

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE**  
**SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**  
**&**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.638/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT Circle-1(1), Hyderabad Hyderabad	Vs.	Sri Vinod Kumar Agarwal IT Towers Masab Tank Hyderabad [PAN:AAWPA6435F]
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अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: None

राजस्व द्वारा/Revenue by: TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 18/07/2024

घोषणा की तारीख/Pronouncement on: 08/08/2024

**आदेश / ORDER**

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order dated 26/10/2023 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Vinod Kumar Agarwal ("the assessee") for the assessment year 2012-13, Revenue preferred this appeal.

2. Assessee is an individual and a Director in M/s Amit Cotton Pvt. Ltd. He filed his return of income for the assessment year 2012-13 on 30/3/2013, declaring an income of ₹ 78,72,520/-. During assessment proceedings, the learned Assessing Officer noticed that there are certain transfers from Amit Cotton Pvt. Ltd, and since the assessee happens to be a Director /shareholder holding more than 10% of the shareholding, learned Assessing Officer treated the same as deemed dividend under section 2(22)(e) of the Income Tax Act, 1961 (the Act), stating that in spite of calling for and allowing sufficient time, the assessee did not respond to notice under section 142 (1) of the Act and failed to produce the books of accounts, bank account statement and the details of shareholding of M/s Amit Cotton Pvt. Ltd.

3. Assessee preferred appeal before the learned CIT(A) and it appears from the impugned order that during the appellate proceedings, the assessee filed additional evidence and made request for admission of the same under Rule 46A of the Income-tax Rules. Said written submissions and the documentary evidence were forwarded to the learned Assessing Officer through ITBA System for remand report on the admissibility of the above evidence and taking the same into account on merits. Learned CIT(A) recorded that no response was received from the learned Assessing Officer and the assessee stated that the copy of audited financial statement of M/s. Amit Cottons Pvt. Ltd. was already furnished to the jurisdictional learned Assessing Officer in the assessment u/s.143(3) of the Act for the above company and the same was filed as additional evidence as an abundant precaution. Considering this submission and the reasons given in the application of the assessee, learned CIT(A) admitted the additional evidence filed by the assessee and decided the issue.

4. Revenue challenges this action of the learned CIT(A), stating that no sufficient opportunity was afforded by the learned CIT(A) to the learned Assessing Officer to verify the facts involved in this matter surrounding the additional evidence produced by the assessee and without sufficient

opportunity, learned CIT(A) decided the matter against the Department. Learned DR submits that there was no need for the learned CIT(A) to decide the appeal in a hurried manner, that too when the assessee did not produce any documentary evidence whatsoever before the learned Assessing Officer despite granting 2 months' time after issuing notice under section 142(1) of the Act .

5. When the matter is called, neither the assessee nor any authorised representative entered appearance. It could be seen from the record that the notices were issued to the address given in Form No. 36 which reflected the address given in assessment order as well as the order of the First Appellate Authority. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements with the postal department for service of such notice by furnishing the temporary address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Non-service of notice in this case is solely attributable to the conduct of the assessee and except the address given in the Form 36, we do not find any other address to serve the notice. There is no point in issuing notice after notice to the same address. In these circumstances, we find no option but to proceed to hear the counsel for Revenue and decide the matter on merits basing on the material available on record.

6. Except stating that the written submissions and the additional evidence produced by the assessee were forwarded to the learned Assessing Officer through ITBA portal and that no response was received from the learned Assessing Officer, the impugned order does not speak when exactly the papers were forwarded to the learned Assessing Officer and the time left at the disposal of the learned Assessing Officer for verification of the documents by following the procedure established under law. The record does not speak that the opportunity granted by the

learned CIT(A) to the learned Assessing Officer for remand report was sufficient to permit the requisite enquiry in this matter. In the circumstances we find it difficult to accept the action of the learned CIT(A) in dispensing with the remand report and accepting the plea taken by the assessee. It is more particularly because the assessee avoided the production of such evidence before the learned Assessing Officer.

7. In these circumstances, we are inclined to accept the submission made on behalf of the Revenue that the opportunity granted by the learned CIT(A) was not sufficient to comply with the requirement of law in respect of verification of the additional evidence produced by the assessee, for the 1<sup>st</sup> time, before the learned CIT(A) and, therefore, the matter requires factual verification at the end of the learned Assessing Officer.

8. We, therefore, set aside the impugned order and restore the issue to the file of the learned Assessing Officer to consider the evidence is to be produced by the assessee and to take a view according to law. We direct the assessee to be diligent in cooperating the assessment proceedings and it is made clear that no further opportunity would be granted. Grounds of appeal of the Revenue are accordingly allowed for statistical purpose.

9. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on this the 8<sup>th</sup> day of August, 2024.

Sd/-  
**(MADHUSUDAN SAWDIA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 08/08/2024  
LR

Copy forwarded to:

1. The DCIT, Circle-1(1), Hyderabad
2. Sri Vinod Kumar Agarwal, IT Towers, Masab Tank, Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD