

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

**(VIRTUAL COURT)**

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

**I.T.A. No. 398/Asr/2019**  
Assessment Year: 2014-15

M/s Jagtar Singh Prabhdoyal **Vs.**  
Jalalabad West, Fazilka

[PAN: AABFJ 4866G]  
**(Appellant)**

DCIT, Circle 2,  
Bathinda

**(Respondent)**

**I.T.A. No. 408/Asr/2019**  
Assessment Year: 2014-15

DCIT, Circle 2,  
Bathinda

**(Appellant)**

**Vs.** M/s Jagtar Singh Prabhdoyal  
Jalalabad West, Fazilka

[PAN: AABFJ 4866G]  
**(Respondent)**

Appellant by : Sh. J. K. Gupta, Adv.

Respondent by: Sh. Rajiv Wadhwa, Sr. DR

Date of Hearing: 24.07.2023

Date of Pronouncement: 04.08.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The cross appeals have been filed by the Revenue and assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Bathinda dated 11.03.2019 in respect of Assessment Year 2014-15.

2. The Revenue has raised the following grounds of appeal in ITA No. 408/Asr/2019:

- (i) *The CIT(A) erred in admitting additional evidence while restricting the addition on account of gross profit and deleting the addition on account of cash credit in its books of accounts in violation of Rule 46A without affording any opportunity to the AO to rebut the same.*
- (ii) *The CIT(A) erred in restricting the addition made on account of gross profit merely by comparing percentage of trading and manufacturing activities of the assessee during earlier year with the year under consideration without giving any findings on how such variation of activities affected the gross profit of the assessee.*
- (iii) *The CIT(A) erred in deleting the addition made u/s 68 of the Act without appreciating that onus of proving the source of credit entry in its books of accounts was on the assessee and the assessee by failing to produce confirmation from the creditor, his ITR and source of the amount, failed to discharge such onus.*
- (iv) *The CIT(A) erred in failing to give findings on genuineness of gift of Rs 4 lakh shown as received from his mother by the creditor, admitted as additional evidence by the CIT(A), which ultimately found its way in the books of accounts of the assessee.*

- (v) *The CIT(A) erred in holding that the assessee was given opportunity to explain source of the credit in its books of account on 26.12.2016 without appreciating that the assessee was required to explain source of such credit vide notice u/s 142(1) dated 02.05.2016 and thereafter, as many as 11 opportunities were provided but the assessee failed to discharge the onus.*
- (vi) *The CIT(A) erred in not taking into consideration the findings of jurisdictional Hon'ble Punjab & Haryana High Court in the case of Mukand Cold Storage, 47 taxmann. 185 wherein, in similar facts and circumstances, it was held that onus was on the assessee to explain source of credit entry in its books of accounts, in the absence of which, it was open to tax authorities to fasten it with the tax liability on the said unexplained entry."*

3. Facts as per record are that return of income was filed by the assessee on 27.11.2014 for the A.Y. 2014- 15 at an income of Rs.8,58,130/-. Assessment u/s 143(3) of the Act was made by the AO on 28.12.2016 at an income of Rs.2,43,24,811/-. While framing assessment, addition of Rs.78,82,262/- was made by applying gross profit rate of Rs.14.06% as against 9.49% declared by the assessee after rejecting books of accounts u/s 145(3) of the Act on the basis of various discrepancies found in inventory of cash and stock found during the course of survey proceedings u/s 133A of the Act at the business premises of the assessee on 20.02.2014 and subsequently in the course of scrutiny proceedings. Another addition of Rs.1,55,11,938/- was made u/s 68 of the Act on account of unexplained credit in the books of account of the

assessee in the name of one of the partners. Another addition of Rs.72,481/- was made on account of disallowance of various expenses, which were not subject to verification.

4. Aggrieved with the assessment order, the assessee filed an appeal before the CIT(A). The Ld. CIT(A) vide order dated 11.03.2019 in Appeal No. 222-IT/16-17 partly allowed the appeal of the assessee. The CIT(A) restricted the gross profit rate applied by the AO at 14.06% to 11% thereby reducing the addition of Rs.78,82,262/- to Rs.26,01,25/ by observing that during the year under consideration, business activities involved manufacturing and trading with almost equal contribution whereas during the preceding year activity was predominantly manufacturing and that profitability could be compared with assessment year 2012-13 with small adjustment. The CIT(A) deleted the addition of Rs.72,481/- by holding that no enquiries were made by the AO regarding admissibility of the expenditure. The CIT(A) deleted the addition of Rs. 1,55,11938/- by holding that AO provided opportunity to the assessee to explain the credit on the partners account on 26.12.2016 by making order sheet entry and assessment order as passed on 28.12.2016 without making any enquiry by observing that documents submitted by the assessee were not sufficient.

5. The Ld. DR for the department submitted that the Ld. CIT(A) erred in admitting additional evidence while restricting the addition on account of gross profit and deleting the addition on account of cash credit in its books of accounts in violation of Rule 46A without affording any opportunity to the AO to rebut the same; that he has restricted the addition made on account of gross profit merely by comparing percentage of trading and manufacturing activities of the assessee during earlier year with the year under consideration without giving any findings on how such variation of activities affected the gross profit of the assessee; that he has deleted the addition made u/s 68 of the Act without appreciating that onus of proving the source of credit entry in its books of accounts was on the assessee and the assessee by failing to produce confirmation from the creditor, his ITR and source of the amount, failed to discharge such onus; that the CIT(A) erred in failing to give findings on genuineness of gift of Rs 4 lakh shown as received from his mother by the creditor, admitted as additional evidence by the CIT(A), which ultimately found its way in the books of accounts of the assessee as an afterthought; that the CIT(A) erred in holding that the assessee was given opportunity to explain source of the credit in its books of account on 26.12.2016 without appreciating that the assessee was

required to explain source of such credit vide notice u/s 142(1) dated 02.05.2016 and thereafter, as many as 11 opportunities were provided but the assessee failed to discharge the onus and that the CIT(A) erred in not taking into consideration the findings of jurisdictional Hon'ble Punjab & Haryana High Court in the case of Mukand Cold Storage, 47 taxmann. 185 wherein, in similar facts and circumstances, it was held that onus was on the assessee to explain source of credit entry in its books of accounts, in the absence of which, it was open to tax authorities to fasten it with the tax liability on the said unexplained entry.

6. Per contra, the Ld. counsel supported the impugned order reiterating the submission made before the CIT(A). At the same time, he objected to the impugned order on confirming the gross profit rate partly. Thus, the Ld. AR was inconsistent in its submission on the finding of the Ld. CIT(A). However, he failed to rebut the contentions of the department on the issue of admission of additional evidence in violation of Rule 46A on restricting GP rate and deleting the unexplained credits.

7. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, there are discrepancies found in inventory of cash and stock

prepared during the course of survey proceedings u/s 133A of the Act at the business premises of the assessee conducted on 20.02.2014 where the shortage found in the stock and cash was remained unexplained in consonance to the sharp fall in GP rate besides unexplained credit entries. In the books of the assessee. The Ld. CIT(A) allegation that the appellant assessee was not granted adequate opportunity by AO is factually incorrect.

8. From the record, it is noted that the Ld. CIT(A) has admitted additional evidence while restricting the addition on account of gross profit and deleting the addition on account of cash credit in its books of accounts in violation of Rule 46A without affording any opportunity to the AO to rebut the contention the appellant accepted by the Ld. CIT(A) on the basis of the additional evidence in violation of principles of natural justice. The department objected to the decision of the CIT(A) in reducing the gross profit from 14.06% to 11% merely on presumption by mentioning comparing percentage of trading and manufacturing activities of the assessee during earlier year with the year under consideration without considering the past history or comparable case or even given any findings on how such variation of activities affected the gross profit of the assessee and that he has deleted the addition made u/s 68 of the Act without

appreciating that onus of proving the source of credit entry in its books of accounts was on the assessee who failed to produce confirmation from the creditor, their ITRs and source of the disputed credits. Meaning thereby, the appellant failed to discharge primary onus to prove genuineness and creditworthiness of creditors in books of account as evident from the facts that the CIT(A) has not given any findings on genuineness of gift of Rs 4 lakh shown as received from his mother by the creditor, being admitted as additional evidence by the CIT(A), which ultimately found its way in the books of accounts of the assessee as an afterthought. The CIT(A) has further ignored to consider the findings of jurisdictional Hon'ble Punjab & Haryana High Court in the case of Mukand Cold Storage, 47 taxmann. 185 wherein, on the similar facts and circumstances, it was held that onus was on the assessee to explain source of credit entries in its books of accounts, in the absence of which, it was open to tax authorities to fasten it with the tax liability on the said unexplained credit entries.

9. The Honorable High Court of Allahabad in the case of "Haji Lal Mohd. Biri Works vs. Commissioner of Income-tax", [2005] 145 TAXMAN 578 (ALL.) on the issue of principle of natural justice while admitting additional

evidence U/R 46A of the ITAT Rules 1963, has held vide para 7 & 8 as under:

*A bare perusal of the rule 46A clearly show that the appellant is not entitled to produce fresh oral or documentary evidence, as a matter of right, in appeal. However, under certain circumstances as mentioned in clauses (a), (b), (c) and (d) of sub-rule (1) of rule 46A, additional evidence can be filed. Under sub-rule (2) of rule 46A, provision for recording reasons under sub-rule (2) has been made to enable the higher forums to examine the issue, if raised by an aggrieved party, before it, in further appeal etc., and to avoid the arbitrariness in the matter. The authority should not act whimsically while exercising the jurisdiction under rule 46A. Sub-rule (2) casts a duty on the authority concerned to record reasons in writing for admission of the additional evidence. Further, the finding that had been recorded by the Tribunal, in the instant case, was that no opportunity to examine new evidence or to produce any evidence in rebuttal was afforded to the assessing authority. Rule 46A contains principle of natural justice. Nobody should be condemned without giving opportunity of hearing. In the instant case, the appellate authority had taken into consideration fresh evidence produced before it without following the principles of natural justice. In that view, there was no legal infirmity in the order of the Tribunal. Apart from the above, the Tribunal had restored back the issue to the file of first appellate authority. It was still open to admit additional evidence sought to be filed by the assessee after complying with the requirement of rule 46A. It had not been found as a fact that the additional evidence was taken by the first appellate authority after application of mind and in the absence of any reason on the record it was not possible to come to such conclusion at that stage. Be that as it might, there was nothing on record to show that the additional evidence was taken with the assent of both sides. The argument that the assessing authority was present during the course of hearing of appeal would not absolve the appellate authority not to pass order in writing with the reasons for admission of fresh evidence. Mere presence of the assessing authority would not lead to presumption that he assented for taking the additional evidence on record. [Para 7]*

*Thus, it was clear that the Commissioner (Appeals) took the additional/ fresh evidence de hors rule 46A and the Tribunal had rightly set aside that part of the order. [Para 8]*

10. The Hon'ble Jurisdictional High Court of Punjab and Haryana in the case of "Mukand Cold Storage vs. Commissioner of Income-Tax [2014] 47 taxmann.com 185 (Punjab & Haryana) has observed that where money is

introduced in names of partners was in fact earned by firm from its business of cold storage, same was to be treated as unaccounted income of firm. The relevant para 13 of the judgement reads as under:

“13. From the above, it emerges that the money introduced in the names of the partners was infact earned by the firm from its business of Cold Storage and was its unaccounted income. Further, no material had been produced to show that partners had independent source of income. The assessee-firm inspite of several opportunities having been provided to it to produce the partners so that confirmation of introduction of cash by them could be verified, had failed to comply with it. Further, the assessee had not furnished the addresses of the farmers from whom Cold storage rent is alleged to have been received as the assessee had been carrying on the business of cold storage for the last at least more than 10 years. Moreover, no receipts in support of the alleged receipt of rent from the said farmers had been produced. The plea of the assessee that it was the amount of the partners and not of the firm remained unsubstantiated. In view of the concurrent findings of fact recorded by the Assessing Officer, the CIT(A) and the Tribunal, which have not been shown to be perverse or illegal in any manner, no substantial question of law arises. The appeals are accordingly dismissed.”

11. In view of the principles of natural justice, we consider it deem fit to remand the matter back to the file of the Ld. CIT(A) to adjudicate the ground of the appeal decided by admitting additional evidence U/R 46A without granting opportunity of being heard to the AO, as agitated by the Ld. DR for the Department, on merits of the case and considering the judgement of Hon'ble Jurisdictional High Court of Punjab and Haryana in the case of “Mukand Cold Storage vs. Commissioner of Income-Tax (Supra) on the addition u/s 68 of the Act as per law after considering the

written submission of the department and the appellant as well and affording adequate opportunity of being heard to the AO. At the same time, liberty is granted to the Id. AO to make all submissions in respect of allowability of additional evidence in the interest of justice. We are not expressing any opinion on the merits of the case as it has not been examined by the CIT(A) on principle of law. Liberty is also granted to the AO and the assessee to raise all arguments as are found necessary by them before the authority below. Accordingly, the subject cross appeals are remanded back to the file of the CIT(A) to adjudicate afresh on the issues of adoption of GP Rate and addition made u/s 68 of the Act by the AO after granting adequate opportunity of being heard to both the sides.

12. In the result, the cross appeals are allowed for statistical purpose.

*Order pronounced in the open court on 04.08.2023*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

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

True Copy  
By Order