

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

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 2955/Del/2014
Assessment Year: 2008-09**

SHRI VIKRAMJIT SINGH,
28-A, PRITHVIRAJ ROAD,
NEW DELHI – 110 003

vs. DCIT, CIRCLE 17(1)
NEW DELHI

(PAN: APMPS1373R)

(ASSEESSEE)

(RESPONDENT)

Assessee by: Sh. Ajay Wadhwa, Adv.
Revenue by: Sh. Anil Kumar Sharma, Sr. DR

ORDER

PER H.S. SIDHU, JM

This appeal is filed by assessee against the Order dated 10.3.2014 passed by the Ld. CIT(A)-19, New Delhi relating to Assessment Year 2008-09 on the following grounds:-

- “1. That the order passed by the ld. CIT (Appeals) is bad in law and on facts.*
- 2. That the ld. CIT (Appeals) has erred in law and on facts by confirming the addition made by the ld. assessing officer without*

giving sufficient opportunity of being heard to the assessee.

3. That the ld. CIT (Appeals) has erred in confirming the addition of Rs. 54 lacs treating it as unexplained cash credit u/s 68 of the Income-tax Act, 1961.

3.1 That the ld. CIT (Appeals) has erred in law and on facts by disregarding the documentary evidence filed by the appellant i.e comprehensive confirmations from all parties consisting of names, addresses, PAN, and amount of loan extended to the assessee.

3.2 That the assessee was in a bonafide belief that nothing more was required to prove the credit worthiness and genuineness of the transactions since the ld. AO did not seek any further details regarding the same.

3.3 That the ld. CIT (Appeals) has erred in law and on fact by not considering the Hon'ble Supreme Court judgment in Orissa

Corporation 159 ITR 78, wherein it was held that the onus of the assessee is discharged once he files confirmation from the creditors along with their GIR.

4. That the ld. CIT (Appeals) has erred in law and on facts by not admitting the additional evidence filed by the appellant u/r 46A of the Income Tax Rules, 1962.

5. That the ld. CIT (Appeals) has erred in observing that a copy of remand report was sent to the assessee vide notice u/s 250 dated 20.02.2014 fixing the appeal for hearing on 03.03.2014, whereas no remand report was received by the assessee vide the said notice.

6. That on the facts and in the circumstances of the case, the Id. CIT (Appeals) has erred in holding that interest u/s 234A & 234B of the I.T Act has been correctly charged.

7. The appellant craves leave to alter, amend or add any other ground of appeal either before or during the course of hearing.”

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. At the time of hearing, Ld. Counsel of the Assessee, Sh. Ajay Wadhwa, Advocate draw our attention towards the impugned order dated 10.3.2014 especially the proceedings of hearing conducted by the Ld. First Appellate Authority, as mentioned in the impugned order and stated that the Ld. First Appellate Authority has adjourned the case many times for a short period and has also not provided effective opportunity of hearing to the assessee. He further stated that assessee has filed the Application under Rule 46A of the I.T. Rules, 1962 vide letter dated 24.1.2013 alongwith the additional evidences, which was sent to the AO for his comments. In compliance to the same, the AO sent his Remand Report, which was not supplied to the assessee and Ld. First Appellate Authority has not accepted the Application filed by the assessee under Rule 46A of the I.T. Rules by not admitting the additional evidences filed by the assessee. Ld. Counsel for the assessee further stated that assessee has

filed the Paper Book containing pages 1 to 84 in which he has attached the copy of return of income with Form 16 from Vimoni India Pvt. Ltd.; copy of reply dated 13.12.2010 submitted to DCIT mentioning details of bank accounts with bank statements; Reply dated 22.12.2010 submitted to DCIT with (i) copy of confirmation of Sunspray Packaging Pvt. Ltd. And Sh. Rajinder Singh (ii) Copy of cheque of Rs. 25 lacs received from Sh. Paramvir Sethi & (iii) Copy of cheque of Rs. 10 lacs received from Sh. Vivek Vishwanathan; copy of reply dated 20.12.2010 submitted to DCIT (i) list of interest free secured loan/gift (ii) Confirmation of Mr. Sanjit Bakshi for Rs. 8 lacs (iii) Confirmation of Mr. Paramvir Sethi for Rs. 25 lacs (iv) Confirmation of Mr. Vivek Vishwanathan for Rs. 10 lacs; Additional evidences letter dated 16.1.2014 under Rule 46A of the Income Tax Rules; (a) Mr. Vivek Vishwanathan – copy of return of income and balance sheet, bank statement; Mr. Sanjit Bakshi – copy of return of income and bank statement; Mr. Parmvir Singh Sethi (NRI) – copy of bank statement; (d) Sun Spray Packaging Pvt. Ltd. – copy of return of income, Bank Statement and annual accounts; Mr. Rajinder Sethi (NRI) – Copy of bank statement. He also draw our attention towards the contention of the Application under Rule 46A of the I.T. Rules, 1962 alongwith the additional evidences

filed by the assessee which are at page no. 63 to 84 of the Paper Book, establishing for fulfilling the requirements of the provisions under section 68 of the I.T. Act, 1961. He requested that the addition in dispute may be cancelled and alternatively he requested that the issue in dispute may be set aside to the AO to decide the same, after thoroughly examination of the additional evidences filed by the assessee before the Ld. CIT(A) alongwith Application u/r. 46A.

4. On the contrary, Ld. DR relied upon the order passed by the Ld. CIT(A) and stated that assessee was given sufficient opportunity for substantiating his claim, but he could not avail the same. Therefore, the order of the authorities below especially the impugned order may be upheld and appeal of the assessee may be dismissed.

5. We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). After examining the impugned order alongwith additional evidences filed by the assessee u/r. 46A of the I.T. Rules, 1962 which assessee has attached at page no. 63 to 84, we are of the considered view that the evidences filed by the assessee before the Ld. CIT(A) are very much essential to render the justice to the

parties. Therefore, the additional evidences filed by the assessee alongwith Application u/s. 46A of the I.T. Rules, 1962 are admitted. After examining the additional evidences filed by the assessee, we are of the view that these evidences requires thorough examination at the level of the AO. Therefore, we set aside the issues in dispute to the file of the AO. The AO is directed to examine the additional evidences and other documents and decide the issue in dispute afresh, under the law, after giving adequate opportunity of being heard to the assessee.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 02/02/2017.

Sd/-

Sd/-

[L.P. SAHU]
ACCOUNTANT MEMBER

[H.S. SIDHU]
JUDICIAL MEMBER

Date 02/02/2017

“SRBHATNAGAR”

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches