

IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH :: NAGPUR

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
(Through virtual hearing)

ITA No. 15/NAG/2020  
(A.Y. 2012-13)

DCIT, Circle-3, Nagpur.	vs	Shyamsunder Nandlalji Jaiswal, 205, Sai Shraddha Apartment 15, Tawakkal Layout, Tawakkal Complex, Wadi, Nagpur.  PAN: ADAPJ 3226 C
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri Kailash Kanojiya, DR
Date of hearing	:	27/09/2023
Date of pronouncement	:	04/10/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of Commissioner of Income Tax [Appeals]-2, Nagpur, dated 25.10.2019 for A.Y. 2012-13 as per the following grounds of appeal:-

- "1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was correct in directing the AO to delete the addition of Rs. 4,23,23,850/- (Rs. 1,06,85,795)
2. Whether on facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in entertaining the narrative of the appellant that he works on very low margin trading of metals and just to keep the business running sells his goods at loss.
3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not giving any opportunity to the AO to re-examine the issues or evidence or documents as produced by the assessee during the appellate proceedings as envisaged under Rule 46A(3) of the Income Tax Rules, 1962.
4. Any other ground that may be raised during the proceedings."

2. At the time of hearing, none appeared for the assessee. That, as

per the grounds of appeal by the Revenue, in ground No.3, the Revenue is aggrieved by the action of Id. CIT(A) in not providing any opportunity to the AO to re-examine the issues/evidences/documents as produced by the assessee during the appellate proceedings which was in contravention of Rule 46A(3) of the Income Tax Rules, 1962.

3. We observe from the order of the Id. CIT(A) that certain oral facts were stated by the assessee which was recorded in the order-sheet as appearing at para 5.1 of the Id. CIT(A)'s order. Further, at para 5.1.1 it is stated by the Id. CIT(A) that *after considering the written submission and the above facts mentioned in para 5.1*, he finds merit in the argument of the assessee. Thereafter, as per the reasoning given in his order, there is no mention of calling for any remand report or asking for submission from the AO with regard to the documents placed by the assessee. Even, whether the oral submissions made by the assessee were correct or not, that was also not referred to the AO for verification. No such opportunity was accorded to the AO by the Id. CIT(A). Rule 46A(3) is essentially an embodiment apotheosis of the principles of natural justice where the Commissioner shall allow a reasonable opportunity to the AO regarding any evidence or document produced by the assessee. In the instant case before us, the Id.CIT(A), as apparent from his order, has not complied with Rule 46A(3) of the IT Rules, 1962. In view thereof, we set aside the order of the Id. CIT(A) and remand the matter back to

his file for *denovo* adjudication in compliance with Rule 46A(3) as well as the principles of natural justice and adjudicate the matter as per law. Grounds of appeal of the Revenue stands allowed for statistical purposes.

4. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in open Court on 04<sup>th</sup> October, 2023.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 04<sup>th</sup> October, 2023  
vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, Nagpur Bench, Nagpur.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary  
ITAT, Pune.