

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH `A' : NEW DELHI)
BEFORE SHRI U.B.S. BEDI, JUDICIAL MEMBER AND
SHRI A.N. PAHUJA, ACCOUNTANT MEMBER**

**ITA No.1831/Del./2012
(Assessment Year : 2007-08)**

**ACIT, Circle 23(1),
New Delhi.**

Vs.

**Late Avtar Singh Bahl
(Through Legal Heir),
Mrs. Subhagya Behl,
177C, Janak Puri,
New Delhi-110 058
(PAN/GIR No.AAGPB6134L)**

(Appellant)

(Respondent)

**Assessee by : None
Revenue by : Shri Alok Singh Sr.DR**

PER U.B.S. BEDI, J.M.

This appeal of the Revenue is directed against the order passed by the CIT (A)-XII, New Delhi dated 24.1.2012, relevant to assessment year 2007-08, wherein the following grounds have been raised:.

- “(i) On the facts and circumstances of the case, Ld.CIT(A) has erred in allowing the appeal of the assessee with a reasoning that evidence filed was corroborated by the assessee through sale deeds submitted as well as cash flow submitted.
- (ii) On the facts and circumstances of the case, Ld.CIT(A) has erred in admitting the additional evidence under Rule 46A in spite of the fact that numerous opportunities were provided to the assessee to file his submissions to substantiate his claim.
- (iii) 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 facts filed before the first appellate authority indicate that the assessee was retired from Ministry of Defence as Defence Estate Officer long back, from where he was getting his pension. After retirement he had started his own business of sale and purchase of residential plot in and near Delhi, beside that he has rental income and other sources of income. Assessee is filing his tax returns since long and regularly being assessed. Assessee is having dividend income amounting to Rs.13,389/-, which has been claimed exempt income during the year under assessment. Assessee is following mercantile system of accounting and there is no variation in the system during the instant assessment year. Assessee expired on 4th August, 2008.

3. The instant year under assessment is for assessment year 2007-08 relevant to financial year ending 31st March, 2007. Assessee declared taxable income of Rs.17,38,988/- and the assessment was made on Rs.27,73,988/- after making additions of Rs.10,35,000/- under section 68 of the I.T. Act, 1961 for the cash deposited by him in his bank account as being remained unexplained. The addition was made in spite of the fact that assessee's business is of sale and purchase of residential plot in and near Delhi and most of the transaction are done through cash supported by the sale deed.

4. Assessee took up the matter in appeal and filed written submission and furnished certain documents before first appellate authority and pleaded that all the cash deposited by the assessee during assessment year in Centurian Bank of Punjab is either from cash withdrawal from the bank or out of sale proceeds from the plots, hence all the cash deposited is accounted for, and action taken by Assessing Officer by making an addition of Rs.10.35 lakhs u/s 68 of the I.T. Act, 1961 is not justified and also wrong from all

cannons of law and against the natural justice. So, addition without proper reasoning is not sustainable which should be directed to be deleted.

5. Ld.CIT(A) while considering and accepting the plea of the assessee has passed a finding to allow the appeal as per last paragraph of his order as under:

“I have perused the facts stated in the assessment order as well as the facts stated by the assessee in his submissions. The source of cash of Rs.10,53,000/- was corroborated by the assessee through sale deeds submitted by him as well as cash flow submitted by him. Hence, appeal is allowed.”

6. Aggrieved by the order of CIT(A), department has come up in appeal and it was strongly pleaded that CIT(A) have disposed of the appeal without passing a speaking order and just accepted the plea of the assessee in less than four lines. There is also violation of the provisions of Rule 46A of the I.T. Rules, 1962 as certain documents and papers were filed before CIT(A), who did not call for any remand report of the Assessing Officer nor Assessing Officer has been associated. Therefore, in the interest of justice, order of the CIT(A) should be set aside and matter be restored back to him for reconsideration of the appeal afresh.

7. Despite sending notice of hearing sufficiently in advance, assessee did not appear nor any adjournment request has been received. So, we proceed to decide the appeal ex-parte qua-the-assessee after considering the arguments of Ld.DR. and material on record.

8. After hearing Ld.DR. and considering he material on record, we find that certain fresh documents have been produced before CIT(A) and CIT(A) without calling for remand report or confronting such material to the Assessing Officer has passed the impugned order in a very precise manner to delete the impugned addition which is not justified. So, action of the CIT(A) is not only violative of Rule 46A of the I.T. Rules,

but also against the natural justice because sufficient and cogent reasons have not been given in this case. Therefore, considering the entirety of facts, circumstances and material on record, we set aside the order of the CIT(A) and restore the matter back on his file with the direction to re-decide the appeal afresh after giving due opportunity to the assessee as well as to the Assessing Officer by passing a speaking order giving cogent reasons in support thereof. We hold and direct accordingly.

9. As a result, the appeal of the department gets accepted for statistical purposes.

Order pronounced in open court soon after the conclusion of the hearing on 21.06.2012.

Sd/-

Sd/-

(A.N. PAHUJA)

(U.B.S. BEDI)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Dated : June 21, 2012

SKB

Copy of the order forwarded to:-

- 1. Appellant**
- 2. Respondent**
- 3. CIT**
- 4. CIT(A)-XII, New Delhi.**
- 5. CIT(ITAT)**

Deputy Registrar, ITAT