

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 485/RPR/2024  
निर्धारण वर्ष / Assessment Year : 2018-19

The Deputy Commissioner of Income Tax  
Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shri Virendra Kumar Agrawal  
Jarway, Raipur (C.G.)  
PAN : ACJPA4921B

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA  
Revenue by : Shri S.L Anuragi, CIT-DR

सुनवाई की तारीख / Date of Hearing : 27.01.2025  
घोषणा की तारीख / Date of Pronouncement : 03.02.2025

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the revenue is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 19.09.2024, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s. 144B of the Income-tax Act, 1961 (in short 'the Act') dated 11.05.2021 for the assessment year 2018-19. The revenue has assailed the impugned order on the following grounds of appeal before us:

"1. "Whether on the facts and in the circumstance of the case, the Id. CIT(A) was justified in deleting the additions made by the AO to the tune of Rs.59,42,862/- on account of deduction claimed u/s.57 of the act by admitting additional evidences in contravention of Income Tax Rules 46A(1) and 46A(2) and thereby ignoring the facts brought on the record by the AO?"

2. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the additions made by the AO to the tune of Rs.37,57,883/- u/s 69C of the act by admitting additional evidences in contravention of Income Tax Rules 46A(1) and 46A(2) and thereby ignoring the facts brought on the record by the AO?"

3. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the additions made by the AO to the tune of Rs.8,15,00,000/- and Rs.4,25,00,000/- u/s 68 of the Act by admitting additional evidences in contravention of Income Tax Rules 46A(1) and 46A(2) and thereby ignoring the facts brought on the record by the AO?"

4. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in admitting additional evidence without giving reasonable opportunity to the AO for counter comments, in contravention to the provisions of rule 46A(3) of the Income Tax Rules?"

5. "Whether on the facts and in the circumstances of the case the Id. CIT(A) was justified in deciding the appeal in favour of the appellant ignoring the ratio of judgment of the Hon'ble Supreme Court of India in the case of Sudarshan Silk and Sarees 300 ITR 205 (SC) wherein the Hon'ble Supreme Court, has laid down the attributes of perversity by holding that an order or finding is perverse on facts, if the finding is without any evidence and when an authority draws a conclusion which can't be drawn by any reasonable person or authority on the material and facts placed before it?"

6. The order of the CIT(A) is erroneous both in law and on facts.

7. Any other ground which may be adduced at the time of hearing."

2. Succinctly stated, the assessee had filed his return of income for A.Y.2018-19 on 30.10.2018 declaring an income of Rs.1,31,17,250/-. The return of income filed by the assessee was processed as such u/s. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. The A.O, thereafter, framed the assessment vide his order passed u/s. 143(3) r.w.s. 144B of the Act, dated 11.05.2021 wherein the income of the assessee was determined at Rs.15,66,68,438/-, after inter alia, making the following additions:

Sr. No.	Particulars	Amount
1.	Addition of personal unsecured loan raised by the assessee u/s. 68 of the Act.	Rs.8,15,00,000/-
2.	Addition of fresh unsecured loans taken during the year under consideration by treating it as unexplained cash credit u/s.68 of the Act	Rs.4,25,00,000/-

3.	Disallowance of the assessee's claim for deduction u/s.57 of the Act of interest paid on unsecured loans	Rs.59,42,862/-
4.	Disallowance of interest paid on unsecured loan raised from M/s. CAP Vanijya Pvt. Ltd.	Rs.37,57,883/-

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). Apropos the addition of unsecured loans of Rs.8.15 crore that raised from 20 parties, the CIT(Appeals) based on his exhaustive deliberations and after taking cognizance of the loan confirmations, copies of the returns of income, bank account statements which the assessee had in the course of the assessment proceedings failed to file before the A.O, vacated the same.

5. Apropos the addition of Rs.4.25 crore pertaining to the unsecured loans that were claimed by the assessee to have been raised from 15 parties (out of 17 parties), the CIT(Appeals) finding favour with the claim of the assessee that there were justifiable reasons, due to which, he had failed to fully participate in the assessment proceedings and furnish the requisite details, thus, taking cognizance of the bank account statements, confirmations of the lenders, copies of the returns of income of the lenders which the assessee had failed to file in the course of the assessment proceedings, vacated the addition of Rs.4.25 crore that was made by the A.O u/s.68 of the Act.

6. Apropos the disallowance of the assessee's claim for deduction u/s.57 of the Act of interest of Rs.59,42,862/- paid on unsecured loans, the CIT(Appeals) observed that now when the unsecured loans were utilized by the assessee for his business purposes, thus, deduction of interest paid on the said loans was allowable as an expenditure.

7. Apropos the disallowance of the assessee's claim for deduction of interest of Rs.37,57,883/- on unsecured loans obtained from M/s. CAP Vanijya Pvt. Ltd., the CIT(Appeals) observed that the same was disallowed by the A.O by treating the lender company as paper/shell company. The CIT(Appeals), observing that the assessee had during the subject year not paid the aforementioned amount of interest on the unsecured loan raised from M/s. CAP Vanijya Pvt. Ltd., but the latter had offered the accrued interest for taxation, thus, held a firm conviction that as the assessee had not made any actual payment of interest to the lender, therefore, the addition made by the A.O u/s.69C of the Act was unwarranted. Accordingly, the CIT(Appeals) based on his aforesaid deliberations vacated the aforesaid additions/disallowances and partly allowed the appeal.

8. The Revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

9. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record.

10. Shri S.L Anuragi, Ld. Departmental Representative (for short 'CIT-DR'), at the threshold of hearing, submitted that as the CIT(Appeals) had vacated the additions/disallowances that were made by the A.O by admitting the "additional documentary evidences" that were produced by the assessee appellant in the course of the proceedings before him without confronting the same to the A.O and calling for his remand report, therefore, the same was in violation of Rule 46A of the Income Tax Rules, 1962. Elaborating further on his contention, the Ld. CIT-DR submitted that as the CIT(Appeals) had admitted the fresh additional evidence without affording any opportunity to the A.O to rebut the same as is statutorily required per the mandate of Rule 46A, therefore, the order so passed by him cannot be sustained and is liable to be set-aside. The Ld. CIT-DR to buttress his aforesaid claim had taken us through the order passed by the CIT(Appeals), which revealed that the latter had based on multi-facet additional documentary evidence that was filed by the assessee which, however, was never confronted to the A.O, vacated the impugned additions/disallowances.

11. Shri R.B. Doshi, Ld. Authorized Representative (for short 'AR') for the assessee relied on the order of the CIT(Appeals). On being confronted as to whether or not the CIT(Appeals) had admitted the additional documentary evidence without confronting the same to the A.O, the Ld. AR in all fairness answered in the affirmative.

12. Controversy involved in the present appeal boils down to the adjudication of solitary issue, i.e. as to whether or not the CIT(Appeals) is right in law and facts of the case in vacating the disallowances/additions made by the A.O based on fresh documentary evidences that were filed by the assessee before him without confronting the same to the A.O?

13. Before proceeding any further, we deem it fit to cull out Rule 46A of the Income Tax Rules, 1962 which entitles the assessee appellant to produce additional evidence in the course of the proceedings before the CIT(Appeals), as under:

“46A. Production of additional evidence before the Deputy Commissioner (Appeals) and Commissioner (Appeals).

(1) The appellant shall not be entitled to produce before the Deputy 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 Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.

(3) The Deputy 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.

(4) Nothing contained in this rule shall affect the power of the Deputy 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.”

As per sub-rule (1) of Rule 46A, the Commissioner (Appeals) shall not take into account any evidence, whether oral or documentary, other than the evidence produced by the assessee in the course of proceedings before the A.O, except for, where the circumstances therein provided in Para (a) to (d).

Also, as per sub-rule (2) of Rule 46A, the Commissioner (Appeals) shall not admit any evidence whether oral or documentary without recording in writing reasons for its admission.

14. Apart from that, as per sub-rule (3) of 46A, the Commissioner (Appeals) shall not take into account any evidence produced before him under sub-rule (1) (supra) unless the A.O has been allowed reasonable opportunity, viz. (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.

15. At this stage, we may herein observe that the aforesaid set of pre-conditions/obligation cast upon the CIT(Appeals) while admitting additional evidence is subject to the exception carved out under sub-rule (4), which vests plenary powers with 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 A.O).

16. Be that as it may, we are principally in agreement with the Ld. CIT-DR that the CIT(Appeals) before admission of the additional documentary

evidence that was produced by the assessee in the present case, remained under a statutory obligation to have allowed a reasonable opportunity to the A.O, viz. (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.

17. We shall now in the backdrop of the aforesaid mandate of law look into the aspect, i.e. as to whether or not the CIT(Appeals) while vacating the additions/disallowances in the present case, had failed to comply with the statutory obligation as was cast upon him while admitting the additional documentary evidence as per the mandate of Rule 46A of the Income Tax Rules, 1962.

18. As is discernible from the CIT(Appeals)'s order, we find that the assessee appellant in the course of the proceedings before him had filed copies of the bank account statements of the lenders, confirmations of the lenders; and copies of the returns of income of the lenders to substantiate the authenticity of the unsecured loans of Rs.8.15 crore and Rs.4.25 crores. As the aforementioned documents were not filed by the assessee in the course of the assessment proceedings, therefore, the same were in the nature of additional documentary evidence. Although, the CIT(Appeals) had admitted the aforesaid additional documentary evidences, but he had

neither confronted the same to the A.O for necessary examination; nor rebuttal, as required per the mandate of Rule 46A of the Income Tax Rules, 1962. Accordingly, we are of a firm conviction that the admission of the aforementioned additional documentary evidence that was filed by the assessee before the CIT(Appeals) is in clear violation of the statutory procedure contemplated in Rule 46A of the Income Tax Rules, 1962.

19. Apropos the disallowance of the assessee's claim for deduction of interest on unsecured loans, we are of the view that as the same is inextricably interwoven with the aforesaid loans that were raised by the assessee during the year under consideration, therefore, it can safely be concluded that the vacating of the said addition being consequential to treating the unsecured loans, based on the admission of additional documentary evidence at back of the A.O, as authentic, is also not as per the mandate of Rule 46A of the Income Tax Rules, 1962. Accordingly, we herein taking cognizance of the fact that the CIT(Appeals) had vacated the additions/disallowances made by the A.O based on additional documentary evidence that were filed by the assessee appellant before him, which, however, were never confronted to the A.O for necessary examination and rebuttal, restore the matter to his file with a direction to re-decide the same after confronting the said documentary evidence that had been admitted by him at the back of the A.O as required per the

mandate of Rule 46A of the Income Tax Rules, 1962. Needless to say, the CIT(Appeals) shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee. Thus, the **Grounds of appeal Nos. 1 to 5** raised by the revenue are allowed for statistical purposes.

20. **Grounds of appeal Nos.6 & 7** being general in nature are dismissed as not pressed.

21. In the result, appeal filed by the revenue is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 03<sup>rd</sup> day of February, 2025.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 03<sup>rd</sup> February, 2025.

\*\*\*SB, Sr. PS

**आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.