

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI**

**DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3289/Del/2023
Asstt. Year 2018-19

DCIT, Exemption Circle, Ghaziabad.	Vs.	Uttarakhand Sheep and Wool Development Board, 2 nd Floor, Pashudhan Bhawan, Mothorawala Road, Dehradun. PAN AAATU2170R
(Appellant)		(Respondent)

Department by:	Shri Amit Katoch, Sr.DR
Assessee by:	Shri Pavitra Arora, Adv.
Date of Hearing:	15.02.2024
Date of pronouncement:	04.03.2024

ORDER

PER ASTHA CHANDRA, JM

This appeal filed by the Revenue is directed against the order no. NFAC/2017-18/10081252 dated 31.10.2023 passed by the Ld. Commissioner of Income Tax (Appeals) ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2018-19.

2. The Revenue has raised the following grounds:

"1. The Ld. CIT(A) has erred in law and facts in deleting addition made by the AO by not granting opportunity as required under Rule 46A of the I.T. Rules, 1962 before admitting additional evidence as regards to

investment of accumulated income of Rs. 2,36,84,845/- in instruments prescribed under section 11 (5) of the Act.

2. The Ld. CIT(A) has erred in law and facts by allowing relief to the assessee without verifying the genuineness of claim of investment of accumulated income in modes prescribed under section 11(5) of the Act.

3. The order of Ld. CIT(A) be cancelled and the order of the AO be restored.”

3. Briefly stated, the assessee trust is engaged in implementing a project in 8 districts of the state of Uttarakhand, under which healthcare of sheep i.e. vaccination, treatment, dipping are included. It is registered u/s 12AA of the Income Tax Act, 1961 (**“the Act”**). It is also registered under the Societies Act with the Registrar of Society. It e-filed its return for A.Y. 2018-19 on 29.09.2018 declaring Nil income. The case was selected for complete scrutiny under CASS. Statutory notice(s) were issued / served upon the assessee through e-mail. In response, the assessee submitted details through the ITBA Portal. The Ld. Assessing Officer (**“AO”**) found that there was surplus accumulation of Rs. 2,36,84,845/- which required to be deposited / invested in the forms / modes specified in Section 11(5) of the Act. The Ld. AO required the assessee to furnish details thereof with supporting evidence. The Ld. AO noticed that Audit Report in Form 10B at Column No. 5 stated that the amount of surplus of Rs. 2,10,88,452/- is deposited in Government saving bank account. However, no documentary evidence thereof was furnished by the assessee. The Ld. AO issued show cause notice on 13.05.2021 requiring the assessee to explain why the surplus of Rs. 2,36,84,845/- be not treated as assessee’s taxable income as per provisions of Section 11(3)(b) of the Act. According to the Ld. AO, the assessee failed to furnish any reply to the show cause notice till 24.05.2021 on which date e-assessment proceedings were completed and order was passed u/s 143(3) read with Section 144B, 143(3A) & 143(3B) of the Act including therein the addition of Rs. 2,36,84,845/- u/s 11(3)(b) of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT (A), who deleted the entire addition by observing and recording the following findings:

“6.1.1 Vide the first ground of appeal the appellant has challenged the addition of Rs. 2,36,84,845/- u/s 11(3)(b) of the Income Tax Act made by the AO vide the assessment order dated 24.05.2021.

In this case the AO has made this disallowance on account of failure on the part of the appellant to submit documentary evidences that the surplus of the society has been invested in the modes prescribed in Section 11(5) of the Income Tax Act.

6.1.2 During the appellate proceedings, the appellant has submitted that:-

“The accumulated funds relate to unutilized balance of Grant in Aid received from Government of India for implementing the various projects undertaken by the organization and the Governing Body of the Organization has also passed a board resolution on dated 04.06.2018 to accumulate the unutilized funds of Rs 2,36,84,845.00. The accumulated funds were deposited in the forms or modes specified in section 11(5) of the Income Tax Act, 1961. During the course of assessment proceeding the Ld. Assessing Officer Deputy Commissioner of Income Tax, National E Assessment Centre New Delhi has disallowed the benefits of section 11(2) and section 11(5) of the Income Tax Act 1961 due to non-submission of proof of Investments relates to accumulated amount was deposited with banks as required in the forms or modes specified in section 11(5) of the Income Tax Act, 1961. Accordingly the Ld. Assessing Officer Deputy Commissioner of Income Tax, National E Assessment Centre New Delhi has passed Assessment Order under section 143(3) of the Income Tax Act 1961 on dated 24-05-2021 by made addition of Rs 2,36,84,845.00 in income and created demand for Rs 1,13,04,161 against the assessee. That during the assessment proceeding the appellant could not produce the complete documents and details with assessing officer however the accumulated funds was deposited with the following bank accounts and balance standing as on 31.03.2018 was Rs 4,50,48,223.25. FDR with PNB A/c Number. 102400PU00000118 - Rs 7,82,458.50 FDR with PNB A/c Number.

102400PU00000127 - Rs 7,82,463.50 FDR with PNB A/c Number.

153200PU00002637- Rs 15,15,831.00 FDR with OBC A/c Number

15053031010168 - Rs 7,73,801.00 Andhra Bank/UBI

241810100012145- Rs 31,62,230.00 Andhra Bank/UBI

241810100012154 - Rs 58,60,701.50 PNB SB A/c

1532000101266931- Rs 43,93,107.55 PNB SBA/c

1532000101289710- Rs 18,62,481.00 HDFC A/C

08931450000204 - Rs 5,98,645.72 SBI SB A/c

35771724903 - Rs 38,31,969.50 SBI SB A/c

10587496367- Rs 93,67,702.98 OBC A/c

08319 Rs 5,157.00 ICICI A/C NO. 159301000743 - Rs 7,85,317.00 ICICI
159301000454 - Rs 53,882.00 ICICI A/c 159301000783 – Rs 63,10,440.00
ICICI A/C NO. 159301000820- Rs 26,09,599.00 ICICI A/C NO.
016401023517 - Rs 23,52,436.00

The Appellant would like to submit the bank account statements and FDRs copy of the above said bank accounts and FDR's as proof of accumulated amount was deposited with Government Banks as required in the forms or modes specified in section 11(5) of the Income Tax Act, 1961 and request your good self to kindly consider the same and allow to appellant assessee to accumulate the unutilized funds of Rs 2,36,84,845.00 under section 11(2) and section 11(5) of the Income Tax Act 1961 for the Assessment Year 2018-19."

6.1.3 The appellant has also submitted the copies of bank statements and deposit certificates from scheduled banks in support of its claim.

The submissions and the documents submitted by the appellant have been perused and considered and it was found that the surplus of the appellant have been deposited and kept in bank accounts and instruments of scheduled bank which is eligible mode of investment prescribed in Section 11(5)(iii) of the Income Tax Act. Accordingly, it is held that that the provisions of Section 11(3)(b) is not attracted in the instant case.

In view of the above the disallowance of Rs. 2,36,84,845/- made u/s 11(3)(b) is hereby deleted."

5. The Revenue is dissatisfied and is in appeal before the Tribunal and all the three grounds relate thereto.

6. The Ld. Sr. DR submitted that while adjudicating the assessee's appeal, the Ld. CIT(A) has admitted additional evidence without granting any opportunity to the Ld. AO under Rule 46A of the Income Tax Rules, 1962 to give his comments/ counter on the same. The Ld. Sr. DR pointed out that in para 6.1.2, the Ld. CIT(A) has stated that during assessment proceedings, the assessee could not produce the complete documents and details with the Ld.

AO. The Ld. CIT(A) also mentioned that the assessee submitted the bank account statements and FDRs; copy thereof as proof. The Ld. Sr. DR laid emphasis on the fact that the Ld. CIT(A) allowed the appeal and deleted the entire addition without affording any opportunity to examine the veracity of additional evidence produced by the assessee. The action of the Ld. CIT(A) is in violation of Rule 46A of the Income Tax Rules, 1962.

7. The Ld. AR supported the order of the Ld. CIT(A) and submitted that the Ld. CIT(A) granted relief to the assessee on the basis of details of FDRs submitted during the course of appellate proceedings. The assessee had submitted details of FDRs in the written submissions before the Ld. AO which was not considered. Reference was made to the decision of Hon'ble Delhi High Court in CIT vs. Manish Buildwell Pvt. Ltd. in ITA No. 928/2011 decided on November 15, 2011.

8. We have considered the rival submissions and perused the records. It is not in dispute that the Ld. AO required the assessee vide notice u/s 142(1) of the Act on 24.03.2021 to furnish details of surplus accumulation of Rs. 2,36,84,845/- with supporting evidence during the course of assessment proceedings. It can also not be denied that in show cause notice issued on 13.05.2021, the assessee was required to explain why the said surplus accumulation be not treated as assessee's taxable income u/s 11(3)(b) of the Act. Even the Audit Report filed before the Ld. AO mentioned that surplus of Rs. 2,10,88,452/- (and not Rs. 2,36,84,845/-) was deposited in Government Savings Bank Account. Not only this, the show cause notice dated 13.05.2021 remained uncomplied with till e-assessment order was passed on 24.05.2021. However, during the appellate proceedings the assessee submitted bank account statements and FDRs and copies thereof as evidence which have been admitted by the Ld. CIT(A) despite noting the facts that complete details and documents were not produced before the Ld. AO. This is clear violation of Rule

46A of Income Tax Rules, 1962 as circumstances enumerated in clause (a) or (b) or (c) of sub-rule (1) of Rule 46A did not exist so as to entitle the assessee to produce before the Ld. CIT(A) any evidence other than the evidence produced before the Ld. AO.

9. We have perused the decision of the Hon'ble Delhi High Court in Manish Buildwell Pvt. Ltd. (supra) we reproduce para 24 thereof below:

“In the present case, the CIT(A) has observed that the additional evidence should be admitted because the assessee was prevented by adducing them before the assessing officer. This observation takes care of clause (e) of sub-rule (1) of Rule 46A. The observation of the CIT (A) also takes care of sub-rule (2) under which he is required to record his reasons for admitting the additional evidence. Thus, the requirement of sub-rules (1) and (2) of Rule 46A have been complied with. However, sub-rule (3) which interdicts the CIT (A) from taking into account any evidence produced for the first time before him unless the Assessing Officer has had a reasonable opportunity of examining the evidence and rebut the same, has not been complied with. There is nothing in the order of the CIT (A) to show that the Assessing Officer was confronted with the confirmation letters received by the assessee from the customers who paid the amounts by cheques and asked for comments. Thus, the end result has been that additional evidence was admitted and accepted as genuine without the Assessing Officer furnishing his comments and without verification..... ”

9.1. It will be observed that in the case before the Hon'ble Delhi High Court, the Ld. CIT(A) had admitted the additional evidence as the case of the assessee fell within the ambit of clause (c) of sub- rule (1) of Rule 46A and the requirement of sub-rule (2) i.e. recording of reason for admittance of additional evidence was also met. However, in the case before us requirement of clause (a) or (b) or (c) of sub-rule (1) and sub rule (2) have not been complied with. Further in the case of Manish Buildwell Pvt. Ltd. (supra) despite the requirement of sub-rule (1) and (2) having been satisfied the Hon'ble Delhi High Court held that the action of Ld. CIT(A) was vitiated as he violated the mandate of sub-rule (3) of Rule 46A which is an indispensable requirement. Sub-rule (3) specifically prohibits the Ld. CIT(A) from taking into account any evidence

produced for the first time before him unless the Ld. AO has been given reasonable opportunity of examining the evidence and rebut the same. This has not been complied with by the Ld. CIT(A) in the case of the assessee under consideration by us.

10. For the reasons set out above, we deem it fit to restore the matter back to the file of the Ld. AO to verify the additional evidence filed by the assessee before the Ld. CIT(A) and decide the matter afresh, in the light of the results of verification, in accordance with law and after allowing reasonable opportunity of being heard to the assessee. We order accordingly.

11. In the result, appeal of the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 4th March, 2024.

**sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 04/03/2024
Pooja, Sr.PS

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	