

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.199/Hyd/2023		
Assessment Year: 2018-19		
Income Tax Officer Ward 7(1) Hyderabad (Appellant)	Vs.	M/s. Avantika Projects Hyderabad PAN:ABIFA4584E (Respondent)
Assessee by:	Adv. V. Siva Kumar	
Revenue by:	Smt. Sheetal Sarin, DR	
Date of hearing:	23/08/2023	
Date of pronouncement:	24/08/2023	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the Revenue is directed against the order dated 31/01/2023 of the learned CIT (A)-NFAC, Delhi relating to A.Y.2018-19.

2. Facts of the case, in brief, are that the assessee is a partnership firm and filed its return of income for the A.Y 2018-19 on 16.10.2018 declaring total income of Rs.4,580/-. The return was processed u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny through CASS. The reason for selection was “Introduction of large capital or share capital in the year of incorporation”. Statutory notices u/s 143(2) and 142(1) were issued and served on the assessee in response to

which there was no proper compliance. The Assessing Officer thereafter completed the assessment u/s 143(3) r.w.s. 144B of the I.T. Act determining the total income of the assessee at Rs.1,82,54,580/- wherein he made addition of Rs.1,82,50,000/- u/s 68 of the Act being the capital introduced.

3. Before the learned CIT (A) NFAC, the assessee filed certain additional evidences based on which the learned CIT (A) NFAC deleted the addition made by the Assessing Officer.

4. Aggrieved with such order of the learned CIT (A) the Revenue is in appeal before the Tribunal by raising the following grounds:

1. The Commissioner(Appeals) erred in admitting additional evidence and coming to a conclusion different from the Assessing Officer without granting opportunity to the assessing officer, thereby ignoring the statutory obligation to put additional material evidence taken on record by him before Assessing Officer, which is violation of Income Tax Rule 46A(3).
2. The order passed by the Commissioner(Appeals) violating the IT Rule 46A(3) is bad in law and is liable to be reversed.

5. The learned DR submitted that the assessee did not furnish any details before the Assessing Officer and filed the additional evidence before the learned CIT (A) NFAC, the learned CIT (A) NFAC without calling for a remand report from the Assessing Officer or without giving an opportunity to the Assessing Officer to rebut the additional evidence deleted the addition made by the Assessing Officer which is not justified. She submitted that there is complete violation of the provisions of Rule 46A(3) of the I.T. Rules. She accordingly submitted that the matter should be restored to the file of the Assessing Officer or the learned CIT (A) NFAC as the case may be.

6. The learned Counsel for the assessee, on the other hand, submitted that the learned CIT (A) NFAC after going through the details filed by the assessee deleted the addition. However, he submitted that the Assessing Officer was not given any opportunity to rebut the additional evidences filed before the learned CIT (A) NFAC. Therefore, he has no objection, if the matter is restored to the file of the Assessing Officer.

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. Admittedly, the assessee during the course of assesment proceedings did not file the requisite details for which the Assessing Officer made addition of Rs.1,82,50,000/- u/s 68 of the Act being the capital introduced. We find before the learned CIT (A) NFAC, the assessee filed certain details in the form of additional evidences based on which the learned CIT (A) NFAC deleted the addition. It is the submission of the learned DR that the learned CIT (A) NFAC in complete violation of the provisions of Rule 46A(3), admitted the additional evidences and deleted the addition without giving any opportunity to the Assessing Officer to rebut the additional evidences. It is an admitted fact that the learned CIT (A) NFAC in gross violation of the provisions of Rule 46A(3) has admitted the additional evidences and deleted the addition made by the Assessing Officer without giving an opportunity to the Assessing Officer to rebut the additional evidence nor has he called for a remand report from the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one opportunity to the assessee to substantiate his case and decide the issue as per facts and law.

We hold and direct accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

8. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 24th August, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 24th August, 2023

Vinodan/sps

Copy to:

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2	M/s. Avantika Projects, C 509 Vijaya Hills, Lakdikapool, Hyderabad
3	Pr. CIT-, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order