in the remand proceedings as well neither the Appellant attended on the fixed date nor filed any reply. Therefore, the Id. Commissioner observed "**that this is a unique case**

where there is complete non-cooperation and non-appearance in the course of assessment proceedings and remand proceedings. The Appellant being habitual defaulter not ready to amend his past practices of avoiding the income tax proceedings”.

Therefore, in the peculiar facts and circumstances, specifically, the non-cooperation and non-appearance by the Appellant before the Assessing Officer in the remand proceedings and the appellate proceedings before the Id. Commissioner, the Id. Commissioner in the absence of any specific evidence, rejected the application filed by the Appellant under rule 46A of the Rules.

6.5 We further observe that though the Ld. Commissioner categorically held *“that the Assessee has completely failed to furnish books of accounts, bills and vouchers and other relevant details and evidence which were otherwise required for determination of taxable income. It is also a fact that even during the appellate proceeding the appellant did not bother to produce books of accounts, bills/vouchers, bank account and other evidences,* however the Appellant claimed to have filed Medical Certificate, Affidavit, Balance Sheet and P & L account (31-03-2009), Form 26AS for A.Y. 2009-10, Breakup of expenditure through Credit Card and Donation receipt for claiming deduction u/s 80-G/80C of the Act, along with Application dated 16-07-2013 u/s 46A of the Rules before the Id. Commissioner .

6.6 Considering the aforesaid sequences, callousness, non-cooperate and irresponsible attitude of the Appellant and the insufficient cause shown by the Appellant which prevented him from producing the evidence before the Assessing Officer, not substantiating its contentions

and claim made in the appellate proceedings before the Id. Commissioner as well and the findings of the Ld. Commissioner to the effects **“that the Appellant did not bother to produce books of accounts, bills/vouchers, bank account and other evidences”**, we are hesitant to entertain the plea/contention of the Appellant qua admission of additional evidence, however considering the medical history of the Appellant and magnitude of documents i.e. Balance Sheet and P & L account (31-03-2009), Form 26AS for A.Y. 2009-10, Breakup of expenditure through Credit Card and Donation receipt for claiming deduction u/s 80-G/80C of the Act, allegedly already filed before the Ld. Commissioner, which prima facie appears to be relevant for the proper adjudication of issues involved and therefore just decision of case and for the ends of justice and to resolve the controversy qua filling or non-filling of documents, we deem it appropriate to set aside the impugned order and consequently remand the case to the file of the Id. commissioner for decision afresh by considering the peculiar facts, circumstances and documents, including referred to above allegedly filed along with application under rule 46A of the Rules, **if already filed** in appellate proceedings before its predecessor, but subject to cost of Rs.55000/- to be deposited by the Appellant in “National Relief Fund” within 15 days of the receipt of this order.

We also direct the Appellant to cooperate with the Appellate proceedings and to appear and file the relevant document(s) if any would be required by the Ld. Commissioner for proper and real adjudication of the issues involved. We clarify that in case of further default, the Appellant shall not be entitled for any leniency.

6. In the result, the appeal filed by the Appellant stands allowed for statistical purposes.

Order pronounced as per Rule 34(4) of the Income Tax Appellate Tribunal Rules,1963, on 08-05-2023.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)
JUDICIAL MEMBER**

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar
ITAT New Delhi

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