

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-‘C’ BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 792/Bang/2024
Assessment Year : 2017-18

M/s. Kalasa Lakshmanashetty Mahesh, Rama Krupa, Canara Bank Road, Chikmagalur – 577 101. PAN: ACUPM2583Q	Vs.	The Income Tax Officer, Ward – 2, Chikmagalur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Manish Golyan, CA
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department

Date of Hearing	:	28-05-2024
Date of Pronouncement	:	10-06-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the order passed by NFAC dated 08.01.2024 for A.Y. 2017-18 on following grounds of appeal:

“1. That on facts and circumstances of the case The order passed by the Commissioner of Income Tax (Appeals) u/s 250 of the income tax is bad both in the eyes of the law and on facts.

2. That on facts and circumstances of the case the order passed by the Commissioner of Income Tax (Appeals) has erred in initiating the proceedings without considering the submissions made by the assessee.

3. That the Commissioner of Income Tax (Appeals has erred on facts and in law in making addition of Rs.19,47,000 by ignoring the fact of the case as well as submission of the assessee.

4. Moreover, when we look back the pattern of Cash withdrawal and Cash deposits by the assessee in his bank account remains the same when compared with the previous year's bank transactions. So, such additions of Rs.19,47,000 by ignoring the fact of the nature of business transactions the Commissioner of Income Tax (Appeals) has erred in making the additions. Attaching the bank statements of the assessee of the previous year along with the said period for your reference in Annexure-01

5. During the appellate proceedings the appellant has submitted the details of the sources of credit in his bank account same is again attached in the Annexure-02 for your reference.

6. However, the documents/additional evidence has not been taken into cognizance as per the provisions of Rule 46A of income tax rules 1962. The same Submission is gain attached in the Annexure-02 for your reference.

7. A distinction should be recognized and maintained between a case where the assessee invokes Rule 46A to adduce additional evidence before the CIT (A) and a case where the CIT (A), without being prompted by the assessee, while dealing with the appeal, considers it fit to cause or make a further enquiry by virtue of the powers vested in him under sub-section (4) of section 250. It is only when he exercises his statutory Suo-Moto power under the above sub-section that the requirements of Rule 46A need not be followed. On the other hand, whenever the assessee who is in appeal before him invokes Rule 46A, it is incumbent upon the CIT(A) to comply with the requirements of the Rule strictly.

However, on receiving an application with additional evidences, CIT (A) is not free to act on his choice, his actions are well defined in the law and in the various judicious pronouncements.

If the additional evidences are crucial and its consideration and appraisal would render the substantial justice to the appellant. The same deserve to be address. The Hon'ble Delhi High Court's judgment in the case of CIT v. Virgin

Securities and Credits P. Ltd. (201 I 332 ITR 396 (Del) wherein the Honble Court held that the CIT(A) should admit the additional evidence if he finds that the same is crucial for the disposal of the appeal. Further Hon'ble Delhi High Court's judgment in the ease of Chandrakant Chanu Bhai Patel 202 Taxman 262 wherein it has been held that if additional evidence is without any blemish and in order to advance the cause of justice, the same ought to be admitted.

8. Violation of Principles of Natural Justice: The admission of additional evidence at the appellate stage deprives the appellant of a fair opportunity to respond effectively. Natural justice demands that both parties have an equal chance to present their case and confront the evidence against them. Allowing the respondent to introduce new evidence unfairly prejudices the appellant's rights.

9. Abuse of Discretion: The [Joint Commissioner] (Appeals) and Commissioner (Appeals) have a duty to exercise their discretion judiciously. Allowing the production of additional evidence without sufficient cause or justification constitutes an abuse of discretion. Such actions undermine the integrity of the appellate process and erode public trust in the administration of justice.

Case Laws in Support:

1. Goodyear India Ltd. vs. CIT (1991) 188 ITR 402 (SC): The Supreme Court emphasized that the principles of natural justice require that both parties be given an adequate opportunity to present their case and rebut the evidence against them. Any departure from this fundamental principle would vitiate the proceedings.

2. The Hon'ble Supreme Court in the case of Collector Land Katji, 167 ITR 471 (SC) have held that when technical considerations are pitted against the cause of substantial justice it is the cause of substantial justice that must prevail. Hence, additional evidences be admitted at any stage of proceedings with a motive to provide justice.

3. CIT vs. Mjs. N.V. Sharimugham and Co. (2002) 254 ITR 0483 (Mad):

The Madras High Court held that the admission of additional evidence at the appellate stage is permissible only in exceptional circumstances and must be supported by cogent reasons. Failure to adhere to this principle would render the appellate proceedings unfair and unjust.

4. If the documents sought to be produced are of such a nature that they render assistance to the authorities in passing order or are required to be admitted for any other substantial cause, it would be the duty of the appellate authority to admit them. This proposition was law upheld by the Hon'ble Tribunal in the case of *Abhay Kumar Shroff V/s. Income-tax Officer 63 ITD 144(Pat)* where in, the Tribunal admitted additional evidence even when not even a whisper of the same was made before the first appellate authority.

10. The assessee during the said period made certain cash deposits due to Demonetization of Currency notes in India. However, when we keenly observe the Bank Statements of the assessee for the previous years and for the current period the deposit made by the assessee during the said period is relatively on the same pattern when compared to previous years. Also attaching the summary of cash deposits of previous years when compared to said period for your reference in Anuexure-03.

Case law

Shivam Industries Radheshyam Sharma & Co. Vs ACIT (ITAT Delhi) Appeal Number: ITA No. 1612/De1/2021: ITAT deletes addition of cash deposits made during demonetization:

Facts:

Cash deposits were made during the demonetization period for Assessment Year 2017-18. Appeal was filed by the Assessee challenging the order of the Commissioner of Income Tax (Appeals) sustaining certain additions made by the Assessing Officer.

The Assessee, in this case, contested the addition of Rs. 8,00,000/- on account of cash deposits during the demonetization period, arguing that the authorities failed to consider past history, relevant documents, and the overall material available on record. The Assessing Officer (AO) justified the addition by highlighting the failure of the Assessee to provide a valid explanation for the cash deposits.

ITAT Delhi held as below:

The Assessee's books of account were duly audited and not rejected by the AO. Despite the lower cash deposits and the absence of disruption in sales, the CIT(A) failed to provide a valid rationale for sustaining the addition.

Even after observing that the cash deposits were lower than that of the last year, no valid reasons were given by the CIT(A) to sustain the additions.

Consequently, the addition of Rs. 8,00,000/- was unjustified and same may be deleted.

PRAYER

The Appellant prays before the Income Tax Tribunal to Set aside the order allowing the production of additional evidence before the [Joint Commissioner] (Appeals) and Commissioner (Appeals). Direct the [Joint Commissioner] (Appeals) and Commissioner (Appeals) to adjudicate the appeal based on the evidence already on record.

The Appellant craves permission to add/delete/alter any grounds of appeal at the time of hearing.

For the above reasons and for such other reasons which may be allowed by the Tribunal to be urged at the time of hearing, it is prayed that the aforesaid additions be set aside, and relief be kindly allowed.”

2. Brief facts of the case are as under:

2.1 The brief facts of the case are that the assessee is an individual and filed its return of income on 30.06.2017, declaring income of Rs.3,26,160/- and agricultural income of Rs.7,00,000/-. The assessee had claimed deduction under chapter VI-A at Rs.62,679/-. Subsequently the case was selected for scrutiny to verify cash deposit and cash withdrawal.

2.2 The Ld.AO vide order dated 23.07.2019 finally made the addition of Rs.11,92,500/- under the head income from other sources on account of unexplained cash deposits from undisclosed sources. Further, the AO made an addition of Rs.1,54,500/- as unexplained cash deposit from unexplained sources under the head income from other sources. Further,

another addition of Rs.6,00 000/- was made on the basis of unexplained source of cash withdrawal.

2.3 On an appeal before the Ld.CIT(A), the Ld.CIT(A) dismissed the appeal of assessee by observing that no details were filed and no explanations were provided before the Ld.AO by the assessee. It is noted from the impugned order that assessee had filed application for admission of additional evidence under Rule 46A which has also been rejected as the same were not submitted before the Ld.AO.

2.4 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. The Ld.AR submitted that assessee may be granted an opportunity to explain the issue that led to the addition based on the evidences in the interest of justice.

3.1 The Ld.DR though objected to the argument of the Ld.AR could not controvert the fact that the Ld.AO has not carried out the verification in respect of the cash deposited.

3.2 We have perused the submissions advanced by both sides in the light of records placed before us.

3.3 It is noted that the assessee had filed evidence to establish source of credits in the bank accounts under Rule 46A which has not been admitted. The letter / submission of the assessee

reproduced in the impugned order is self explanatory. None of the documents or submissions have been verified.

We are of the view that substantial justice must be pitted against technicalities.

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3.4 In the interest of justice, we deem it appropriate to remit the issues to the Ld.CIT(A) for fresh consideration in the light of evidences filed. The assessee is directed to establish all relevant details to substantiate its claim.

3.5 The Ld.CIT(A) shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law.

Needless to say that proper opportunity of being heard must be granted to the assessee. The assessee may be granted hearing through VC in order to justify its claim.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 10th June, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 10th June, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore