

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "F", NEW DELHI**

**BEFORE SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI C.M. GARG, JUDICIAL MEMBER**

I.T.A.No. 4501/DEL/2012 A.Y. 2008-09		
ACIT, Circle 33(1) New Delhi	Vs.	Researcho Reprints 4735/22, Prakash Deep bldg. Near PNB Bank, Dariya Ganj Delhi 110 002 PAN: AAFFR 7837 K
(APPELLANT)		(RESPONDENT)

Appellant by : Sh. Vikram Sahay, Sr.D.R.
Respondent by : Sh. Ved Jain &
Ms.Rano Jain, CAs

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT

This is an appeal filed by the Revenue and is directed against the order of the Ld.CIT(A)-XXVI dated 28.5.2011 pertaining to the A.Y. 2008-09.

2. Facts in brief:- The facts of the case as are brought out at para 2 of the Ld.CIT(A)'s order are extracted for ready reference.

"2. The assessee is a Partnership Firm, carrying on the business of whole sale trading of education research books. The assessee filed its return for the A.Y. under consideration on 27.0.2008 declaring a total income of Rs.1,23,68,870/-. The case was processed u/s 143(1) and later on selected for scrutiny. Notice u/s 143(2) dt. 4.8.2009 and 29.9.2009 was issued and served upon the assessee. In response to the same, the Ld.Counsel for the assessee attended the assessment proceedings from time to time and filed details. Books of accounts, original bill and vouchers as were called for were produced before the AO. After examining and verifying the same, the AO passed an order on 24.12.2010 assessing the total income at Rs.8,20,47,627/- with the following additions.

i.	Addition of processing fee	Rs.7,40,916/-
ii.	Addition on account of deemed dividend	Rs.27,841/-
iii.	Addition on account of unsecured loans u/s 68	6,89,10,000/-“

3. Aggrieved the assessee carried the matter in appeal. The First Appellate Authority granted relief.

4. Aggrieved the Revenue filed this appeal before us on the following grounds.

1. *"On the fact and in the circumstances of the case, the Ld CIT (A) has erred in admitting additional evidence under Rule 46A despite the reasons outlined in the Remand Report wherefrom it is clear that none of the conditions of Rule 46A are attracted in the case of the assessee."*

2. *"Without prejudice, the Ld CIT (A) erred in deleting the addition to income of Rs. 6,89,10,000/- on account of unsecured loans in the absence of evidence as to identity, genuineness and creditworthiness citing the ground that the AO has not given clear cut finding embraced with reasonable evidence to make the addition; since CIT (A) has failed to appreciate the facts brought out in the assessment order and remand report that the burden of proof in respect of additions to unsecured loans lay on the assessee which the assessee has not discharged in either the assessment proceedings or appellate proceedings and without prejudice, the contentions of the assessee regarding source have not been proved by any evidence by the assessee even in additional evidence."*

3. *"Without prejudice the Ld.CIT(A) erred in deleting the addition of "Processing fee" Rs. 740916/- made to being expenditure of a different entity which the CIT (A) has deleted stating that the contentions of the assessee and evidences filed relevant to this claim was verified by the AO which is totally contrary to facts and which has been brought out clearly in the Remand Report."*

4. *"Without prejudice, the Ld. CIT (A) erred in deleting the addition made by invoking provisions of section 2 (22) (e) of the Act of Rs. 27,841/- stating that the AO has not clearly brought out pertinently that the conditions laid down in section 2 (22) (e) are fulfilled when the facts have been clearly brought out both in assessment order and in Remand Report and it has been proved in the Remand Report that the assessee's contentions made before CIT {A} are meretricious and thus CIT{A}'s order is perverse."*

5. *"Without prejudice the Ld.CIT(A) has erred in not appreciating the contents of the Remand Report dated 4.05.2012 wherein it is clearly brought out that*

the additional evidences are not admissible under Rule 46 A and it is also clearly brought out that the additions have been correctly made on merits.

6. *The appellant craves leave to add, alter or amend any/all the grounds of appeal before or during the course of hearing of the appeal.”*

5. We have heard Shri Vikram Sahay, the Ld.Sr.D.R. on behalf of the Revenue and Shri Ved Jain, C.A. the Ld.Counsel for the assessee.

6. On a careful consideration of the facts and circumstances of the case, on perusal of orders of lower authorities, material placed on record, we hold as follows.

7. The first issue that arises for our consideration is whether the First Appellate Authority was right in admitting additional evidence under Rule 46A. The A.O. has strongly objected to the admission of additional evidence.

7.1. The Ld.Sr.D.R. vehemently contended that the First Appellate Authority was wrong in admitting additional evidence despite objections of the Assessing Officer. It was argued that the assessee was not prevented by sufficient cause from filing the evidence before the A.O. during the assessment proceedings.

7.2. The Ld.Counsel for the assessee submitted that the return of income was filed by the assessee on 27.9.2008 and that upto 21.1.2010, the AO did not take any action and that it was only in October, 2010, the hearings commenced and a show cause notice was issued to the assessee and the assessment was completed within a period of two months. He pointed out that the Ld.CIT(A) at para 5 recorded that the assessee filed whatever details that were available with him within the short period and was in the process of collecting further details and documents and that the AO in the meanwhile completed the assessment.

8. We find that the AO had vide order sheet entry dt. 13.12.2010 asked the assessee for details and passed the order of assessment on 24.12.2010. Thus we are of the considered opinion that the First Appellate Authority has rightly admitted the application of the assessee under Rule 46A as in our

view the assess was prevented from sufficient cause in filing the evidence before the A.O. during the assessment proceedings. This decision of the First Appellate Authority does not call for any interference.

9. We now take up the issue on merits. There are three issues that come up for our consideration i.e. (a) disallowance of Rs.7,40,916/-; (b) addition u/s 222(e) of Rs.27,841/-; (c) addition of unsecured loans u/s 68 for Rs.6,89,10,000/-.

10. On the first issue the First Appellate Authority has given a categorical finding that there was an error committed by the bank. The HDFC bank had wrongly debited processing fee to the account of M/s Research Co. Book Centre, which is a sister concern of the assessee, instead of the assessee's bank account. This mistake was latter realised and the processing fee in question which was due and paid to HDFC bank by the assessee, was claimed as revenue expenditure. The assessee had submitted the following documents in support of its claim.

- (a) copy of bank account of M/s Researchco Book Centre.
- (b) Copy of the ledger account of the assessee in the books of M/s Researchco Book Centre;
- (c) Copy of letter from HDFC bank, accepting the error made by its officials;
- (d) Copy of sanction letter received by the assessee, in respect of enhancement of cash credit limit.

10.1. In view of the above evidences the First Appellate Authority has deleted the disallowance. We find no reason to interfere in the same. Hence this ground is dismissed.

10.2. As regards addition u/s 2(22)(e) of the Act, the First Appellate Authority deleted the addition for the reason that the assessee company's

business, is the same as the business of M/s Arihant Literary Works Pvt.Ltd. and M/s Researchco Book & Periodicals Pvt.Ltd. and that an advance of loan made in the ordinary course of business, does not fall within the purview of S.2(22)(e) of the Act. Further he held that the assessee is not a registered share holder of M/s Arihant Literary Works Pvt.Ltd. or M/s Researchco Book & Periodicals Pvt. Ltd. and that the assessee is also not a beneficial owner of the shares. Under the circumstances, the decision of the First Appellate Authority does not call for any interference as it is in line with the decision of the Jurisdictional High Court on the issue.

10.3. The third addition is of Rs.6,89,10,000/- u/s 68 of the Act. The parties whose names appear, on the liability side of the balance sheet under the head 'unsecured loans' are as follows.

a. Anand Minda	Rs.2,00,000
b. HJ Book Agency	Rs.4,12,40,000
c. International Periodicals Suppliers	Rs. 45,00,000
d. Naresh Kumar Jain	Rs.11,20,000
e. NR Book Syndicate	Rs.76,50,000
f. Time and Space Haulers	Rs.15,00,000
g. Arihanta Librery Works P.Ltd.	Rs. 1,25,00,000
h. Researchco Books and Periodicals P.Ltd.	Rs.2,00,000

10.4. The assessee has filed details containing the respective ledger accounts from each of the parties. Confirmations were filed from all the parties. Copies of the income tax returns of these creditors, bank statements and various other details have also been filed by the assessee. The A.O. has not conducted any enquiry or collected any adverse material

who come to a conclusion that the evidence filed by the assessee cannot be accepted. The assessee has discharged the burden of proof that lay on it.

10.5. In the case of Anand Minda, an amount of Rs.20 lakhs was taken and the same was returned on 30.7.2007. The copy of the income tax return of Anand Minda was filed which disclosed that he had declared income of Rs.22,88,259/-.

10.6. In the case of HJ Book Agency, the PAN numbers and copy of return of income were also filed. The assessee received Rs.4,12,40,000/- from the said party and this amount along with the opening balance was returned during the year. HJ Book Agency declared income of Rs.16,64,162/-. The assessee filed confirmation letters. The detailed submissions made by the assessee could not be controverted by the A.O.

10.7. In the case of International Periodicals and Suppliers, the income tax returns and confirmation letters were filed and this concern had declared income of Rs.9,22,980/-. The amounts were returned. No contrary evidence has been brought on record by the A.O.

10.8. In the case of Naresh Kumar Jain, confirmation letters and income tax returns were filed. An amount of Rs.11,20,000/- was received from the party and there was an opening balance of Rs.13 lakhs. The addition was made on the ground of credit worthiness. Mr.Naresh Kumar Jain declared income of Rs.1,94,660/-. In this case also the assessee has submitted the evidence that is available with him and it is for the A.O. to have enquired further and brought contrary evidence on record, to disprove the claim of the assessee.

10.9. In the case of NR Book Syndicate confirmation letters were filed. Confirmation from parties, who have paid money to Mr. Anil Kumar Jain, Prop. M/s NR Book Syndicate was also filed.

10.10. In the case of M/s Time and Space Haulers the assessee has filed confirmation, bank statements, income tax returns and balance sheet.

10.11. In the case of M/s Arihant Literary Works Pvt.Ltd. similar details have been filed.

10.12. In the case of M/s Researchco Books and Periodicals Pvt.Ltd., it is a sister concern and the assessee produced confirmation letters, ledger accounts, balance sheet and income tax details. Most of these loans have been re-paid up during the year.

11. As the assessee has already discharged the burden that lay on it by proving the identity, credit worthiness and genuineness of the transactions, and as the A.O. could not find any evidence to contradict the claim of the assessee, we uphold the order of the First Appellate Authority and delete this addition.

12. In the result the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 07th October, 2015.

Sd/-
[C.M. GARG]
JUDICIAL MEMBER

Sd/-
[J. SUDHAKAR REDDY]
ACCOUNTANT MEMBER

Dt. the 07th October, 2015

- *Manga*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches