

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 2037/DEL/2021 [A.Y. 2015-16]

The Dy. C.I.T  
Central Circle -4  
New Delhi

Vs.

MG Housing Pvt Ltd  
G - 127, K.G. Marg  
New Delhi

PAN - AAHCM 7489 B

(Applicant)

(Respondent)

Assessee By : Shri Salil Aggarwal, Sr. Adv  
Shri Shailesh Gupta, Adv  
Shri Madhur Aggarwal, Adv

Department By : Shri Sanjeev Kaushal, CIT-DR

**Date of Hearing : 13.03.2025**  
**Date of Pronouncement : 04.06.2025**

**ORDER**

**PER NAVEEN CHANDRA, A.M:-**

This appeal by the Revenue is preferred against the order of the ld.  
CIT(A)-23, New Delhi dated 14.06.2021 for A.Y 2015-16.

2. The grievances of the Revenue read as under:

The Id. CIT (A) has erred in deleting the addition of Rs. 2,00,00,000/- u/s 68 on account of share capital and premium received from M/s SGS Udyog Pvt. Ltd. ignoring the factual findings of AO regarding the creditworthiness, identity and genuineness of the transaction.

1.2 The Ld. CIT (A) has erred in admitting the additional evidences in form of Balance Sheet, assessment order u/s 143(3) of the company making investment in M/s SGS Udyog Pvt. Ltd., bank statement without calling the report from assessing officer under Rule 46A of the Income-tax Rule, 1962, for providing an opportunity of making further enquiries of parties' creditworthiness, genuineness and identity.

2.1 The Id. CIT(A) has erred in deleting the addition of Rs. 2,00,00,000/- u/s 68 on account of share capital and premium received from M/s Capital Electrotech Ltd. ignoring the factual findings of AO regarding the creditworthiness, identity and genuineness of the transaction.

2.2 The Ld. CIT (A) has erred in admitting the additional evidences in form of confirmation from shareholder, ITR and audited Balance sheet, P&L of shareholder, Bank Statement, Share certificate, valuation report without calling the report from assessing officer under Rule 46A of the Income-tax Rule, 1962, for providing an opportunity

of making further enquiries of parties' creditworthiness, genuineness and identity

3.1 The Id. CIT(A) has erred in deleting the addition of Rs. 5,00,00,000/- u/s 68 on account of share capital and premium received from M/s Key Components Pvt. Ltd. ignoring the factual findings of AO regarding the creditworthiness, identity and genuineness of the transaction.

3.2 The Ld. CIT (A) has erred in admitting the additional evidences in form of confirmation from shareholder, ITR and balance sheet & P&L, bank statement of shareholders, share certificate, valuation report without calling the report from assessing officer under Rule 46A of the Income-tax Rule, 1962, for providing an opportunity of making further enquiries of parties' creditworthiness, genuineness and identity.

4. The Id. CIT(A) has erred in not accepting the findings of AO that all the parties who has paid share capital and share premium are merely entry provider which is evident from the circular transactions in their bank accounts.

5. Without prejudiced to the other ground of appeal, the Id. CIT(A) has erred in deleting the addition u/s 68 of the Act, of Rs. 1,75,00,000/- and Rs. 1,00,00,000/- which has been received in form of share capital and share premium from M/s SGS Udyog Pvt Ltd and M/s Murari Marketing Pvt. Ltd. respectively, considering that issue pertains to the AY 2013-14 without invoking the provision to

**section 150 of the Income-tax Act, 1961 to issue directions to the AO to assess the escaped income u/s 148 of the Income-tax Act, 1961 in view of the fact that as on the date of issue of notice u/s 143(2), the relevant assessment years could have been taken up u/s 148 of the Income-tax Act, 1961 and that all the ingredients of proviso to section 147 and the provisions of section 149(1)(a) are fulfilled in the facts of this case.**

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

3. Brief facts of the case are that the assessee is engaged in the business of promotion, construction, development, purchase and sale of real estate properties and filed its return of income for the A.Y. under consideration on 27.09.2015 declaring total income of Rs. 77,28,950/-. The case was selected for limited scrutiny through CASS and accordingly, notice u/s 143(2) of the Income-tax Act, 1961 [the Act, for short] was issued on 12.04.2016 which was duly served upon the assessee company.

5. The AO found that during the year, the assessee had issued 80,00,000/- shares at a premium of Rs 20 whereby the assessee garnered a share capital of Rs 8,00,00,000 with share premium of Rs 8,00,00,000/. The shares were subscribed by the following companies:

SGS Udyog Pvt Ltd	Rs 3,75,00,000/-
Capital Electrotech Pvt Ltd	Rs 2,00,00,000/-
Key Components Pvt Ltd	Rs 5,00,00,000/-
Murari Marketing Pvt Ltd	Rs 1,00,00,000/-
Total	<u>Rs 11,75,00,000/-</u>

6. The Assessing Officer doubted the veracity of share subscription in the assessee company by the above companies and was not satisfied with the replies of the assessee with regard to the identity, creditworthiness and genuineness of transaction and held the parties as entry providers which is evident from the circular transactions in their bank account. Ultimately, the Assessing Officer made an addition of Rs 11,75,00,000/- u/s 68 and assessed the total income of the assessee at Rs. 12,52,28,950/- vide his order dated 28.12.2017 u/s 143(3).

7. Aggrieved, the assessee went in appeal before the Id. CIT(A) who decided the issue in favour of the assessee.

8. Now the Revenue is aggrieved and is in appeal before us.

9. Before us, the key grievance of the Revenue was with respect to the adherence of Rule 46A of the Income Tax Rules. The Id DR vehemently argued that the CIT(A) never directed the assessee to produce evidence/documents invoking his own inherent power u/s 250(4) of the

Act. The ld. DR has erred in admitting the additional evidences in form of confirmation from shareholder, ITR and audited Balance sheet, P&L of shareholder, Bank Statement, Share certificate, assessment order u/s 143(3) of the company making investment by M/s SGS Udyog Pvt. Ltd., valuation report without calling the report from assessing officer under Rule 46A of the Income-tax Rule, 1962. The ld DR submitted that the CIT(A) did not provide an opportunity of making further enquiries of parties' creditworthiness, genuineness and identity Balance Sheet, bank statement. The ld. DR strongly relied upon the orders of the Assessing Officer.

10. Per contra, the ld. counsel for the assessee stated that in the instant case, the ld. CIT(A) has exercised his power u/s 250(4) of the Act and had himself called for details from the assessee which he is entitled to do. The ld. counsel for the assessee vehemently stated that the ld. CIT(A) at pages 19 from paragraph 7.3.7 of the appellate order has given a finding that in the case of Murari Marketing Pvt Ltd the credit in the account was made prior to the instant year and hence addition u/s 68 in the impugned year cannot be made. With respect to shares subscription from Capital Electrotech Pvt Ltd; Key Components Pvt Ltd and SGS Udyog Pvt Ltd, the

CIT(A) found that Capital Electrotech Pvt Ltd and Key Components Pvt Ltd are group companies and has subscribed from funds refunded by other parties such as M/s M G Plotters Pvt Ltd and Capital Urjatech Pvt Ltd. Capital Electrotech Pvt Ltd and M/s Key Components had advanced funds to M/s M G Plotters Pvt Ltd and Capital Urjatech Pvt Ltd which were returned in this year and the same was invested in the shares of the assessee company. In the case of SGS Udyog Pvt Ltd also the fund was received as refund from M/s M G Plotters Pvt Ltd which in turn was used for subscription of shares of the assessee. With respect to SGS Udyog Pvt Ltd, the CIT(A) found that out of share subscription of Rs 3,75,00,000/- a sum of Rs 1,75,00,000/- was paid in AY 2013-14 hence the same cannot be added in the impugned year. The CIT(A) upon verification of all documents, held that the credit worthiness of these subscribers was thus established and deleted the additions u/s 68 of the Act.

11. With respect to adherence to Rule 46A of the Act, the ld. counsel for the assessee submitted that it is for the assessee to invoke Rule 46A for admission of new evidence, whereas, in the instant case, the ld. CIT(A) has suo-moto made enquiry using his power u/s 250(4) of the Act. It is submitted that the documents were produced at the behest of the ld.

CIT(A) u/s 250(4) of the Act. Therefore, there is no violation of Rule 46A of the Act as the assessee had not invoked Rule 46A for admission of additional evidence. It is the say of the ld. counsel for the assessee that upon receipt of the information provided by the assessee, the ld. CIT(A) granted opportunity to the Assessing Officer to attend and rebut the submissions made by the assessee which the Assessing Officer failed to avail. The ld. counsel for the assessee relied upon the decision of the Jurisdictional High Court in the case of *Manish Buildwell* 363 ITR 369 and in the case of *ARN Infrastructure India Ltd* 469 ITR 333.

12. We have heard the rival submissions and have perused the relevant material on record. We find that the CIT(A) records at para 4 of his order that he had issued notice to the assessee under section 250 fixing the case for hearing on 1<sup>st</sup> March 2021 and 18<sup>th</sup> March 2021. The assessee in response to the notice, made a submission dated 01.03.2021 and 31.05.2021 where it furnished in support of its grounds of appeal, the following documents, which were not before the AO:

- A) Murari Marketing Private Limited
- i) copy of account in the books of the assessee;
  - ii) audited balance sheet of assessee company for AY 2013-14

iii) order under section 143(3) for assessment year 2013-14 and 2014-15 in the case of Murari Marketing Private Limited.

B) SGS Udyog Private Limited

- i) audited balance sheet of the assessee company for assessment year 2013-14
- ii) order under section 143(3) for assessment year 2013-14 and 2014-15 in the case of SGS Udyog Pvt Ltd
- iii) Confirmation of accounts, ITR, balance sheet, and bank statement for AY 2015-16.

13. The CIT(A) further mentions the submission of the assessee dated 20.05.2021 where the assessee furnished the following documents:

A) Capital Electrotech Pvt Ltd

- i) a copy of ledger account of M/s MG Plotters Pvt Ltd in the books of account of M/s Capital Electrotech Private Limited along with bank statement copy.

B) Key Component Pvt Ltd

- i) a copy of ledger account of M/s MG Plotters Pvt Ltd in the books of account of M/s Key Component Pvt Ltd and copy of bank statement.
- ii) a copy of ledger account of M/s Capital Urjatech Pvt Ltd in the books of account of M/s Key Component Pvt Ltd and copy of bank statement.

C) M/s MG Plotters

- i) copy of ITR
- ii) order under section 143(3) for AY 2015-16 in the case of M/s MG Plotters Pvt Ltd

D) Capital Urjatech Pvt Ltd

- i) copy of ITR

14. We find that all the above documents were filed by the assessee before the CIT(A) for the first time. We find no evidence or any indication or intention depicted in the appeal order that the CIT(A) has called for or directed the production of the above documents suo-moto for deciding the issue by virtue of his coterminous power under section 250(4) of the Act. There is no evidence to say that the documents were filed at the behest of the CIT(A). We find that the CIT(A) had merely issued notices u/s 250 **fixing** the case for hearing and the assessee had furnished all the above documents in support of its grounds of appeal. From the facts of the instant case, we are of the opinion that when the assessee has introduced evidence/documents before the CIT(A), without CIT(A) calling for such evidence/documents, the same shall not be out of purview of Rule 46A.

15. It would be apposite to reproduce the provisions of section 250(4) and Rule 46A:

"250 (4) The Appellate Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Income-tax Officer to make further inquiry and report the result of the same to the Appellate Assistant Commissioner".

" Production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)].

46A. (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](#).]

16. Reading section 250(4) and sub-rule 4 of Rule 46A in order to give a harmonious interpretation, we are of the view that when the CIT(A) invokes his coterminous power to make inquiry on his own, he has to explicitly direct the production of documents/evidence and the CIT(A) has to show/declare in the appeal order that such a communication/direction to that effect has been made to the assessee. The coterminous powers of the CIT(A) can not be simply inferred. In this regard whether the CIT(A) has invoked his powers u/s 250(4), it was pointed out by the assessee, in the course of hearing before us, that the same is available in the assessee's submission dated 20.05.2021 where it has referred to a notice dated

12.04.2020 from the CIT(A). Upon being asked by the Bench to produce the CIT(A)'s letter dated 12.04.2020 as evidence of CIT(A) invoking his powers under section 250(4), no such letter was produced before us. We also note that this reference of CIT(A) letter dated 12.04.2020 is quite suspicious as we have already noted that the CIT(A) had fixed the case for hearing vide his notice u/s 250 dated 01.03.2021 and 18.03.2021 whereas the letter, where the CIT(A) has purportedly invoked his powers under section 250(4), is dated 12.04.2020, almost a year earlier from the date when the case was fixed for hearing. We are therefore of the considered view that in the impugned order, the CIT(A) has nowhere invoked his coterminous powers under section 250(4) of the Income Tax Act. We're also of the view that when fresh evidence/documents are filed before the CIT(A), without him calling for the documents, he has to follow Rule 46A of the Income Tax Rules 1962 and not render the Rule 46A otiose.

17. We also find that the submission of the assessee that upon receipt of the information provided by the assessee, the Id. CIT(A) granted opportunity to the Assessing Officer to attend and rebut the submissions made by the assessee which the Assessing Officer failed to avail, is not supported by the facts depicted in the CIT(A)'s order itself. The letters

granting opportunity to the AO was issued on 24.02.2021 and 12.03.2021 which was prior to the date of submissions of documents by the assessee dated 01.03.2021 and 31.05.2021. Thus, the AO being allowed reasonable opportunity to controvert the evidences/documents is not borne out from the facts of the case.

18. Our aforesaid view is fortified by the Hon'ble Delhi High Court which in the case of *Manish Buildwell* [supra] itself where it dwelled on the powers of CIT(A) under section 250(4) and provisions of Rule 46A as under:

"23. It is for the aforesaid reason that Rule 46A starts in a negative manner by saying that an appellant before the CIT (A) shall not be entitled to produce before him any evidence, whether oral or documentary, other than the evidence adduced by him before the assessing officer. After making such a general statement, which is in consonance with the principle stated in the above judgment, exceptions have been carved out that in certain circumstances it would be open to the CIT (A) to admit additional evidence. Therefore, additional evidence can be produced at the first appellate stage when conditions stipulate in the Rule 46A are satisfied and a finding is recorded.

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We are highlighting these aspects only to press home the point that the conditions prescribed in Rule 46A must be shown to exist before additional evidence is admitted and every procedural requirement mentioned in the Rule has to be strictly complied with so that the Rule is meaningfully exercised and not exercised in a routine or cursory manner. A distinction should be recognized and maintained between a case where

the assessee invokes Rule 46A to adduce additional evidence before the CIT (A) and a case where the CIT (A), without being prompted by the assessee, while dealing with the appeal, considers it fit to cause or make a further enquiry by virtue of the powers vested in him under sub-section (4) of section 250. It is only when he exercises his statutory suo moto power under the above sub-section that the requirements of Rule 46A need not be followed. On the other hand, whenever the assessee who is in appeal before him invokes Rule 46A, it is incumbent upon the CIT (A) to comply with the requirements of the Rule strictly.

24. In the present case, the CIT (A) has observed that the additional evidence should be admitted because the assessee was prevented by adducing them before the assessing officer. This observation takes care of clause (c) of sub-rule (1) of Rule 46A. The observation of the CIT (A) also takes care of sub-rule (2) under which he is required to record his reasons for admitting the additional evidence. Thus, the requirement of sub-rules (1) and (2) of Rule 46A have been complied with. However, sub-rule (3) which interdicts the CIT (A) from taking into account any evidence produced for the first time before him unless the Assessing Officer has had a reasonable opportunity of examining the evidence and rebut the same, has not been complied with. There is nothing in the order of the CIT (A) to show that the Assessing Officer was confronted with the confirmation letters received by the assessee from the customers who paid the amounts by cheques and asked for comments. Thus, the end result has been that additional evidence was admitted and accepted as genuine without the Assessing Officer furnishing his comments and without verification. Since this is an indispensable requirement, we are of the view that the Tribunal ought to have restored the matter to the CIT (A) with the direction to him to comply with sub-rule (3) of Rule 46A. In our opinion and with respect, the error committed by the Tribunal is that it proceeded to mix up the powers of the CIT (A) under sub-section (4) of [Section 250](#) with the powers vested in him under Rule 46A. The Tribunal seems to have overlooked sub-rule(4) of Rule 46A which itself takes note of the distinction between the powers conferred by the CIT (A) under the statute while disposing of the assessee's appeal and the powers conferred upon him under Rule 46A. The Tribunal erred in its interpretation of the provisions of Rule 46A vis-à-vis [Section 250\(4\)](#). Its view that since in any

case the CIT (A), by virtue of his conterminous powers over the assessment order, was empowered to call for any document or make any further enquiry as he thinks fit, there was no violation of Rule 46A is erroneous. The Tribunal appears to have not appreciated the distinction between the two provisions. If the view of the Tribunal is accepted, it would make Rule 46A otiose and it would open up the possibility of the assessee's contending that any additional evidence sought to be introduced by them before the CIT (A) cannot be subjected to the conditions prescribed in Rule 46A because in any case the CIT (A) is vested with conterminous powers over the assessment orders or powers of independent enquiry under sub-section (4) of [Section 250](#). That is a consequence which cannot at all be countenanced.

Emphasis supplied.

25. For the above reasons, we answer the substantial questions of law framed in paragraph 21 above, in favour of the Revenue and against the assessee. The issue relating to the addition of Rs. 1,61,67,600/- made under [Section 68](#) of the Act is restored to the CIT (A) who shall comply with the requirements of Rule 46A and take a fresh decision on the merits of the addition in accordance with law.

19. In view of the discussion above, we are of the considered view that the assessee in the instant case, has on its own, sought to introduce additional evidence before the CIT(A). There is no direction of the CIT(A) to the assessee to produce any documents. In such a situation, it was incumbent upon the CIT(A) to follow the diktats of sub-rule 3 of Rule 46A wherein the assessing officer was to be allowed a reasonable opportunity to examine the evidence/documents. We further find that as far as the enquiries of the CIT(A) is concerned, it is limited to the examination of the documents submitted by the

assessee itself and no verification/enquiries with the subscribers company was undertaken especially, when the finding of the AO was to the effect that the subscriber company failed to appear before the AO in response to notice u/s 136(6)/131 to establish the identity, creditworthiness and genuineness of transactions. The CIT(A) also ignored the fact that even though the assessee was able to procure all documents of the subscriber companies yet the assessee company could not ensure their presence before the AO. The CIT(A) had no word on the AO's findings that the subscribers company bank statements show circuitous transactions and seems to be that of entry providers. We therefore hold that the CIT(A)'s action of deciding the issues without giving a reasonable opportunity to the AO, following the procedure under sub-rule 3 of Rule 46A, is not permissible in law more so when the CIT(A) himself had acknowledged the plea of the assessee that the AO began his enquiries at the fag end of the year and the assessee could not get sufficient time to address the issues raised by the AO. We therefore find it incumbent upon us to set aside the order of the CIT(A) and remit the matter to the file of the CIT(A) who shall comply with law as stipulated in sub-rule 3 of Rule 46A of the Income

Tax Rule and take a fresh decision on the merits of the addition. The grounds of appeal 1.2 and 3.2 are allowed.

19. As the issue of addition u/s 68 has been set aside on technical ground, no adjudication on rest of the grounds is made on the merits of the case.

20. In the result, the appeal of the Revenue in ITA No. 2037/DEL/2021 is partly allowed for statistical purposes.

The order is pronounced in the open court on 04.06.2025.

Sd/-

**[MADHUMITA ROY]  
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER**

Dated: 04<sup>th</sup> June, 2025.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)

Asst. Registrar,

5. DR

ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order</i>	
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3.	<i>Date on which the typed draft Tribunal Order is placed before the other Member</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial)</i>	
11.	<i>The date on which the file goes for xerox</i>	
12.	<i>The date on which the file goes for endorsement</i>	
13.	<i>The date on which the file goes to the Superintendent for checking</i>	
14.	<i>The date on which the file goes to the Assistant Registrar for signature on the Tribunal order</i>	
15.	<i>Date on which the file goes to the dispatch section</i>	
16.	<i>Date of Dispatch of the Order</i>	