

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No:-2984/Del/2017
(Assessment Year- 2011-12)**

Income Tax Officer Ward-18(4), Delhi	Vs.	M/s. North West Sales and Marketing Pvt Ltd Community Centre, Plot No.40, Block-A, Paschim Vihar, New Delhi-110 063.
PAN No:AAACN4873F		
APPELLANT		RESPONDENT

Appellant by : Gaurav Jain, Advocate
Department by: Ms.Monika Singh, CIT-DR

Date of Hearing : 22.07.2025
Date of Pronouncement : 19.09.2025

ORDER

PER AMITABH SHUKLA, A.M :

This appeal filed by the Revenue is directed against the order dated 31.03.2017 passed by CIT(A), 6, Delhi, arising out of the order passed by Assessing Officer dated 22.12.2015 for A.Y.2011-12. The reference to the word "Act" in this order hereinafter shall mean the Income Tax Act, 1961 as amended from time to time.

2. The first issue raised by the Revenue through its grounds of appeal 1 & 2 are regarding an addition of Rs. 32,47,77,750/- u/s 68 of the Act by the Ld.AO and its deletion by the Ld.CIT(A). The ground of appeal No.4 is regarding admission of additional evidences by the Ld.CIT(A) in violation of provisions of Rule 46A. As the three grounds of appeal are inter-connected, they are dealt together. The Ld.Counsel for the assessee explaining the brief factual matrix, submitted that the assessee had obtained fresh unsecured loans of even amount. Admittedly, the assessee could not provide the Ld.AO requisite details in respect of said unsecured loans, as a result of which the Ld.AO proceeded to make an addition of Rs. 32,47,77,750/- u/s 68 of the Act. Before the Ld.CIT(A) the assessee requested for admission of additional evidences. The Ld.CIT(A) requested the Ld.AO to submit a remand report after examining the issue of veracity of impugned unsecured loans. The Ld.Counsel informed that the Ld.AO conducted his enquiries into the said unsecured loans. The Ld.AO did not convey any infirmity in the loans per se u/s 68 but objected to admission of additional evidences on the premise that the assessee did not possess sufficient justified grounds to have filed the evidences before the Ld.AO during the assessment proceedings. The Ld.CIT(A) after considering the remand report of the Ld.AO proceeded to delete the impugned addition.

3. It is the case of the assessee that no infirmity was found by the Ld.AO in assessee's procurement of unsecured loans and therefore the Ld.CIT(A) has rightly deleted the addition. It is argued that the arguments of Ld.AO for non-admission of additional evidences are unwarranted and against the spirit of law. It was stated that in all the cases where evidences were requested by the Ld.AO and the assessee failed to submit the same, Rule 46A provided an opportunity for furnishing of the same before the Ld. First Appellate Authority. The Ld.Counsel also submitted Rule 46A mandates admission of any evidence during appellate proceeding which is deemed necessary for proper adjudication of the case. It was accordingly submitted that the relief accorded by the Ld.CIT(A) was based upon correct understanding and facts of the case.

4. Per contra the Ld.DR relied upon the order of lower authorities. It was argued that the Ld.CIT(A) has violated Rule 46A by admitting evidences which were not liable for admission.

5. We have heard the rival submissions in the light of material available on records. We have noted that ground of appeal no.1, 2 and 4 are on the issue of admission of additional evidences as well as the justification of unsecured loans of Rs.32.47 Crores app. As regards, admission of additional evidences, we have noted the following provisions of Rule 46A:-

“... ⁶[*Production of additional evidence before the ⁸[*Joint Commissioner*] (*Appeals*)*] ⁹[*and Commissioner (Appeals)*].

46A. (1) *The appellant shall not be entitled to produce before the ⁸[^{8a}Joint Commissioner] (Appeals)] ⁹[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 ¹⁰[Assessing Officer], except in the following circumstances, namely :—*

(a)	<i>where the ¹⁰[Assessing Officer] has refused to admit evidence which ought to have been admitted ; or</i>
(b)	<i>where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the ¹⁰[Assessing Officer] ; or</i>
(c)	<i>where the appellant was prevented by sufficient cause from producing before the ¹⁰[Assessing Officer] any evidence which is relevant to any ground of appeal ; or</i>
(d)	<i>where the ¹⁰[Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.</i>

(2) *No evidence shall be admitted under sub-rule (1) unless the ¹¹[^{11a}Joint Commissioner] (Appeals)] ¹²[or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.*

¹³(3) *The ¹⁴[^{14a}Joint Commissioner] (Appeals)] ¹⁵[or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the ¹⁶[Assessing Officer] has been allowed a reasonable opportunity—*

(a)	<i>to examine the evidence or document or to cross-examine the witness produced by the appellant, or</i>
(b)	<i>to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.</i>

(4) Nothing contained in this rule shall affect the power of the ¹⁷[^{17a}Joint Commissioner] (Appeals)] ¹⁸[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 ¹⁹[Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.].....”

6. Thus, the statutory prescription provided in Rule 46A is clear in as much as it mandates that an assessee is entitled to request for admission for any additional evidences, during appellate proceedings, which it could not provide before the assessing officer. The law further mandates that the Ld.CIT(A) can adjudicate qua such evidences provided the assessing officer is given an opportunity to examine the same. As per the facts of the present case, the assessing officer had requested the assessee to file details / evidences in respect of unsecured loans and the assessee could not provide the same. All these evidences were produced before the Ld.CIT(A) who forwarded them to the Ld.AO for examination and submission of remand report. The Ld.AO conducted his enquiries u/s 133(6) during the remand proceedings and as evident from his remand report, extracted at page no.5

& 6 of the appellate order, did not find any infirmity with the unsecured loans taken by the assessee. The Ld.AO however objected to admission of additional evidences under Rule 46A on the plea of assessee having unjustified grounds for their non-production before the Ld.AO.

7. At this stage we deem it necessary also to extract contents of page 5 & 6 of the appellate order as under:-

".....On receiving the application under Rule 46A of the Income Tax Rules, a remand report was asked from the Assessing Officer vide letter dated 13/08/2015. The Assessing Officer sent the remand report dated 18/12/2015 which is reproduced as below:-

"Please refer to you letter no. F.No.A.91/14-15/CIT(Appeals)-6/15-16/131 dated 13/08/2015 on the above mentioned subject as Application under rule 46A of the Income Tax Rules, 1962 for admission of additional evidence in the case of M/s North West Sales & Marketing Pvt. Ltd. Appeal No. 9/14-15, Asst. year 2011-12

The assessee company had pleaded before your good self vide written submission dated 22.07.2015 that the AR could not file the confirmation, ITR copies, Bank Statement of the Unsecured Loans taken during the year under scrutiny as the parties from whom loans taken were not cooperative. That the AO, due to time limitation, assessed the case ex-parte by adding the Unsecured Loans of Rs. 8,64,50,000/- and the expenses incurred for running the bustness of the appellant company to the extent of Rs. 3,02,494/ and now the confirmation and other requisite details are obtained and filed and the same may be treated as additional evidence as per rule 46A of Income Tax Rules, 1962.

That the Notice U/s 133(6) were sent to all the parties from whom assessee company had received Loans during the year and the requisite replies were received and the same were taken on records. That all the parties have confirmed the payment of unsecured loans to the assessee company and submitted the confirmations, Ack of ITR and Bank Statements.

However, although the confirmations have been filed by the persons from whom assessee company had taken unsecured loans but the assessee company should have filed the same before the AO during the assessment proceedings and the plea of the assessee that the parties were-net co-operative at the time of assessment proceedings were also not on records. That during the assessment proceedings, assessee company could not even file the name & addresses of the parties, so that the verification of the same can be made by the AO, if the

parties are not co-operative with the assessee company in these circumstances, assessee company had not sufficient grounds which prevented them to file

the confirmations at the stage of assessment proceedings and the application under rule 46-A should be rejected, although parties have confirmed the payments of Unsecured Loans to the assessee company at the Remand Report proceedings by replying the Notice(s) under section 133(6) of the Income Tax Act, 1961 send by the undersigned to verify the correctness of the facts submitted before your goods self at the appellate proceedings....."

8.0 We have noted that as far as legal compliances are concerned the Ld.CIT(A) has not violated any provisions of Rule 46A in as much as he has given the Ld.AO opportunity to examine the additional evidences before drawing his own conclusions. It is pertinent to note that the authority to admit or not admit additional evidences under Rule 46A has been given to the Ld.First Appellate Authority and Ld.AO does not have any role play in the impugned decision. The Ld.Assessing Officer is only entitled to be given an opportunity to examine the additional evidences under Rule 46A filed by the assessee provided they were not given to him during the assessment proceedings. We have also noted that the Ld.AO has conducted his enquiries u/s 133(6) in respect of additional evidence filed by the assessee. Now the

Ld.AO cannot do two diametrically opposite things. If it was genuinely convinced about non-admission of additional evidences, then the Ld.AO ought not have conducted any enquiries. Once the Ld.AO chose to conduct his enquiries on the impugned additional evidences it cannot reject the said evidences summarily. Thus, we do not find any force in the challenge of the Revenue qua ground of appeal no.4 pertaining to admission of additional evidences. **Ground of appeal no.4 raised by the Revenue is therefore dismissed.**

9. As regards the merits of the case, we have noted from the remand report submitted by the Ld.AO, extracted hereinabove, that the Ld.AO has conducted his enquiries u/s 133(6) to satisfy about the veracity of the loans. We have also noted that the Ld.AO has not pointed any defect / deficiency in the details / evidences filed by the assessee u/s 68 of the Act. Thus, the Ld.AO has accepted genuineness of transactions as well as identity and creditworthiness of the lenders u/s 68. Consequently the decision of the Ld.CIT(A) in deleting the addition made by the Ld.AO cannot be faulted upon. Accordingly, we are of the considered view that the order of the Ld.CIT(A) is based upon correct understanding and interpretation of the facts of the case. **The grounds of appeal nos. 1 & 2 raised by the Revenue is therefore dismissed.**

10. Ground of appeal no.3 raised by the Revenue is regarding addition of Rs.3,02,494/- on account of unexplained expenditure. Briefly put the Ld.AO noted that the assessee had claimed expenses of Rs 3,24,554/- on account allied heads like salary, travelling, rent,bank charges and commission , auditors fees etc. The assessee was asked to submit a detailed note business activities since incorporation which could not be provided. The Ld.AO therefore proceeded to add Rs.3,02,494/ after giving benefit of auditors fees of Rs 22,060/- .

11. The assessee informed the first appellate authority that the assessee is in a business of sale / purchase of immovable property and also to develop the sites and sale the property after construction. For the year under consideration the assessee had purchased a plot of land from Delhi Development Authority for construction of business complex. During the year under consideration the assessee had incurred Capital and Revenue expenses and that the latter were claimed in its financials for the year. It was submitted that on the plot of land assessee had commenced digging, plumbing, soil testing etc and that all the expenses except those claimed in Profit and loss account were included in the work in progress. It was accordingly pleaded that the decision of Ld.CIT(A) to allow the same was based upon correct understanding and interpretation of the case.

12. Per contra, the Ld.DR relied upon the orders of lower authorities.

13. We have heard the rival submissions in the light of material available on records. We have noted that in para 3 on page 4 of his order, the Ld.AO has recorded that the assessee was asked to furnish details of the impugned expenses which were not complied. We have also noted on page 2 of the assessment order to produce books of accounts along with bills, vouchers and log books, which again was not provided to the Ld.AO. The Ld.CIT(A) in para 3.2.3 of his order observed that “ *....the facts of the case and the submissions of the appellant have been carefully considered. I have examined the supporting documents which point to the conduct of the business as the activities stated to have been under taken constitute business activity which is part of the beginning of the business. In view of these observations, the contention of the appellant is acceptable and as such disallowance of expenses is deleted. Ground no.3 is therefore allowed....*”. Thus, it is noted that the Ld. CIT(A) has given the relief to the assessee after considering submissions, details and documents. The relief accorded by the Ld. CIT(A) therefore cannot be faulted as the same is based on correct understanding and appreciation of the facts case. Thus, we are of the considered view that there is no case for intervention in the order of the Ld. CIT(A) at this stage. **The order of Ld. CIT(A) is therefore confirmed and the ground of appeal no.3 raised by the Revenue is dismissed.**

14. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 19.09.2025

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

** Sh Damodar Kutty Sr. PS**

Dated: 19/09/2025.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

1.	Date of dictation of Tribunal order	
2.	Date on which the typed draft Tribunal Order is placed before the Dictating Member	
3.	Date on which the typed draft Tribunal order is placed before the other Member	
4.	Date on which the approved draft Tribunal order comes to the Sr. PS/PS	
5.	Date on which the fair Tribunal order is placed before the Dictating Member for pronouncement	
6.	Date on which the signed order comes back to the Sr.PS/PS	
7.	Date on which the final Tribunal order is uploaded by the Sr.PS/PS on official website	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal order	
9	Date of killing off the disposed of files on the judisis Portal of ITAT by the Bench Clerks	
10.	Date on which the file goes to the Supervisor (Judicial)	
11.	The date on which the file goes to the Assistant Registrar for endorsement of the order	
12.	Date of Despatch of the order	