

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.46/Asr/2018
Assessment Year: 2013-14**

IncomeTax Officer, Ward-3(5), Jalandhar. (Appellant)	Vs.	Sh. Nitin Pal Singh, S/o Sh. Gurnam Singh H.No. 563, Cheema Nagar Extension, Jalandhar. [PAN:-AWLPS9138A] (Respondent)
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**I.T.A. No.65/Asr/2018
Assessment Year: 2013-14**

Sh. Nitin Pal Singh, S/o Sh. Gurnam Singh H.No. 563, Cheema Nagar Extension, Jalandhar. [PAN:-AWLPS9138A] (Appellant)	Vs.	Income Tax Officer, Ward-3(5), Jalandhar. (Respondent)
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Appellant by	Sh. S.R. Kaushik, CIT. DR
Respondent by	Sh. Gaurav Dhall, CA.

Date of Hearing	22.06.2023
Date of Pronouncement	07.07.2023

ORDER

Per:Anikesh Banerjee, J.M.:

The instant appeal of the revenue and Cross Appeal of the assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Jalandhar,[in brevity the 'CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961[in brevity the 'Act'], for A.Y. 2013-14.The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-3(3), Jalandhar,[in brevity the AO], order passed u/s 143(3) of the Act.

2. In the outset, both the appeals are vice-versa in the same nature and in the common issue.So, we are adjudicating together for the sake of convenience, **ITA No. 46/Asr/2018**, is taken as lead case.

I.T.A. No.46/Asr/2018

3. The revenue has taken the following grounds:

“1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the addition made after accepting the additional evidence. The acceptance of additional evidence was not in order, particularly when the assessee refused to receive the notices issued, during the course of assessment proceedings and also didn't refill the conditions as per Rule 46A of the Income Tax Rules, 1962.

2. *The Ld. CIT(A) has erred in admitting additional evidence by relying on the submission of the assessee that information required by the Assessing Officer could not be furnished due to faulty attitude of the then Authorized Representative of the assessee without appreciating that assessee didn't provide evidences to this effect and that assessee, being in a business for such a long period could not have been unaware of the requirement of law in furnishing the evidence before the AO when called for.*

3. *The Ld. CIT(A) has erred, in law and on the facts of the case, in deleting the addition of Rs. 1,47,43,598/- out of total addition of Rs. 1,50,00,000/-, after admission of additional evidence, which was not in accordance with the provisions of Rule 46A of the I.T. Rules, 1962.*

4. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in the case in deleting the addition of Rs.11,50,20,133/- out of total addition of Rs.11,62,64,013/- made by the AO on account of credits in banks account, relying upon die explanation of assessee, in respect of credit entries in respect of bank accounts holding die same to be on account of business of the assessee.*

5. *The Ld. CIT(A) has erred in law and on the facts in the case, in holding that the rimes in Bank Accounts related to the business of the assessee, without substantiating the sources of each and every credit entry in the Bank Accounts, in the light of section 68 and 69 of Income-tax Act, 1961.*

6. *The Ld. CIT(A) has erred in law and on the facts in the case in ignoring the section of the Assessing Officer, in his remand report, wherein he pointed out a number: of credit entries which did not tally with submission of the assessee and were not verifiable.*

7. *The Ld. CIT(A), in law and on the facts of the case, has erred in ignoring the requirement of substantiating various credit entries in Bank Accounts with supporting evidence by the assessee.*

8. *It is prayed that the order of the Ld. Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.*

9. *The appellant requests for leave to add or amend or alter the grounds of appeal before the appeal is heard and disposed off.”*

4. The assessee has taken the following grounds:

“1. That on the facts and circumstances of the case, assessment framed is illegal and bad in law since assessment was required to be made u/s 144 of the Act by invoking provisions of section 145(3) of the Act as against best judgment assessment framed u/s 143(3) of the Act without invoking provisions of section 145(3) of the Act. Conclusion drawn by learned CIT(A) that “there is no infirmity in the proceedings adopted by Assessing Officer and assessment order passed by Assessing Officer u/s 143(3) of the Act is valid” is bad in law & as such illegal.

2. (a) That on the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-Jalandhar has grossly erred in law in estimating commission of Rs. 9333/- per student and calculating total income at Rs. 1493280/- as against income of Rs. 249400/- declared by the assessee and thus confirming addition of Rs. 1243880/-.

(b) That estimation of commission by the Learned Commissioner of Income Tax (Appeals) is based on assumptions and presumptions and suffer from following:-

a) Total no. of students have been worked on higher side.

b) No credit has been given for students who were refused visa resulting in no commission.

c) Rate of interest applied for calculating commission is on higher side.

3. That on the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-Jalandhar has grossly erred in law in concluding that Rs. 231798/- being redemption of mutual funds is taxable under the head "Short Term capital Gains."

4. That on the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-Jalandhar has grossly erred in law in concluding that Rs. 24604/- being interest income has not been declared in the return.

5. That the Appellant requests for leave to add or amend the grounds of appeal before the appeal is heard or disposed off."

5. Brief fact of the case is that the assessee during impugned assessment year was assessed and the amount of Rs.8,85,000/- related to income from undisclosed source, Rs.1,50,00,000/- related to deposit of investment from undisclosed source and Rs.11,62,64,013/- which was related to unexplained credit in the bank a/c of the assessee. The total amount which works out to Rs.1.32.77.963/- was added back with the total income of the assessee. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) partly allowed the appeal. Being aggrieved both the parties filed an appeal before us by challenging the order of appeal.

6. The Id. DR vehemently argued and first pointed out that only issue was agitated related to relief granted by the Id. CIT(A) amount of Rs.1,47,43,598/- consideration to total addition of Rs.15 lacs and relief allowed Rs.11,50,20,133/- out of total addition of Rs.11.62,64,013/-. He further agitated that the Id. AO wrongly granted the relief by considering the additional evidence by contravening Rule 46A of Income Tax Rule 1962. Accordingly, the addition was liable to be confirmed.

7. The Id. AR fully relied on the order of the Id. CIT(A). We heard the rival submission and relied on the documents available in the record.

Adjudication Related to Additional Evidence

7.1 The Id. DR agitated this point before the bench that the following Rule 46A as per Income Tax Rule, 1962, the Id. CIT(A) accepted the documents of the assessee considering the submission of the Id. AR. The Id. CIT(A) had called for three remand report from the Id. AO. The Id. AO made objection related to remand report. We reproduce the relevant paragraph of the appeal order related paragraph as below: -

“5. That sum and substance of the comments of the Ld. A.O. are that the additional evidence should not be admitted since the assessee did not cooperate during the assessment

proceedings did not produce the books of accounts did not filed the requisite supporting documents and had filed return u/s 44AD when there were huge credits in his account. Sufficient opportunity was given to the assessee to provide the requisite documents lie did not do the same. However, the A.O. in the last line of para 7.1 has admitted that the additional evidence are in line with the statement of the assessee (Answer to question no. 20).

6. That the assessee completely relied upon his counsel who never informed the assessee regarding the documents to be filed before the A.O. Therefore, the assessee was prevented from filing the requisite information before Ld. A.O. and had sufficient causes for the same. Case of the assessee falls under clause “b” and “c” of the Rule 46A(1) of the Income Tax Rule 1962. It is thus prayed that additional evidence be admitted to make the ends of justice meet.”

8. We find that the Id. CIT(A) has power as per section 250(4) for verification. The additional evidence can be accepted by the Id. CIT(A) by exercising powers as followed Rule 46A. The Id. CIT(A) has accepted the additional evidence as per Rule 46A(1)(b) & (c). About the observation of the Id. CIT(A), the Id. DR had not made comment. But only issue is the additional evidence should be verified to AO by the help of Rule 46A. The Id. CIT(A) had properly considered

and executed the Rule 46A in this case. In our considered view the ground nos. 1 and 2 of the revenue are dismissed.

8.1 Related to addition amount of Rs.1,50,00,000/- the ld. CIT(A) adjudicated the issue which are reproduce as below Para 5.10 and 5.11:

“5.10 Further, on examination of these details (page 25 & 26 of the PB of the reply to the remand report filed by the appellant vide letter dated 20-03-2017) I find that appellant has earned a profit of Rs. 2,31,798/- on redemption of mutual funds. This amount has now been credited by the appellant to the capital account without being offered for taxation. I do not agree with the contentions of the appellant as the same is taxable being short-term capital gains. Accordingly, I confirm the addition of Rs. 2,31,798 on account of profit(short term capital gains) on redemption of mutual funds. Further, in the course of examination of details filed it is seen that appellant has earned interest income of Rs. 1,78,560 and of Rs. 2,17,568 in the year under consideration. The total interest income earned by the appellant for the period comes to Rs.3,96,128 as against which interest income of Rs. 3,71,524 has been declared in the return of income. Therefore, I confirm an addition of Rs. 24,604(Rs. 3,96,128-Rs. 3,71,524) on account of interest income.

5.11 In view of the above facts, I confirm the addition of Rs. 2,56,402 (Rs. 2,31,798 + Rs. 24,604) out of the total addition of Rs. 1.50 crore made by the AO on this account.”

8.2 We find that the Id. CIT(A) has properly adjudicating the issue and calculated the interest of the assessee amount of Rs.2,56,402/-. The assessee is an educational agent and amount received from the different parties as a security for payment of foreign university Rs.1.5 Crore of related to mutual fund invested and the source was duly clarified before the bench. The only part is related to the interest which was correctly ascertained and confirmed by the Id. CIT(A) amount of Rs.2,56,402/- both the assessee and the revenue has taken this ground vise verse. In our considered view the ground no. 3 of the revenue and ground 3 and 4 of the assessee are dismissed.

8.3 The addition related to amount 11,62,64,013/- both the assessee and revenue has agitated this ground. The revenue has agitated for deletion of addition amount of Rs.11,50,20,133/- and the assessee had agitated that for confirming the addition amount of Rs.12,43,880/- here we are reproduced the order of the Id. CIT(A) para no. 6.16 to 6.18 are reproduced as below:

“6.16 These facts have been accepted by the appellant in the submissions made in the course of present proceedings and

therefore, the next issue is how to estimate the income of the appellant for the period under consideration. For this purpose, I find that on an average an amount of Rs. 8 lakh per student has been given for an average period of one month. It is also an accepted fact that total credits in the bank account are in the range of Rs.13 to Rs.14 crore and therefore, if the total turnover of Rs. 14 crore is divided by Rs. 8 lakh then the total number of students who have been given funds can be determined. Accordingly, the total number of students would work out to 175 students for the year under consideration to whom services have been provided by the appellant. The ledger accounts prepared by the appellant based on the entries in the bank accounts also show the no. of students to around 145 to 150. Thus, aftertaking into account all these factors, I hold that the total number of students is 160 to whom appellant has provided services.

6.17 Further, the next issue would be as to how much amount has been charged as commission/fee per student by the appellant. I hold that it would be fair to charge an interest rate of 14% p.a on average amount of finance of Rs. 8 lakh provided for an average period of one month per student, which comes to commission income of Rs. 9333 per student. This would help in the computation of total commission income earned by the appellant in the year under consideration. The total commission

income earned by the appellant for the year under consideration would come to Rs. $9333 \times 160 =$ Rs. 14,93,280.

6.18 Thus, after giving a credit of business income of Rs. 2,49,400 which has already been declared by the appellant, the net addition comes to Rs. 12,43,880 on account of business income. Accordingly, an addition of Rs. 12,43,880 on income is confirmed as against the addition of Rs. the AO on account of unexplained bank deposits.”

9. The Id. DR vehemently argued and invited our attention in appeal order page 6.14 which is extracted as below: -

“6.14 The AO was again asked to conduct enquiries from the banks to verify the contentions of the appellant. It is submitted in response to the report of the AO that total credits in the bank account comes to Rs.12,86,00,091 as against Rs.13,91,16,543 computed by the AO in the remand report. The appellant has filed an explanatory statement on the discrepancies pointed out by the AO in the remand report, which primarily pertain to the differences in the account number, name, date and amount etc. This statement furnished by the appellant was verified on test check basis from the details enclosed there-with consisting of a copy of the different bank account statements, ledger account of the student.

10. In our considered view, there is lack of opportunity was allowed to revenue in the order of the Id. CIT(A). The source of the investment was duly explained by

the assessee and the ld. CIT(A) was duly satisfied and accepted the submission of the assessee. But the discrepancies were pointed out by the ld. AO in remand report was remained unexplained before the ld. AO. The grievance of revenue that the appeal was allowed on basis of statement of assessee. The opportunity to revenue was denied. Related to calculation of commission, the ld. CIT(A) had calculated Rs.12,43,880/- which was not accepted by the assessee. There is no proper basis and absence of comparative in same business. The ld. CIT(A) cannot calculate the commission in his own accord. We find that both the assessee & revenue should get proper opportunity in the proceeding. Since the matter is restored to the file of ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the set aside proceeding before the ld. CIT(A). The observations herein made by us in remanding the matter back to the file of ld. CIT(A) will not impair or injure the case of the revenue nor will it cause any prejudice to the defence/explanation of the assessee. Accordingly, we set aside the impugned order of the ld. CIT(A) only on merit and restore the matter back to the file of the ld. CIT(A) to decide afresh after affording reasonable opportunity of being heard to the assessee & revenue. The ld. CIT(A) should perform duly properly

related remand report from the assessing authority. The assessee is directed to be diligent in the set aside proceedings.

Accordingly, the ground nos. 4 and 5 of the revenue and ground no. 2 of the assessee are allowed for statistical purpose.

11. In the result, the appeal of the revenue bearing **ITA No. 46/Asr/2018** is & appeal of the assessee bearing **ITA No.65/Asr/2018** are allowed for statistical purpose.

Order pronounced in the open court on 07.07.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member
AKV

Sd/-

(ANIKESH BANERJEE)
Judicial Member

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order