

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.4272/Del/2018
(ASSESSMENT YEAR 2012-13)**

**ITA No.4273/Del/2018
(ASSESSMENT YEAR 2013-14)**

Dy. CIT, Central Circle, Noida	Vs.	Sh. Piyush Tiwari D-203, Sector-47, Noida PAN-ADRPT 7904N
(Appellant)		(Respondent)

Appellant by	Mr. Sanjeev Jain, CA
Respondent by	Mr. S.L. Anuragi, SR-DR
Date of Hearing	02/05/2023
Date of Pronouncement	21/05/2023

ORDER

PER YOGESH KUMAR U.S., JM:

These two appeals have been filed by Revenue against the common order passed by the Learned Commissioner of Income Tax (Appeals)-IV, Kanpur ["Ld. CIT(A)", for short], dated 16/03/2018 for Assessment Years 2012-13 and 2013-14 respectively.

2. Since, the issues involved in both appeals are common in nature; hence, they are clubbed together and disposed off by this common and consolidate order for the sake of convenience.

3. The common grounds raised by assessee in both appeals except variance of amount which are as under: -

“1. Whether on facts and circumstances of the case and in Law, the Ld. CIT(A) erred in admitting the additional evidences without affording reasonable opportunity to the Assessing Officer as provided in the rule 46A of the Income Tax Rule, 1962.

2. Whether in the facts and circumstances of the case, the Ld. CIT(A) was erred in law in deleting the additions Rs.2,04,98,642/- made on account of unexplained transactions recorded in the seized documents after admitting the additional evidences without affording reasonable opportunity to the Assessing Officer as provided in the rule 46A of the Income Tax Rule,1962.

3. The order of CIT(A) is erroneous in law and on facts that the CIT(A) did not appreciate the facts and material on record.

4. The order of CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.”

4. None appeared for the assessee. On verifying the records, it is found that the notice issued to the registered address of the assessee returned with an endorsement ‘insufficient address

returned to sender', further, an effort has been made to serve the notice through the Ld. Departmental Representative by way of affixture accordingly, the notice has been served on the assessee through 'affixture' and a report has been submitted to the Tribunal by the Department vide letter dated 30/06/2022, even after the service of the notice, the assessee remained absent before us. Considering the above facts and circumstances, we deem it fit to decide the appeal after hearing the Ld. Departmental Representative and verifying the material on record.

5. Since the issue involved in both the appeal and the grounds raised by the Department are identical, for the sake of convenience, the brief facts of the case for the Assessment Year 2012-13 are taken into consideration. A search and seizure operation u/s 132 of the Act was conducted on 09.10.2013 at the premises of the assessee. Further, in response to notice u/s 153A of the Act assessee filed his return declaring income of Rs. 60,9A,950/-. Later on, notices u/s 143(2) & 142(1) were also issued and A.O. completed the assessment by making additions of Rs.

7,99,84,536/- u/s 68/69/696 of the Act & on account of unexplained expenditure incurred on foreign travelling.

6. Aggrieved by the assessment order dated 29/03/2016, the assessee preferred an appeal before the CIT(A). During the appellate proceedings, the assessee filed additional evidence which has been admitted by the CIT(A) and relying on the Additional evidence produced by the assessee ultimately the CIT(A) deleted the addition of Rs.2,04,98,642/- made by the A.O. on account of unexplained transaction.

7. The Ld. Ld. Departmental Representative vehemently submitted that the CIT(A) has committed grave error in admitting the additional evidence without affording reasonable opportunity to the Assessing Officer as provided under Rule 46A of the Income Tax Rules 1962 ('Rules' for short). Therefore submitted that the order of the CIT(A) requires to be set aside.

8. We have heard the Ld. Departmental Representative and perused the material available on record and gave our thoughtful

consideration. The ld. CIT(A) while deleting the addition of Rs. 2,04,98,642/- held as under:-

“During the assessment proceeding, assessee was required to explain the entries mentioned as above. But, assessee could not explain aforesaid entries to the AO.

Before the undersigned also, appellant only came out with cogent explanation with regard to the entries as mentioned below.

Annexure A-6, Page-25 Annexure A-6, Page-29

Rs. 24,53,782/-

Rs. 1,80,44,860/-

It was submitted by the appellant that above entries are pertained to M/s Advert Communication Bank Book entries and some do not have any relation to the appellant itself. In support of his contention, appellant filed copy of account of statement M/s. Advert Communication and its bank/evidencing all the entries of seized document in the bank statement of Punjab National Bank, Delhi bearing account no. 1988008700000209. A perusal of seized document and bank statement reveals that contention of appellant has merit and therefore, above said entries are treated as explained.

In respect of remaining entries, as appended above, appellant could not substantiate his contention, as given in written submission, with documentary evidence. He only repeated a similar

story for each addition but could not prove that same are not related to him. The addition made by AO is based on incriminating documents found and seized as a result of search. By now this is the settled preposition of law u/s 292C of the Act and 132(4A) of the Act that incriminating documents found belongs to the person and the content of incriminating documents are true and correct unless it is rebutted by the cogent evidences. Therefore, in absence of satisfactory explanation it is treated that remaining entries aggregating to Rs. 5,29,85,894/- remained unexplained. Thus, addition to the extent of Rs. 5,29,85,894/- is confirm while addition in respect of Annexure A-6, Page 25 and Rs. 2,04,98,642/- is deleted. Annexure A-6, Page- 29 amounting to Rs. 2,04,98,642/- is deleted.”

9. It is found from the above that the assessee had produced certain additional evidences, but the Ld. CIT(A) at no point of time provided opportunity to the Department as required under Rule 46A of the Rules before admitting the Additional evidence and relying on the same and deleting the addition. Thus, the approach of the ld. CIT(A) is contrary to Rule 46A of the Rules.

10. Considering the above facts and circumstances, we are of the opinion that if the issue involved in the appeal is remanded to the file of the A.O. for de-novo adjudication, the substantial justice would be rendered. Accordingly, we partly allow the Ground No. 1 & 2 of the Revenue in both ITA Nos. 4272/Del/2017 & 4273/Del/2018 and remand the matter to the file of the A.O. with a direction to decide the matter afresh by giving opportunity of being heard to the assessee.

11. In the result, Appeal in ITA No. 4272/Del/2017 & 4273/Del/2018 are partly allowed for statistical purpose.

Order pronounced in the open Court on 21st June, 2023.

Sd/-
(Dr. B. R. R. Kumar)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 21/06/2023

Pk/R.N, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

