

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

**BEFORE SH. I.C. SUDHIR, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 2198/Del/2014
Assessment Year: 2009-10

ACIT, Circle-22(1), New Delhi	Vs.	Sh. Raman Deep Singh Anand, A-50, Sector-31, Noida
PAN : AMMPS3471R		
(Appellant)		(Respondent)

Appellant by	Sh. F.R. Meena, Sr.DR
Respondent by	None

Date of hearing	20.03.2017
Date of pronouncement	30.03.2017

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against order dated 17/01/2014 of learned Commissioner of Income-tax (Appeals)-XXIII, New Delhi (in short the CIT-A) for assessment year 2009-10, raising following grounds:

- i. Whether on the facts and in the circumstances of the case, learned CIT(A) was right in deleting the addition of Rs.53,93,467/- on account of unexplained cash deposit in bank a/c Rs.80,00,0000/- on account of payment of excise duty Rs.20,00,000/- on account of unexplained investment in purchase of car, Rs.28,32,259/- on account of unexplained investment in purchase of car, Rs.28,32,259/- on account of business income made by the A.O.*
- ii. On the facts and on the circumstances of the case the learned CIT(A) has erred in admitting the additional evidence produced by the assessee during the appellate proceedings in contravention of Rule 46A of the Income Tax Rules, 1962.*

- iii. On the facts and on the circumstances of the case the impugned order passed by learned CIT(A) is perverse both in facts and law.*
- iv. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.*

2. The ground No.1 of the appeal was subsequently modified as under on 17/10/2016, for correcting the amount of excise duty payment, which Rs. 80,00,000/-, however, by mistake it was mentioned as Rs. 8,00,00,000/-in the original grounds:

- i. Whether on the facts and in the circumstances of the case, learned CIT(A) was right in deleting the addition of Rs.53,93,467/- on account of unexplained cash deposit in bank a/c Rs.80,00,000/- on account of payment of excise duty Rs.20,00,000/- on account of unexplained investment in purchase of car, Rs.28,32,259/- on account of unexplained investment in purchase of car, Rs.28,32,259/- on account of business income made by the A.O.*

2.1 The facts in brief of the case as culled out from the orders of the lower authorities are that the assessee, an individual was granted license for business of liquor retail trading for the relevant year, however, the assessee became member of an Association of Person (AOP), namely, M/s Punjab Trading Associates and carried out business of liquor retail trading through this AOP. The assessee filed return of income declaring income of Rs.26,28,760/- on 5/02/2010. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short ~~the Act~~) was issued and duly served, however, there was no compliance. Subsequently, notices issued under section 143(2) and 142(1) of the Act were also not complied. In view of the limitation for completion of the assessment, the Assessing Officer completed the assessment under section 144 of the Act on 27/12/2011, relying upon

the material available with him and assessed the total income at Rs.2,19,52,911/-, after making following additions:

1.	Unexplained cash deposit in bank account	Rs.53,93,467/-
2.	Unexplained payment through credit cards	Rs.10,98,425/-
3.	Payment of excise duty	Rs.80,00,000
4.	Unexplained investment in purchase of car	Rs.20,00,000/-
5.	Business income	Rs.28,32,259
	Total	Rs.1,93,34,151/-

2.2 On appeal before the Ld. CIT-A, the assessee filed additional evidences. The Ld. CIT-A forwarded all the additional evidences filed by the assessee to the Assessing Officer calling for a remand report. After taking into account, the remand report of the Assessing Officer and the rejoinder on behalf of the assessee, he sustained addition of Rs.6,66,045/- against the payment made through credit cards and balance additions were deleted. Aggrieved, the Revenue is in appeal raising the grounds as reproduced above.

3. At the outset, it is mentioned that the assessee was served the notices, fixing the hearing of the appeal, however, neither the assessee nor any Authorized Representative appeared on behalf of the assessee on any of the dates of hearing, thus, the case was heard ex-parte qua the assessee. After hearing Ld. Senior Departmental representative, modification in the ground No. 1 was allowed.

3.1 The Ld. Senior D.R. supporting the modified grounds, submitted that the assessee did not make any compliance of the notices issued by the Assessing Officer and filed additional evidences before the Ld. CIT-A, who accepted such evidences in contravention of Rule 46A of Income-tax Rules, 1962 and allowed the relief to the assessee. In view of

the arguments, he requested for restoring the matter back to the file of the Assessing Officer.

3.2 We have heard the submission of the Ld. Senior DR and perused the relevant material on record, particularly the impugned order of the Ld. CIT-A.

4. In ground No. 2, the Revenue challenged admitting of additional evidences produced by the assessee during the first appellate proceeding. It is contended by the Ld. Senior DR that those additional evidences have been admitted in contravention of Rule 46A of Income Tax Rules. The Rule 46A of Income-tax Rules, 1962, reads as under:

“[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 ²⁷[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 ²[Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]”

4.1 Thus, in the circumstances, when the Assessing Officer has refused to admit evidence, or the assessee has been prevented by sufficient cause to produce evidences or the Assessing Officer has passed the order without providing sufficient opportunity to the assessee, the assessee can file the additional evidence.

4.2 Further, the Ld. CIT-A is required to allow a reasonable opportunity to examine and rebut those evidences.

4.3 On the issue of admission of additional evidences, the Hon'ble Delhi High Court in the case of CIT Vs. Manish Build Well Private Limited, 45 CTR 397 (Delhi) observed that before admitting additional evidences, the learned CIT-A is required to give opportunity to the Assessing Officer to verify those additional evidences and give his comments on merit.

4.4 In the instant case, we find that the Ld. CIT-A forwarded the additional evidences to the Assessing Officer, who sent a report to the Ld. CIT-A on 03/07/2013. The relevant para of the impugned order mentioning the facts in respect of remand report is reproduced as under:

“4.2 the learned AR submitted that due to extreme financial difficulties and professional problems, the appellant had to leave his residence and therefore, he could not receive any of the notices issued by the AO. There was no willful disobedience or avoidance of the AO's notices on the part of the appellant. He was prevented by sufficient cause due to his circumstances and, therefore, he could not appeal before the AO. Accordingly, the learned AR submitted an application under Rule 46A of the Income Tax Rules, 1962 dt. 22.03.2013 for admittance of additional evidence. In the light of the submissions made by the learned AR, the additional evidences were admitted and a copy of the same were given to the AO for submission of Remand Report after going through the written submissions and examination of additional evidences. The Remand Report was received from the AO dt. 03.07.2013 and the rejoinder was submitted by the learned AR on 07.08.2013. The grounds of appeal taken by the appellant are decided hereunder after taking into consideration the additional evidences, arguments of the learned AR, Remand Report of the AO and the rejoinder given by the appellant.”

4.5 The Ld. CIT-A, while discussing the addition of Rs.53,93,467/- against cash deposit, has mentioned that the Assessing Officer has not given any adverse comment in respect of the cash deposits. Similarly, while dealing the other additions, also the Ld. CIT-A has taken into consideration the comments of the Assessing Officer, on merit of the additions. Further, it was contended that the assessee was not available at the address mentioned in the return and, therefore, there was a sufficient cause in failure to produce those documents.

4.6 In view of above facts and circumstances, in our opinion, the Ld. CIT-A has duly complied with the provisions of the Rule 46A of Income Tax Rules and there is no error on the part of the Ld. CIT-A in dealing with the additional evidences. Accordingly, we dismiss this ground of the appeal.

5. In ground No. 1, the Revenue has challenged deletion of addition of Rs.53,93,467/- on account of unexplained cash deposits in bank

account, Rs.80,00,000/- on account of excise duty, Rs.20,00,000/- on account of unexplained investment in purchase of Car and Rs.28,32,259/- addition made on account of business income.

5.1 As regard to the addition of Rs.53,93,467/-, the Assessing Officer observed cash deposits of Rs.11,57,467/-, Rs.22,55,000/- and Rs.19,85,000/- in the saving bank accounts of the assessee maintained with HDFC bank Ltd., ICICI bank Ltd. and Axis Bank Ltd. In view of non-compliance by the assessee, the Assessing Officer held the deposits as unexplained. However, before the Ld. CIT-A, the assessee submitted that the deposits were out of business receipt, which were duly reflected in the books of accounts of the assessee. The Ld. CIT-A called for the remand report from the Assessing Officer, who after verification of the additional evidences and explanations given by the Ld. counsel of the assessee, treated the cash deposits as explained and no adverse comments were given. These facts have not been disputed by the Ld. Senior DR. In our opinion, once the Assessing Officer himself has verified the source of the cash deposits with the books of accounts and found the same as explained, there should not have been any grievance to the Revenue. The Revenue has not pointed out before us any defect in the verification carried out with Assessing Officer or any malafide on the part of the authorities. In such circumstances, we do not find any justified reasons by the Revenue for filing appeal before us on the issue in dispute. Accordingly, we confirm the finding of the Ld. CIT-A on the issue in dispute.

6. On the issue of addition of Rs.80,00,000/- deposited towards excise duty, the Assessing Officer observed deposit of the said amount with State Excise, Patiala. In view of no compliance, the Assessing Officer made the addition. Before the Id. CIT-A, on behalf of the assessee, it was explained that license fee of Rs.79,50,000/- was paid

by the AOP and it was duly accounted for in the books of accounts of the AOP. The Assessing Officer also verified from the books of accounts of the AOP, the fact of deposit of Rs.3,30,16,69,936/- as deposit of licence fee by the AOP, however, he said that bifurcations of amount of Rs.79,50,000/- invested on behalf of the assessee was not provided. The Ld. CIT-A after taking into account the explanation of the assessee deleted the addition with following observations:

“ 4.5 In the next ground of appeal, the appellant has impugned the addition of Rs.80 lacs made by the AO towards amount deposited with State Excise Duty. The Id. AR of the appellant has submitted that the appellant deposited Rs.80 lacs towards State Excise Duty for the liquor shops for which licences were granted to him for doing the business of liquor retail trading. The appellant has submitted that the shops were being run by an AOP in the name and style of M/s. Punjab Trading Associates and the appellant was one of the members of the AOP. The AO had acknowledged this fact in the Remand Report and has stated that the copy of Deed of Incorporation of AOP has been placed on record. The Id. AR submitted that the entire license fees of Rs.79,50,000/- was paid by the AOP and it was duly accounted for in the books of accounts of the AOP. Audited balance sheet and copy of accounts of M/s. Punjab Trading Associates as well as proof of its filing of return of income have been placed on record. It has been submitted that the shops were pooled in order to avoid unhealthy competition and for effective management since the shops were in various districts and therefore, it was difficult to manage them individually. The AO has stated in the Remand Report that a perusal of the audited accounts of AOP M/s. Punjab Trading Associates for the year ending 31.03.2009 reveals that a total amount of paid on account of license fee for these shops came to Rs.3.30.16.69.936/-. However, the AO has stated that the bifurcation of the amount of Rs.79,50,000/- invested on behalf of the appellant was not provided. On the other hand, the Id. AR has provided a confirmation and an affidavit from the AOP M/s. Punjab Trading Associates. In the light of the facts and circumstances of the case and the evidences on record, it is apparent that the amount of Rs.79,50,000/- is included in the total amount of Rs.3,30,16,69,936/- and therefore, this addition of Rs.80 lacs having no merit stands deleted.”

6.1 In view of above, we find that the assessee has explained the source of deposit of entire license fee of Rs.3,30,16,69,936/- deposited by the AOP, which included the deposit of Rs79,50,000/-, and thus the deposit of amount of Rs.79,50,000/-, claimed by the Assessing Officer towards the excise duty, stand explained. In our opinion, the order of the Ld. CIT-A on the issue in dispute is comprehensive and well reasoned and no interference on our part is required. Accordingly, we uphold the finding of the Ld. CIT-A on the issue in dispute.

7. In respect of addition of Rs. 20,00,000/- for unexplained investment in purchase of car, the Assessing Officer observed from the AIR information that the assessee purchased car valuing Rs.20,00,000/- from Lali Motors, GT Road, Pragpur, Jalandhar. In view of no explanation of source of investment by the assessee, the Assessing Officer held the investment as unexplained. During first appellate proceedings, the assessee explained the same as Rs. 5.00 lakhs from own resources and balance Rs. 15 lakh out of loan taken from HDFC bank. During remand proceeding, the Assessing Officer verified these facts. In view of the verification by the Assessing Officer, the Ld. CIT-A accepted the explanation of the assessee and deleted the addition. In our opinion, the action of the Ld. CIT-A, in deleting the addition is well reasoned and justified as the source of investment stands duly explained and which is also verified by the Assessing Officer. In view of these facts, we find no error in the decision of the Ld. CIT-A and accordingly, we uphold the same.

8. With regard to the addition of Rs.28,32,259/-, the facts in brief are that the Assessing Officer observed receipt of payment of Rs.2,83,22,590/- from various parties. In absence of reconciliation of the

TDS with incomes/receipts declared in the return of income, the Assessing Officer, estimated net profit at the rate of 10%, which was computed to Rs.28,32,259/-. Before the Ld. CIT-A, on behalf of the assessee, it was submitted that the amount in question of Rs.2,83,22,590/- was not received as payments from various parties and in fact, this amount was spent towards payments made to the parties for purchase of liquor from them and on which TCS was deducted and, therefore, it got uploaded in form No. 26AS. The assessee submitted that the purchases were actually made by the AOP, M/s Punjab Trading Associates and not by the assessee, however, the liquor license was allotted in the name of the assessee, the Permanent Account Number (PAN) of the assessee was quoted and, therefore, it reflected in the form no 26A-S of the assessee. The relevant finding of the Ld. CIT-A on the issue in dispute is extracted as under:

“4.7 In the sixth ground of appeal, the appellant has impugned an addition of Rs.28,32,259/- being 10% estimated income on gross receipts of Rs.2,83,22,590/- from different companies. It has been submitted by the Id. AR that payments were not received to the tune of Rs.2,83,22,590/- from various companies namely M/s. Rana Sugar Ltd., M/s. AB Grain Spirits Pvt. Ltd., M/s. AB Sugars Ltd., M/s. Patiala Distillers and Manufacturers Ltd., M/s. Jagatjit Industries Ltd., a unit of Piccadilly Sugar and Allied Industries Ltd., M/s. Gursimran Distilleries Pvt. Ltd., M/s. Chandigarh Distillers and Bottlers Ltd., M/s. Malbros International Ltd., M/s. New City Wines and M/s. Pioneer Industries Ltd. In fact, this amount was spent towards payments made to these parties for purchase of liquor from them on which TCS was being deducted and therefore, it got uploaded on to 26AS. It has been submitted that these purchases were actually made by the AOP M/s. Punjab Trading Associates and not by the appellant. However, as the liquor licenses on shops were allotted in the name of the appellant, PAN number of the appellant has been used instead that of the AOP, on which the appellant was a member. Therefore, the TCS credit has appeared in 26AS in the name of the appellant. The fact, however, remains that the TCS credit was never used by the appellant but was used by the AOP

M/s. Punjab Trading Associates and this has been duly reflected in the return of income filed by the AOP. These transactions on purchases from various companies have been duly recorded by the AOP in its books of accounts. In support of the arguments, the complete set of audited accounts along with an affidavit stating that the above transactions have been duly recorded in the books of M/s. Punjab Trading Associates, which is assessed to tax at Amritsar. The AO has objected to the admittance of additional evidence, although, he acknowledged that these evidences have been placed on record and had been verified by him. He had also objected to the fact that the requisite Power of Attorney has not been submitted by the Id. AR. In the light of the fact that notices could not be served on the appellant during assessment stage and the assessment order was passed u/s. 144 and also keeping in view the fact that additional evidences submitted go to the root cause of the grounds of appeal and also that grave injustice would be done to the appellant if the additional evidences are not accepted, it is decided that the additional evidences are accepted in the light of the judgment of Hon'ble IT AT in the case of ACIT vs. Sh. Joginder Singh in ITA No. 2942 (Del) of 2011. The Power of Attorney of the Id. AR has been placed on record. The copy of accounts of all the relevant parties as appearing in the books of the AOP M/s. Punjab Trading Associates showing purchases made from the above parties and also its payments from the bank accounts of the AOP have been placed on record to substantiate that the purchases to the tune of Rs.2,83,22,590/- have been made by the AOP and have been duly accounted for in its books. The addition of 10% of this amount and treated it as the income of the appellant does not have any merit as it would tantamount to double taxation. The addition of Rs.28,32,259/- is therefore deleted.”

8.1 In view of the submission of the assessee before the Ld. CIT-A, remand report of the Assessing Officer, we find that the assessee has explained payments corresponding to TCS reflected in the form No. 26-AS related to the assessee. In the additional evidences, the assessee furnished copy of ledger accounts of all the relevant parties appearing in the books of accounts of the AOP showing the purchases made from those parties and the payments from bank account of the AOP to those parties. Once the payment to those parties has been verified from the

books of the AOP, in our opinion no addition could have been made in the case of assessee. In these circumstances, the finding of the Ld. CIT-A on the issue in dispute is comprehensive and well reasoned and we do not find any error in the same. Accordingly, we uphold the finding of the Ld. CIT-A on the issue in dispute.

9. The ground No. 1 of the appeal is accordingly dismissed.

10. The grounds No. 3 and 4 of the appeal are general in nature and we are not required to adjudicate upon.

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

The decision is pronounced in the open court on 30th March, 2017.

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated: 30th March, 2017.
RK/(D.T.D)

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi