



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.442/LKW/2019
Assessment Year: 2015-16

Dy. CIT Central Circle-I Kanpur	v.	Shri Yogendra Kumar Jaiswal 2601, Glenridge Hiranandani Gardens Powai, Mumbai
		PAN:AAOPJ1739K
(Appellant)		(Respondent)

Appellant by:	Smt. Namita S Pandey, CIT(DR)		
Respondent by:	None		
Date of hearing:	13	05	2024
Date of pronouncement:	13	05	2024

ORDER

PER SUBHASH MALGURIA, J.M.:

This appeal has been filed by the Revenue against the order of the Id. CIT(A)-IV, Kanpur dated 30.4.2019 for the assessment year 2015-16, inter alia, on the following grounds:-

1. *On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.50 Crores made by AO on the basis of seized document, page no.-53 of Annexure A - 2 without considering the inquiry report of the AO that the facts explained by the assessee before the Ld. CIT(Appeals) are contradictory from the facts explained during the course of assessment.*

2. *On facts and circumstances of the case and in law, the Ld.. CIT(A) even before calling the enquiry report u/s 250(4) on 16/1/2019 from the AO on addl. evidence furnished, erred in admitting such additional on his own without giving any opportunity to AO to file objections on admission of addl.*

evidence or passing any order u/r 46A(2) to show that the conditions for filing addl. evidence u/r 46A(1) are satisfied, thereby violating the principles of admissions of addl. evidence as explained in Ranjit Kumar Choudhary 288 ITR 179 (Guj). That the powers of CIT(A) to admit or reject is not absolute but only subject to satisfaction of conditions under rule 46A (1) to be specifically recorded in writing in the appellate order.

3. On facts & circumstances of the case and in law, the CIT(A) erred in calling the enquiry (remand) report from the AO without passing any order u/r 46A(2) to show that the conditions for filing addl. evidence u/r 46A(1) are satisfied and ignoring the objection raised by AO during the remand proceedings requesting that since sufficient opportunities were provided, the conditions of rule 46A(1) were not satisfied. The CIT(A) failed to record any findings with reference to the circumstances under which the assessee was prevented from producing the evidence before the AO or on the genuineness and correctness of the claims raised by assessee nor has not controverted this assertion of the AO, while admitting the addl. evidence.

4. On facts & circumstances of the case and in law, the CIT(A) erred in admitting the additional evidence at appellate stage without appreciating that the purpose of rule 46A is to ensure that evidence is primarily led before the Income-tax Officer as held in Rajkumar Srimal 102 ITR 525 (Cal), Ganpatrai & Sons Ltd. 24 ITR 362 (Bom).

5. On facts & circumstances of the case and in law, the CIT(A) erred in admitting the additional evidence and asking the AO to submit enquiry report u/s 250(4) without mentioning as to on what issues the enquiries were directed by him. The Ld. CIT(A) should have specifically mentioned the issues on which enquiry was required from AO u/s 250(4) instead of merely forwarding the reply of assessee along with addl. evidence already admitted by him.

6. On facts & circumstances of the case and in law, the CIT(A) erred in accepting the plea of the assessee that the

coded amount '5000' written on loose paper no 53 of Annexure A - 2 represented only 50 lacs and not 5000 lacs as concluded by AO, without appreciating that on various papers seized during the search, admittedly the amounts were written in coded figures in lacs only, because similar coded figures appearing on the other seized paper no 56,59,60 & 57 of Annexure A-2 were also expanded by assessee itself in lacs while explaining/reconciling those entries from bank accounts/books, etc. The Ld. Has duly accepted the explanation of assessee by expanding the figures in lacs and reconciling the same with bank accounts as quoted in appellate order also while deleting the addition made by AO based on seized paper no 56, 59,60 & 57 of Annexure A-2 and hence maintaining consistency, the figures of '5000' appearing on seized paper no 53 of Annexure Lambda - 2 ought to have been decoded as 5000 lacs i.e. 50 Crores only and not 50 lacs as contended by assessee before CIT(A). The Ld. CIT(A) did not give any reason to decode the entries on paper no 53 differently from the paper nos 56,59,60 & 57 of same Annexure A-2.

7. On facts & circumstances of the case and in law, the CIT(A) failed to appreciate that once the coded figure of '5000' appearing on seized paper 53 of Annexure A-2 represented Rs.50 Crores, then the reconciliation provided by assessee to the extent of 50 lacs only would mean that the balance 49.50 Cr was still unreconciled and liable to be taxed as income of the assessee.

8. On the facts and circumstances of the case and in law, the CIT(A) failed to allude to the relevant facts & circumstances and misread the legal provisions and ignored relevant facts to arrive at the conclusion.

2. None has appeared for the Assessee despite issuance of Notice through RPAD, which Notice has not returned unserved. However, finding that the matter can be decided in the absence of the Assessee, we have decided to dispose of the appeal after

hearing the ld. CIT (D.R.) and after perusing the material on record.

3. The brief facts of the case are that subsequent to the search and seizure operation conducted under section 132 of the Income Tax Act, 1961 in Tilak Raj Sharma Group of cases on 9.7.2014, a search and seizure operation was also conducted at the premises of the assessee. During the course of search and seizure proceedings at the premises of the assessee, cash to the tune of Rs.1,69,000/- was found but not seized and jewellery items amounting to Rs.1,25,82,710/- were also found, out of which jewellery of Rs.74,54,650/- was seized. The Assessing Officer issued notice under section 142(1) of the Act to the assessee on 5.11.2015 requiring the assessee to file his return of income. The assessee, in response, filed his return of income on 31.10.2015 declaring a total income of Rs.1,28,15,080/-, which includes the income surrendered by the assessee during the course of search and seizure operation of Rs.84,00,000/-.

4. The Assessing Officer while completing the assessment under section 143(3) of the Act, made additions to the tune of Rs.84,96,56,394/- on the basis of the figures found appearing on the seized documents marked as 'Annexure-A2', during the course of survey, and assessed the total income of the assessee at Rs.86,24,71,474/-.

5. Aggrieved, the assessee preferred an appeal before the ld. CIT(A). Before the ld. CIT(A), assessee moved a petition under rule 46A of the I.T. Rules for admission of the additional evidences in relation to the additions made by the Assessing Officer. The additional evidences so filed by the assessee were admitted by the ld. CIT(A) and vide his letter dated 16.1.2019,

the additional evidences furnished by the assessee were forwarded to the Assessing Officer for submitting the inquiry report under section 250(4) of the Act. The ld. CIT(A), after admitting the additional evidence filed by the assessee and considering the inquiry report submitted by the Assessing Officer under section 250(4) of the Act, deleted most of the additions made by the Assessing Officer and partly allowed the appeal of the assessee.

6. Aggrieved by the order of the ld. CIT(A), the Revenue is in appeal.

7. During the course of hearing before us, the main argument of the ld. CIT(DR) was that the ld. CIT(A) even before calling for the inquiry report under section 250(4) of the Act from the Assessing Officer on the additional evidence furnished on behalf of the assessee, admitted such additional evidence on his own without giving any opportunity to the Assessing Officer to file his objections on admission of the additional evidence or passing any order under rule 46A(2) of the Rules to show that the conditions for filing the additional evidence under rule 46A(1) of the Rules are satisfied, therefore, the acceptance of fresh evidence by ld. CIT(A) is in violation to Rule 46A of the Income Tax Rules. She submitted that Rule 46A mandates a specific procedure, which should have been followed by the ld. CIT(A). She has further contended that the ld. CIT(A) has also failed to record any finding with regard to the circumstances under which the assessee was prevented from producing the evidence before the Assessing Officer. She prayed that in the interest of justice, the matter may be restored back to the file of the ld. CIT(A) for deciding the same afresh after affording reasonable opportunity

to the Assessing Officer to file his objection, if any, on the additional evidence filed on behalf of the assessee.

8. We have heard the ld. CIT (D.R.) and perused the material placed on record. As is evident from record, the Assessing Officer had made various additions on the basis of the figures found appearing on the seized documents marked as 'Annexure-A2', during the course of survey. Before the ld. CIT(A), assessee had produced additional evidence. As regards the objection by the Revenue regarding admission of additional evidence in violation of rule 46A of the Rules, we find that prior to admission of the additional evidence by the ld. CIT(A), the Assessing Officer was not confronted with the additional evidence furnished on behalf of the assessee. Therefore, there is a clear cut violation of the provisions of rule 46A of the Rule by the ld. CIT(A). For the sake of ready reference, we reproduce below the relevant paragraph, i.e., paragraph 5.3 of the order of the ld. CIT(A):

"5.3 As, petition of the appellant u/r 46A of the I. T. Rule, 1962 is accepted on the facts and circumstances of the present case, therefore, a copy of written submission alongwith the additional evidences furnished of the Id. A.R. of the appellant were forwarded to the AO vide this office letter dated 16.01.2019, which is scanned and reproduced below:

"F.No. CIT (A)-IV/KNP/Inquiry Report/2018-19/ Dated: 16.01.2019

To,

*The Deputy Commissioner of Income Tax,
Central Circle-1,
Kanpur.*

Sub: Inquiry Report u/s 250(4) of the Income Tax Act, in the case of Shri Yogendra Kumar Jaiswal, 2601 Glenridge, Hiranandani Gardens, Powal, Mumbai-400072 for A.Y-2015-16- Reg.-

Please find enclosed herewith a copy of submission filed by the appellant before the undersigned on 15.01,2019 alongwith copy of application u/r 46A of the Act for filing additional evidences, which has been admitted by the undersigned.

In the context, you are requested to please go through the content of said submission and the additional evidences submitted by the appellant and send your report by making inquiry u/s 250(4) of the I. T. Act, after providing opportunity of being heard to the appellant, to this office positively by 30.01.2019.

The matter may please be given 'top priority' keeping in view the directions given in Central Action Plan 2018-19."

9. From the above, it is amply clear that the Id. CIT(A), prior to accepting the additional evidence furnished on behalf of the assessee, the Assessing Officer was not confronted with such additional evidence furnished on behalf of the assessee.

10. For the sake of clarity, we reproduce hereunder the rule 46A of the I.T. rules:

“Production of additional evidence before the [Joint Commissioner] (Appeals) and Commissioner (Appeals).

46A. (1) *The appellant shall not be entitled to produce before the [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances, namely :—*

- (a) where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or*
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or*

- (c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or*
- (d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*
 - (2) No evidence shall be admitted under sub-rule (1) unless the [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.*
 - (3) The [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) shall not take into account any evidence produced under sub-rule (1) unless the Assessing Officer has been allowed a reasonable opportunity—*
 - (a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or*
 - (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.”*

11. Sub-rule (3) of rule 46A, which interdicts the Id. 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 Id. CIT (A) to show that before accepting the additional evidence, the Assessing Officer was confronted with the additional evidence furnished on behalf of the assessee. 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. As per sub-rule (1) of rule 46A, no evidence shall be admitted unless the Id. CIT(A) records in writing the reasons for its admission, whereas in the present case, no such reasons were recorded by the Id. CIT(A) for admission of the additional evidence furnished by the assessee for the first before him. Since this is an indispensable requirement, we are of the view that the issues in dispute needs to be restored to the CIT (A)

with the direction to him to comply with the provisions of Rule 46A.

12. In this view of the matter, we set aside the impugned order of the ld. CIT(A) and restore the issues in dispute to his file for deciding the same afresh after affording reasonable opportunity to the Assessing Officer to furnish his report on the additional evidence filed by the assessee for the first time before the ld. CIT(A) and also on affording reasonable opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 13/05/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED:13/05/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar