



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1289/PUN/2024

निर्धारण वर्ष / Assessment Year : 2016-17

The Income Tax Officer, Ward-6(1), Pune.	V s	Sunil Asher, B-602, Verde Residence Collection, Near Gurunanak Dairy, KalyaniNagar, Maharashtra – 411037. PAN: ACAPA1980B
Appellant/ Revenue		Respondent /Assessee

Assessee by	Shri Kishor B Phadke – AR
Revenue by	Shri Arvind Desai – Addl.CIT(DR)
Date of hearing	24/12/2024
Date of pronouncement	24/12/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Revenue directed against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC] u/sec.250 of the
Income Tax Act, 1961; dated 18.04.2024 for the A.Y.2016-17,
emanating from assessment order u/sec.144 of the Act for
A.Y.2016-17, dated 16.12.2018. The Revenue has raised the
following grounds of appeal :



“1. On the facts and in circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition made u/s 68 of the Act, by accepting the claim of the assessee that the source of the investments of Rs.5.87 Cr. are lifetime accumulations and savings of the assessee made out of earnings in Canada and Thailand, as well as in India, without appreciating the fact that assessee has failed to produce any supporting documentary evidences during the assessment proceedings before the AO. While doing so, the ld.CIT(A) also failed to actually examine whether the accumulations claimed to be past savings, were disclosed in the ITRs filed for the respective years and offered to tax.

2. On the facts, circumstances of the case and in law, the ld.CIT(A) failed to appreciate that the details / evidences on the basis of which relief has been granted by him were furnished by the assessee for the first time before the appellate authority and the same constituted additional evidence within the meaning of Rule 46A of the I.T. Rules and therefore, the ld.CIT(A) was statutorily obliged to give an opportunity to the AO to examine those evidence as clearly provided in sub-rule (3) of Rule 46A of the I.T. Rules, 1962 or by calling for a remand report u/s.250(4) of the Income Tax Act.

3. Without prejudice to the above, On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating that sufficient opportunity was granted by the AO to the assessee to furnish the supporting evidences to back his claims during the assessment proceedings and the assessee had also failed to show any circumstances which prevented him from furnishing the additional evidences before the AO. Therefore, the ld.CIT(A) is clearly not justified in admitting the additional evidences and relying on the same to give relief to the



4. *The appellant craves leave to add to, amend, alter any of the above grounds of appeal.”*

Submission of ld.DR :

2. Ld.DR for the Revenue submitted that ld.CIT(A) had admitted additional evidence without providing opportunity to the Assessing Officer which is violation of Rule 46A.

Submission of ld.AR :

3. Ld.AR filed paper book containing 179 pages. Ld.Authorised Representative(ld.AR) for the Assessee submitted that ld.CIT(A) had considered the Return of Income filed by assessee for A.Y.2013-14 along with cash flow statement filed by assessee. Ld.AR submitted that hence there was no additional evidence as such. Ld.AR vehemently supported the order of the ld.CIT(A). Ld.AR also submitted that in this case assessment order was passed on 16.12.2018 when assessee had sought adjournment vide submission dated 07.12.2018. Assessee filed a written submission on 17.12.2018 in physical form before ITO, Ward-6(1), Pune. Ld.AR invited our attention to the page 8 of the paper book.

**Findings & Analysis :**

4. We have heard both the parties and perused the records. It is observed that assessee has e-filed his Return of Income for A.Y.2016-17 on 02.08.2016. Assessee's case was picked up for scrutiny. During the assessment proceedings, it is mentioned in the assessment order that assessee merely filed electronically some bank account statements and failed to comply subsequent notices. The Assessing Officer issued notice under section 142(1) of the Act, dated 22.02.2018, 26.05.2018, 12.11.2018 and 23.11.2018. Further the Assessing Officer issued a show-cause notice dated 10.12.2018. As per assessment order, assessee has not filed the details called-for. We have perused the paper book filed by the Id.AR. At page no.48 of the paper book, there is an online reply filed by the assessee dated 05.10.2018. As per the said reply, assessee has merely uploaded the copy of bank account statements. Then, vide online submission dated 07.12.2018 assessee requested for an adjournment till 15.12.2018. The assessment order was passed on 16.12.2018. Thus, there was no submission other than copy of bank statement filed by assessee before the Assessing Officer. Thus, during assessment proceedings, assessee failed to



answer, how assessee's capital has increased to Rs.6,10,63,678/- for A.Y.2016-17 from Rs.12,68,350/- of earlier year. The Assessing Officer added the difference under section 68 of the Act. Ld.CIT(A) admitted certain additional evidences as appearing in the order like copy of Foreign Inwards Remittance Certificate, Net Worth Certificate, Cash Flow Statement, Reconciliation Statement of personal assets. These documents were never filed by the assessee during assessment proceedings. Ld.CIT(A) has admitted these documents without providing opportunity to the Assessing Officer. The ld.CIT(A) has also not recorded any satisfaction for admission of additional evidence which is mandatory. Therefore, ld.CIT(A) has violated the Rule 46A of the Income Tax Rules. The Rule 46A of the Income Tax Rules is reproduced here as under :

Production of additional evidence before the ¹[Joint Commissioner] (Appeals) and Commissioner (Appeals).

46A. (1) The appellant shall not be entitled to produce before the ¹[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)	<i>where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or</i>
(b)	<i>where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce</i>



	<i>by the Assessing Officer ; or</i>
(c)	<i>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</i>
(d)	<i>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.</i>

(2) No evidence shall be admitted under sub-rule (1) unless the ¹[Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.

(3) The ¹[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)	<i>to examine the evidence or document or to cross-examine the witness produced by the appellant, or</i>
(b)	<i>to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.</i>

(4) Nothing contained in this rule shall affect the power of the ¹[Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Assessing Officer) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.

5. Since Id.CIT(A) has violated Rule 46A, we are of the considered opinion that Id.CIT(A) needs to follow Rule 46A of Income Tax Rules. Therefore, we set-aside the order of Id.CIT(A) to Id.CIT(A) for denovo adjudication. The Id.CIT(A) shall provide opportunity to both Assessing Officer and Assessee. The Id.CIT(A) shall record satisfaction for admission of additional



evidence. Accordingly, Ground No.2 and 3 raised by the Revenue are allowed.

6. Since we have set-aside the order of Id.CIT(A) to Id.CIT(A), we do not intend to comment on the merits of the addition.

7. In the result, appeal of the Revenue is partly allowed.

Order pronounced in the open Court on 24th December, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th Dec, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.