

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'A' : NEW DELHI)  
BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 9235/Del/2019  
(Assessment Year : 2015-16)**

Arise Commercial (P) Ltd. Khasra No. 42/29, Landmark Near Jai Bharat Dharma Kanta Village, Main GT Karnal Road, New Delhi-110001 PAN : AALCA7264L	Vs.	ACIT Circle, Ward3(2), Room No. 381, C.R. Building, I.P.Estate, New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Ms. Smriti Sahay, Adv.
Revenue by	Sh. Kanv Bali, Sr. DR

Date of hearing:	22.08.2023
Date of Pronouncement:	28.08.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been preferred by the Assessee against the order dated 24.09.2019 of CIT(A)-1, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. 493/17-18 arising out of an appeal before it against the order dated 13.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-3(2), New Delhi (hereinafter referred as the Ld. AO).

2. The brief facts of the case are that the appellant is a private company engaged in the business of trading and agro products and filed its return of income on 22.03.2016 declaring NIL income under the normal provisions of the Act. Thereafter, case of the appellant was selected for scrutiny under CASS and assessment order u/s 143(3) of the Act was passed after making additions amounting to Rs. 84,03,915/-. The issues involved are;

1. *Adhoc addition at the rate of 1% turnover as Unexplained Transactions after Rejection of books of accounts. During the previous year, the appellant company had made purchases & sales of Rs.29,16,52,750/- & Rs.34,03,91,500/-, respectively. However, the appellant assesses could not file the requisite details before the assessing officer. On the basis of observations that the appellant could not have achieved such turnover, by incurring expenditure of Rs. 3,56,229/-, only, it was alleged by Ld. AO that appellant company has no genuine business since the purchases and sales is from the same related party. Therefore, he rejected the books of accounts and estimated the income of the appellant @ 1% of the sales made during the year, i.e., 1 % of Rs. 34,03,91,500/- amounting to Rs. 31.03,915/-*

2. *During the previous year, the appellant company had taken, a loan of Rs.50,00,000/- from Mr. Sarang jain whom assessee has claimed was Director and is also the shareholder with 89.50% shareholding in the company. During the course of assessment proceedings, Ld. Assessing Officer had directed to produce the relevant documents in support of the unsecured loan taken during the year under consideration. However, the appellant could not furnish the requisite details within the time provided by the Ld. AO. Thus, the Ld. Assessing Officer invoked section 68 and made an addition of Rs. 50,00,000/- on the ground that appellant company had failed to discharge its onus to prove the identity of the creditor and the genuineness of the transaction. Thus, he made the addition of Rs. 50,00,000/- u/s 68 to the total income of the Act.*

3. The assessee challenged the same before Ld. CIT(A) and also filed additional evidences, however, Ld. CIT(A) had dismissed the additional evidences with following findings ;

*“The AO has reported that under Rule 46A of the Income Tax Rules, the additional evidences which could not be produced before the AO at assessment stage are fresh evidences and cannot be given at appellate stage. In the case of the appellant, the appellant has filed an application under Rule 46A but none of the contentions raised in the application, as discussed above, fall in the category of circumstances given in Rule 46A. In absence of the same, it cannot be said that the case of the appellant falls in any of the clauses mentioned in Rule 46A. The application of the appellant for admission of additional evidence under Rule 46A does not fulfill the conditions of Rule 46A. In view of it, the application under Rule 46A for admission of additional evidence is rejected.”*

3.1 Further, the appeal of assessee on merits was dismissed. The assessee has come in appeal raising following grounds ;

*“1. Ld. CIT(A) has erred in the facts and in making an addition circumstances of the case and in law estimation basis at 1% of alleged unexplained revenue from operations to the total income of the appellant. AO erred in the facts in disallowing 1% of sales as unexplained transaction despite the fact that the purchases have not been doubted.*

*2. Ld. CIT(A) has erred in ignoring the fact that unsecured loan of Rs. 50,00,000/- is taken by appellant during the previous year from Mr. Sarang Jain, who is also the shareholder & director of the company, and as such the identity and genuiness of the creditor cannot be doubted.*

*3. The order of AO as affirmed by the CIT(A) is not tenable as the same is arbitrary, illegal, bad in law and in violation of the ruydimentary principles of contemporary jurisprudence.*

*4. The appellant craves leave to add/alter/modify any/ all grounds of appeal before the or at the time of hearing of the appeal.”*

4. Heard and perused the record.

5. On hearing the Ld. Representatives of both the sides it comes up that before Ld. AO there was insufficient representation on behalf of the assessee, in spite of Shri M.R.Garg CA putting in appearance and therefore after issuing notices u/s 144 of the Act AO proposed to complete the assessment. Assessment order shows thereafter Shri M.R.Garg CA, attended the proceedings and by letter dated 30.11.2017 had filed details but which were not considered sufficient and the Ld. AO proceeded to complete the assessment on best judgment basis in the manner provided u/s 144 of the Act.

6. Then before Ld. CIT(A) appellant filed an application for additional evidence under Rule 46A and Ld. CIT(A) had forwarded the same to the ld. AO for calling remand report. The assessee had filed following additional evidences;

- 1. Copy of Purchase Account in the books of the assessee.*
- 2. Copy of Sales Account in the books of the assessee.*
- 3. Copy of Account of Sohan Lal Sunil Kumar in the books of the assessee.*
- 4. Copy of Account of LMJ Services Ltd. in the books of the assessee.*
- 5. Copy of Account of Parekh Brothers in the books of the assessee.*
- 6. Copy of Account of Guar Gum in the books of the assessee.*
- 7. Copy of invoices.*
- 8. Copy of bank statement of account number 00000034707102293 maintained with SBI from 16.02.2015 to 13.03.2015.*
- 9. Copy of bank statement of account number 34707102293 maintained with SBI from 01.04.2015 to 30.10.2017 with no transactions.*
- 10. Copy of acknowledgement of ITR of Shri Sarang Jain, 26B, Camac Street, Kolkata showing returned income of Rs. 1,94,540/-.*
- 11. Copy of Profit & Loss Account, Balance Sheet and details of investment in shares of Shri Sarang Jain.*
- 12. Copy of PAN Card.*

*13. Copy of bank statement of account number 18720100013678 maintained with Bank of Baroda at Jodhpur of Shri Sarang Jain from 02.05.2014 to 18.03.2015.*

7. The remand report shows that Ld. AO claimed that additional evidences are fresh evidences, therefore cannot be admitted under Rule 46A. Ld. AO had also tried to discredit the same by making submissions on merits and Ld. CIT(A) being satisfied that the additional evidences do not fall under scope of Rule 46A rejected the same.

8. After taking into consideration the matter on record it comes up that the primary reason for filing the additional evidences was failure of Ld. AR to represent the case appropriately. Then if the additional evidence documents narrated above are considered the same cannot be called as fresh evidences rather these documents were the very document which Ld. AO expected to examine with regard to the issue for rejecting the accounts or to consider the genuineness of unsecured creditors.

9. Then Ld. CIT(A) has failed to justify his observation that the evidences to be filed under Rule 46A do not fall in the category of circumstances enumerated there in. When before Ld. AO on 30.11.2017 the Ld. AR of assessee had appeared and filed details which Ld. AO had not considered sufficient, then before proceeding u/s 144, the assessee should have been called to satisfy the specific queries which it appears was not done.

9.1 Thus there was sufficient cause which prevented the assessee from producing evidence which was called upon by the Ld. AO and also there was insufficient opportunity and Ld. CIT(A) once having called the remand report wherein assessee had examined the additional evidences on merits also should

have taken into consideration the same and allowed the additional evidences. Having failed to do so the order of ld. CIT(A) is not sustainable in law.

10. **Accordingly, the appeal of assessee is allowed for statistical purposes** and the issues on merits are restored to the files of Ld. CIT(A) to allow the additional evidences and after taking the same into consideration and giving an opportunity of hearing to the assessee on the same, decide the issues on merits afresh.

**Order pronounced in the open court on 28<sup>th</sup> August, 2023.**

**Sd/-  
(G.S.PANNU)  
PRESIDENT**

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

*Date:- 28<sup>th</sup> .08.2023*

**\*Binita, SR.P.S\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

AR, ITAT  
New Delhi