

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[ CONDUCTED THROUGH VIRTUAL COURT ]

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 150/Rjt/2021  
Assessment Year 2012-13**

The ACIT (Intl. Taxn), Amruta Estate, Room No. 312, M.G. Road, Nr. Girnar Cinema, Rajkot (Appellant)	Vs	Shri Bharat Champaklal Ruparel Krishna Kanaiya, Flat No. 13, 7 <sup>th</sup> Floor, University Road, Rajkot-360005 PAN: AKBPR6891B (Respondent)
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**ITA No. 151/Rjt/2021  
Assessment Year 2012-13**

The ACIT (Intl. Taxn), Amruta Estate, Room No. 312, M.G. Road, Nr. Girnar Cinema, Rajkot (Appellant)	Vs	Shri Chandrika Bharat Ruparel Krishna Kanaiya, Flat No. 13, 7 <sup>th</sup> Floor, University Road, Rajkot-360005 PAN: AKBPR6890A (Respondent)
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**Assessee by: Shri Mehul Ranpura, A.R.  
Revenue by: Shri Shramdeep Sinha, Sr. D.R.**

Date of hearing : 11-07-2023  
Date of pronouncement : 19-07-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

These are appeals filed by the Department against the order passed by Ld. CIT(Appeals) in the case of Shri Bharat Champak Lal Ruparel and his wife Mrs. Chandrika Ruparel for assessment year 2012-13, arising from order of the CIT(A)-13, Ahmedabad both dated 10-08-2021, in proceedings under section 250 of the Income Tax Act, 1961; in short “the Act”.

2. The Department has taken the following grounds of appeal:

**ITA number 150/Rjt/2021 (Shri Bharat Champaklal Ruparel)**

“(1) On the facts and circumstances of the case and in law, the learned CIT(A) erred in admitting the additional evidences in contravention of Rule 46A of the Income-tax Rules, 1962 without appreciating the fact that the assessee failed to justify that her case was falling within the exception clause to Rule 46A(1) of the IT. Rules.

(2) On the facts and circumstances of the case and in law, the learned CIT(A) erred in admitting the additional evidences in contravention of Rule 46A of the Income-tax Rules, 1962 without appreciating the fact that the assessee had failed to show that he had sufficient reasons for complete non-compliance during assessment stage which is a pre-condition for accepting additional evidence under Rule 46A of the IT, Rules, 1962.

(3) On the facts and circumstances of the case and in law, the learned CIT(A) erred in admitting the additional evidences in contravention of Rules 46A of the Income-tax Rules, 1962 without recording the detailed reasons for admission in writing which is a sine qua non under Rule 46A(2) of the IT. Rules, 1962.

(4) On the facts and circumstances of the case and in law, the learned CIT(A) erred in completely ignoring the provisions of Rule 46A of the IT. Rules. 1962.

(5) *That the revenue craves leave to alter, add modify, delete any or all grounds of appeal.”*

**ITA number 151/Rjt/2021 (Shri Chandrika Bharat Ruparel)**

“(1) *On the facts and circumstances of the case and in law, the learned CIT(A) erred in admitting the additional evidences in contravention of Rule 46A of the Income-tax Rules, 1962 without appreciating the fact that the assessee failed to justify that her case was falling within the exception clause to Rule 46A(1) of the IT. Rules.*

(2) *On the facts and circumstances of the case and in law, the learned CIT(A) erred in admitting the additional evidences in contravention of Rules 46A of the Income-tax Rules, 1962 without appreciating the fact that the assessee had failed to show that he had sufficient reasons for complete non-compliance during assessment stage which is a pre-condition for accepting additional evidence under Rule 46A of the IT. Rules, 1962.*

(3) *On the facts and circumstances of the case and in law, the learned CIT(A) erred in admitting the additional evidences in contravention of Rule 46A of the income-tax Rules, 1962 without recording the detailed reasons for admission in writing which is a sine qua non under Rule 46A(2) of the IT. Rules, 1962.*

(4) *On the facts and circumstances of the case and in law, the learned CIT(A) erred in completely ignoring the provisions of Rule 46A of the IT. Rules, 1962.*

(5) *That the revenue craves leave to alter, add modify, delete any or all grounds of appeal.”*

3. Since, common facts and issues for consideration are involved for both the years under consideration, both the appeals filed by the Department are being taken up together.

4. We shall first start with the appeal filed by the Department in the case of Shri Bharat Champak Lal Ruparel (ITA number 150/Rjt/2021).

5. Notably in this case, Department has not challenged the order passed by Ld. CIT(Appeals) on merits. The only contention raised by the Department in its appeal is that Ld. CIT(Appeals) erred in facts and in law in admitting additional evidence filed by the assessee in appellate proceedings under Rule 46A of the Income Tax Rules.

6. The brief background of the case is that the assessee did not file return of income for assessment year 2012-13. As per information available with the Department, the assessing officer observed that there were substantial deposits in the bank accounts by the assessee held with HDFC Bank and Bank of Baroda. Accordingly, the assessing officer issued notices under section 142(1) of the Act and made additions in the hands of the assessee, with respect to deposits made with NRO account with HDFC Bank amounting to ₹ 1.08 crores in the hands of the assessee on substantive basis and also simultaneously in the hands of his wife, on protective basis (since she was a joint holder in HDFC bank). The assessing officer also made addition on account of credit entries in Bank of Baroda amounting to ₹ 1 crore in the month of November 2011, in the hands of the assessee under section 69A of the Act. Further, the Ld. Assessing Officer also made addition of ₹ 1.02 crores in the hands of the assessee u/s 69A of the Act on protective basis with respect to another NRO account with HDFC Bank (while additions on substantive basis with respect to this NRO Account were made in the hands of assessee's wife). Accordingly, the assessment was completed by assessing total income at ₹ 3,20,32,140/- in the hands of the assessee.

7. In appeal, the assessee submitted that the assessee is a non-resident Indian, who is settled in Dubai since more than 35 years. It was submitted that all the aforesaid deposits were on account of transfer/remittance made by the assessee from his personal bank accounts in Dubai into his Non-Resident Ordinary (NRO) bank accounts held with HDFC Bank for the purpose of making investments in fixed deposits receipts of the bank. The assessee submitted documentary proof to show that the aforesaid deposits were only remittances from personal bank account of the assessee in Dubai to the NRO account in India. Similar documentary evidences were also furnished by the assessee with respect to other NRO accounts held by him in India in Bank of Baroda. A report from the concerned assessing officer was sought by Ld. CIT(Appeals) with respect to aforesaid evidences placed on record by the assessee, and after taking into consideration the comments made by the assessing officer in the remand report, Ld. CIT(Appeals) observed that the assessing officer has not drawn any adverse inference with respect to documents submitted by the assessee and further the assessing officer has not objected to the submissions and documents filed by the assessee. Accordingly, after taking into consideration the documents/evidence furnished by the assessee in support of its case and the comments of the assessing officer in remand proceedings, Ld. CIT(Appeals) deleted additions on the ground that assessee has been able to establish the source of deposits and thereby, the additions made during the course of assessment proceedings were deleted.

8. The Department is in appeal before us, on the limited aspect of admitting additional evidence under Rule 46A of the Income Tax Rules.

However, after hearing the parties before us and on going to the records of the case, it is observed that there is no allegation whatsoever by the Department that there was any violation of due process by Ld. CIT(Appeals), while admitting the additional evidence under Rule 46A of the Income Tax Rules. It is observed that the aforesaid additional evidence could not be filed because the assessee is a non-resident Indian and settled in Dubai by for the last 35 years. Further, a perusal of the documentary evidence establishes the source of deposits made in the NRO account held by the assessee, as being transfers/remittances made by the assessee from its own bank accounts held in Dubai. Further, all the written submission/evidences submitted by the assessee were placed before the assessing officer for his comments in the remand proceedings, and after taking into consideration the observations made by the assessing officer, the Ld. CIT(Appeals) allowed the appeal of the assessee on merits. Accordingly, looking into the facts of the instant case, we are of the considered view that Ld. CIT(Appeals) has followed the due process of law while admitting additional evidence, which were required to be admitted to decide the appeal of the assessee on merits. Accordingly, we find no infirmity in the order of Ld. CIT(Appeals) while admitting the addition evidence under Rule 46A of the Income Tax Rules.

9. In the result, the appeal of the Department is dismissed.

10. Since similar facts and issues for consideration are involved in Department's appeal in case of assessee's wife as well (ITA No. 151/Rjt/2021), keeping in view the observations made in the preceding

paragraphs, the appeal of the Department is dismissed in the case of Smt. Chandrika Ruparel as well.

11. In the combined result, the appeal of the Department is dismissed in respect of both the assesseees, Shri Bharat Champak Lal Ruparel and Mrs. Chandrika Ruparel for assessment year 2012-13.

Order pronounced in the open court on 19-07-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 19/07/2023**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot