

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “G” NEW DELHI**

**BEFORE NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.4977/Del/2016

निर्धारणवर्ष/Assessment Year: 2010-11

<b>Surinder Kumar Bali, D-58, Anand Niketan, Moti Bagh, New Delhi.</b>	<b>बनाम Vs.</b>	<b>ITO Ward 43(4), New Delhi.</b>
<b>PAN No. AMEPB0297L</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारितकीओरसे /Assessee by	<b>Shri Mukesh Jain, CA &amp; Shri Sahil Gupta, CA</b>
राजस्वकीओरसे /Revenue by	<b>Ms. Kajal Singh, Sr. DR</b>

सुनवाईकीतारीख/ Date of hearing:	20.06.2023
उद्घोषणाकीतारीख/Pronouncement on	26.06.2023

**आदेश /O R D E R**

**PER ANUBHAV SHARMA, J.M.**

The Assessee has come in appeal against the order dated 15.07.2016 passed by the Ld. Commissioner of Income Tax (Appeals)-28, New Delhi [in short ‘Ld.CIT(A)’] u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred as “the Act”) being Appeal No. 522/13-14/208/15-16, pertaining to AY 2010-11.

2. Heard and perused the record.
3. The facts in brief are that assessee filed a return of income of Rs.3,77,150/- which included salary of Rs.4,68,153/- received from Punjab

National Bank and NSC interest of Rs.9,000/- . Ld. AO had found deposit in the bank accounts on the basis of which addition of Rs.44,74,362/- was made u/s 68 of the Act and addition of Rs.1,59,268/- was made on account of undisclosed interest income . It comes up from the modified grounds that assessee has challenged the order of the Ld.CIT(A) being erroneous on the averments that voluminous evidence submitted by the assessee was ignored. In this context it can be appreciated that before Ld.CIT(A) assessee had taken a plea that as his daughter was suffering from Cancer and his mother was also unwell, therefore, due to mental stress and being busy in the hospital he was unable to represent his case appropriately before the Ld.CIT(A). The order of Ld.CIT(A) shows that the application for additional evidence under Rule 46A was not entertained after taking report of Ld.AO who had justified the assessment order on the basis of fact that in spite of several opportunities assessee has failed to produce this evidence before Ld.AO. Thus, Ld. CIT(A) taking into account the 19 opportunities given by the AO and that assessment proceedings continued for 18 months with sufficient notice and opportunity to assessee declined to entertain additional evidence under Rule 46A. In para 2.5 Ld. CIT(A) observed as follows: -

*“2.5 In the case under consideration the assessment has been completed after being giving more reasonable opportunity to the assessee. Further the case of the appellant is not covered in any of the exceptional circumstances specified in rule 46A of the Income Tax Rule as stated above. Hence there is no reason for admitting additional evidence submitted by the appellant. Accordingly, I agree with the report of the Assessing Officer that this is not a fit case for admission of the additional evidence as per rule prescribed in 46A of the Income Tax Rule. Accordingly, the request of the appellant for admission of additional evidence is rejected and the appeal is decided accordingly.”*

4. It can be appreciated that primarily the Ld. AO has made the addition on the basis of certain contractions he had found in the cash book and the bank statement. Here before this Tribunal assessee has submitted that certain amounts were received by him from his acquaintances who have given their affidavit that they had given the amount to the assessee to get a draft in their favour and assessee was a bank employee. Assessee has also given us reconciliation as to how he intended to establish before the Ld. Tax Authorities that the amounts withdrawn by him from his bank accounts were deposited back.

5. The Bench is of the considered opinion that given the fact that assessee was the bank employee and his only source of income was salary and interest income from NSC and that he had claimed that due to his daughter suffering from Cancer and mother's ill health he was unable to produce relevant evidences before the Ld. AO. The Ld. CIT(A) has fallen in error to observe that there are no exceptional circumstances. The Bench is of the considered view that to exercise the discretion of admission of evidence under Rule 46A the assessee was required to show that sufficient cause prevented him from producing the evidence called for by the AO or which was relevant to any ground of appeal. Since the powers of Ld. CIT(A) are coterminous with that of Assessing Officer and the appeal before Ld.CIT(A) is considered to be continuation of assessment and Section 250 of the Act gives wide powers to Ld.CIT(A) to make an enquiry on facts at his own instance so the exercise of powers under Rule 46A cannot be said to be on exceptional circumstances only rather as a rule additional evidence relevant to the grounds should be admitted. It appears that the Ld. AO has not rebutted the additional evidence on merits but only countered it by the justification that sufficient opportunities were given during the assessment proceedings. In the light of aforesaid discussion, the Bench is inclined to

allow the ground no. 1 partly in favour of assessee with the direction to the Ld.CIT(A) to admit the additional evidence of assessee and decide the issue on merits afresh. An opportunity of hearing to assessee be also given.

6. In the result, the appeal is **allowed for statistical purposes**.

Order pronounced in the open court on 26/06/2023

Sd/-  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Dated: 26.06.2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**

