

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRIPAWAN SINGH, JUDICIAL MEMBER&
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.822/SRT/2024

Assessment Year: (2017-18)

(HybridHearing)

Bala Filling Station Opp. GEB Substation, Jambusar Road,Jambusar - 392150, Gujarat	Vs.	The ACIT, Circle - 1, Bharuch
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAGFB8418F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Mukund Rao, AR
Respondent by	ShriMukesh Jain, Sr. DR
Date of Hearing	11/03/2025
Date of Pronouncement	13/05/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 10.06.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2017-18.

2. Grounds of appeal raised by the assessee are as under:

"1. The Appellant prays and an appeal that the learned CIT Appeals NFAC has erred in law and on facts is not allowing the appellant's application filed under rule 46A of the Income Tax rules for addition of additional evidence and further erred and in not considering the evidence filed before him.

2. The Appellant prays that the file the addition made u/s40(a)(ia) of the act of Rs.4,26,950/- does not sustain because the transporter had less

than ten goods transport vehicle on which provision of section 194C(6) were not applicable and the appellant submitted certificate from the transporter as additional evidence under rule 46A of the income tax ruled before the learned CIT Appeals (NFAC).

3. The conclusion the Appellant prays that addition of Rs.4,26,950/- be deleted.

4. Without prejudice to the above Appellant reserves its right to make any amendment or the grounds of appeal at the time of hearing.

3. The facts of the case in brief are that the assessee e-filed its return of income on 10.10.2017, declaring total income of Rs.58,98,190/-. The assessee-firm is engaged in the business of retail trade in petroleum products. The case was selected for complete scrutiny under CASS. After hearing the assessee, the Assessing Officer (in short, 'AO') added Rs.10,47,297/-, Rs.4,26,950/-, Rs.3,75,000/- and Rs.6,500/- on account of unexplained cash credit u/s 68 of the Act, disallowance u/s 40(a)(ia) of the Act, reconstitution fees capitalized and interest income respectively.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The appellant raised grounds on the first three additions. The CIT(A) deleted the additions of Rs.10,47,927/- and Rs.3,75,000/-. However, he dismissed the disallowance of Rs.4,26,950/- made u/s 40(a)(ia) of the Act by not considering the prayer of the assessee to admit additional evidence under Rule 46A of the Income-tax Rules, 1962. The appellant had submitted that transport expenses of Rs.4,26,951/- was paid to M/s Sonal Transport, which did not own 10 or more than 10 trucks. The appellant filed declaration from the transporter and requested to admit the same as

additional evidence under Rule 46A. The CIT(A) did not admit the additional evidence because appellant did not submit the same before AO despite sufficient opportunities granted to it by AO. The CIT(A) observed that the appellant failed to make out a case under any of the 4 limbs of Rule 46A(1). Accordingly, he dismissed the ground.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the ITAT. The learned Authorized Representative (Id. AR) of the assessee submitted a paper book and stated that the appellant had filed copy of PAN card of Sonal Transport but it filed the certificate issued for the earlier financial year (FY) 2015-16 [AY.2016-17] and not the subject AY.2017-18. Before the CIT(A), the appellant submitted the certificate for the year under consideration but he did not admit it. The Id. AR submitted that the appellant had submitted certificate of the earlier year to AO by mistake, which was sought to be rectified by filing the correct certificate before the CIT(A). He relied upon the decision of ITAT, Delhi in case of M/s M. M. Chhabra & Sons (HUF) vs. ACIT, ITA No.429/Del/2010. He, therefore, requested that the said that the matter may be set aside to CIT(A) to pass appropriate order after admitting the additional evidence.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of lower authorities.

7. We have heard both the parties and perused the materials available on record. We have also carefully gone through the decision relied upon

by both parties. Let us first decide about the admissibility of additional evidences of the appellant. Before the CIT(A), assessee requested for admission for additional evidences because the appellant had filed wrong certificate of the transporter before the AO. The reasons for not accepting additional evidence by CIT(A) is that assessee was given adequate opportunity during assessment proceedings, but it failed to file the proper certificate from the transporter. The CIT(A) observed that conditions under clause (a) to (d) of sub-Rule (1) of Rule 46A are not satisfied.

7.1 We are not in agreement with the view of the Id. CIT(A). It is well-settled that the CIT(A) is vested with co-terminus power that the AO has in making an assessment order. The Hon'ble Bombay High Court in the case of Smt. Prabhavati S. Shah vs. CIT, (1998) 100 Taxman 404 (Bombay) held that on a plain reading Rule 46A, it is clear that the same is intended to put fetters on the right of the appellant to produce before the AAC, any evidence, whether oral or documentary, other than evidence produced by him during the course of proceedings before the ITO except in the circumstances set out therein. It does not deal with the power of the AAC [CIT(A)] to make further inquiry, which is made clear by way of sub-Rule (4) which specifically provides that the restriction placed on the production of additional evidence by the appellant would not affect the powers of AAC to call for the production of any documents or the examination of any witness to enable him to dispose of the appeal. Further, under sub-section

(4) of section 250 of the Act, the AAC is empowered to make such further inquiry as he thinks fit or direct the ITO to make further inquiry and to report the matter to him. On a conjoint reading of section 250 and Rule 46A, it is clear that the restrictions placed on the appellant to produce evidence do not affect the powers of AAC under sub-section (4) of section 250 of the Act. This decision has been followed by Hon'ble Kerala High Court in case of CIT vs. K. Ravindranathan Nair, 265 ITR 217 (Ker.). The purpose of Rule 46A appears to be ensured that evidence is primarily led before the AO. In the present case, we find that the assessee had filed the PAN copy and certificate of the transporter issued for the earlier financial year. It was a mistake which was sought to be rectified by filing the certificate of the subject year before the CIT(A). Therefore, in the interest of justice, the CIT(A) should have admitted additional evidence and thereafter called for the remand report from AO and decided the matter accordingly. In view of the facts and clear statutory provisions discussed above as well as the precedents cited supra, we set aside the order of the CIT(A) and remit the matter to the CIT(A) to pass appropriate order after admitting the additional evidence.

8. Since we have set aside the order of CIT(A) and remitted the matter to the CIT(A) for fresh adjudication, the other grounds raised by the appellant are academic in nature and do not require adjudication.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 13/05/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 13/05/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat