

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "SMC" : NEW DELHI)**

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT

ITA No. 767/Del/2025
Asstt. Year : 2009-10

VIJAY DESWAL,
H.NO. 160/22, VIKAS NAGAR,
ROHTAK, HARYANA-124001
(PAN: AJBPD7321H)
(Appellant)

VS. INCOME TAX OFFICER,
WARD-5, ROHTAK

(Respondent)

Appellant by : Sh. Naveen Gupta, Adv.
Respondent by : Shri Shyam Manohar Singh, Sr. DR.

Date of Hearing	05.05.2025
Date of Pronouncement	05.05.2025

ORDER

This appeal by the assessee is emanating from the order dated 24.2.2023 of the NFAC, Delhi in Appeal No. ITBA/NFAC/S/250/2022-23/1050117791(1) relating to assessment year 2009-10.

2. I have heard both the sides and perused the records. It is noted that during the first round of appeal, the addition made of Rs. 30,14,014/- on account of cash deposit in the bank account, which was subsequently confirmed by the Id. CIT(A) and in appeal ITAT has set aside the matter to the file of the AO for fresh consideration with certain directions.

2.1 It is further noted that Ld. CIT(A) in his impugned order has observed that during the set aside assessment proceedings, the assessee could not produce Smt. Sneh Aggarwal, Director of Stoploss Commodity Solutions Pvt. Ltd. to examine the veracity of the explanation furnished by the assessee regarding the source of cash deposit nor any documentary filed. Moreover, during the appellate proceedings, the assessee has also not made out any case as to under which exception prescribed under Rule 46A, the new evidences can be admitted at this stage especially when such new evidences were neither filed during the first round of appeal nor during the assessment proceedings in the second round. The new evidence can be admitted only if the appellant satisfies any of the conditions prescribed under rule 46A of the Income Tax Rules, 1962 and in the case under consideration, the assessee has not made any case that new evidence is admissible under Rule 46A. Therefore, the new evidence is not being admitted.

3. Before me, Ld. AR has submitted that AO has erred in not complying with the direction of ITAT to examine the veracity of the explanation furnished by the appellant regarding the source of deposit of Rs. 30,14,014/- and in making inadequate efforts to secure the presence of Smt. Sneh Aggarwal as directed by the Tribunal. It was further submitted that Ld. CIT(A) erred in not admitting the additional evidences filed by the assessee u/R 46A, explaining the source of deposits in the bank account. Hence, he submitted that the additional evidences rejected by the Ld. CIT(A) shall explain the source of deposits in the bank account and deserve to be admitted and thereafter, the matter may be remitted back to the

file of the Assessing Officer with the directions to consider the additional evidences of the assessee and then decide the issue in dispute afresh, after giving adequate opportunity of being heard to the assessee, in accordance with law. Ld. DR did not raise any objection to the aforesaid contention.

4. In view of the aforesaid factual matrix and in the interest of justice, the additional evidences, if any, are hereby admitted and accordingly, issue in dispute is remitted back to the file of the Assessing Officer with the directions to consider the same afresh, after giving adequate opportunity of being heard to the assessee, in accordance with law. Assessee is also directed through Ld. AR to fully cooperate with the Assessing Officer during the proceedings and provide him all the necessary evidences/documents for his consideration.

5. In the result, the Assessee's appeal is allowed for statistical purposes

Order pronounced in the Open Court on 05.05.2025.

SD/-
(MAHAVIR SINGH)
VICE PRESIDENT

SRBhatnagar

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT,
Delhi Bench