

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.1729/Bang/2016
Assessment year : 2012-13

The Income Tax Officer, Ward 7(2)(1), Bengaluru.	Vs.	Smt. Tara Jain, No.151/14, 36 th Cross, 7 th Block, Jayanagar, Bengaluru – 560 011. PAN: AFBPJ 1358J
APPELLANT		RESPONDENT

Appellant by	:	Ms. Renugadevi, Jt.CIT(DR)
Respondent by	:	Shri H.N. Khincha, CA

Date of hearing	:	27.04.2017
Date of Pronouncement	:	28.04.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the revenue against the order of CIT(Appeals) *inter alia* on the following grounds:-

- “1. The order of the learned CIT(A) is opposed to law and facts of the case.
2. Whether on the facts and circumstances of the case, the CIT(A) is justified in law in admitting fresh evidences/proof submitted by the assessee without putting forth the same before the AO for comments and for verifying the

genuineness as required under Rule 46(A)(3) of the Income-tax Rules?

3. Whether on the facts and in the circumstances of the case the CIT (A) is justified in law in not ascertaining the credit worthiness of the loan creditor, though the said payment is received in the form of a cheque?

4. Whether the CIT(A) was justified in law in not applying the section 68 of the I. T. Act, wherein any sum is found credited in assessee's books of accounts for the previous year and the assessee offers no explanation of the nature and source of such income?

5. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

6. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.”

2. During the course of hearing, the Id. DR has invited our attention that before the AO, the assessee has not filed the confirmation of Mr. Tejraj Gulecha and the AO has made the addition of Rs.50 lakhs loan received from him. Before the CIT(Appeals), the assessee has filed the confirmation letter which was taken into account by the CIT(A) while deleting the additions, without confronting the same to the AO. Therefore, there is a violation of the provisions of Rule 46A of the I.T. Rules. In the light of these facts, the order of CIT(Appeals) has to be set aside and matter be restored to him to adjudicate the issue afresh, after confronting the additional evidence filed before him to the AO.

3. The Id. AR initially disputed the contention of the revenue, but later on he has agreed that let the matter be sent back to the lower authorities for examination of this aspect.

4. Having carefully examined the contentions of both the parties, we find that undisputedly the additional evidence was considered by the CIT(Appeals) without confronting the same to the AO. Therefore, there is a violation of provisions of Rule 46A of the I.T. Rules. We accordingly set aside the order of the CIT(Appeals) and restore the matter to his file with a direction to readjudicate the issue afresh, after confronting the additional evidence filed by the assessee to the AO and after affording opportunity of being heard to the assessee.

5. In the result, the appeal of revenue is allowed for statistical purposes.

Pronounced in the open court on this 28th day of April, 2017.

Sd/-

(A.K. GARODIA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 28th April, 2017.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.