

prevented by any reasonable conditions as laid down in Rule 46A (l)(a),(b),(c) or (d) during the assessment proceedings.

2. *That the Ld. CIT(A) has erred in law and facts in admitting the additional evidence furnished by the assessee before him during the appellate proceedings ignoring the facts :-*

(i) that the circumstances explained by the assessee do not fall under clauses (a), (b), (c) and (d) of Rule 46A(1) of Income Tax Rules, 1961.

(ii) that sufficient opportunities were allowed to the assessee to furnish the relevant documents and produce the books of account during the assessment proceedings, which the assessee failed to furnish/produce.

3. *That the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs. 2,10,170/- on account of demurrage paid to railways when no evidence was produced by assessee before AO to prove his claim.*

4. *That the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs. 4,36,632/- made by AO on account of unexplained addition to capital account, when no evidence was produced by assessee before AO to prove his claim.*

5. *That the Ld. CIT(A) has erred in law in deleting the addition of Rs.8,00,000/- made by the Assessing Officer u/s 68 of the Income Tax Act, 1961 by ignoring the fact that the assessee had failed to file any confirmation before the AO and had further failed to establish the identity & creditworthiness of the investor and genuineness of the transaction during the assessment proceedings.*

6. *That the Ld. CIT(A) has erred in law and facts in allowing relief of Rs.7,24,478/- out of the total disallowance of Rs.7,30,033/- made by the A.O. on account of interest paid on non-business interest free advances, without assigning any reason.*

7. *That the order of the Ld. CIT(A) be set aside and that of the A.O. be restored.*

8. *That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off."*

3. In Ground No. 1 & 2, the revenue challenged the admission of additional evidence by the CIT(A), contrary to

the conditions enumerated under Rule 46A of Income-tax Rules, 1962.

4. Ld. 'DR' contended that the CIT(A) has admitted the new evidence without complying with the requirements of Rule 46A. However, ld. 'AR' contended that CIT(A) has validly admitted new evidences, in pursuance to Rule 46A. The assessee had already been cooperating, in the assessment proceedings and requisite details were filed before AO. However, the AO did not accept the information, on one occasion, as mentioned in the written submissions and the same was submitted to him by way of Speed Post. In view of this, ground raised by the revenue is factually and legally incorrect and untenable.

5. We have carefully perused the rival submissions, facts of the case and the relevant record. Ld. CIT(A) has considered the detailed submissions filed by the assessee before him, in respect of admission of additional evidence under Rule 46A of the Income-tax Rules, 1962. The assessee has filed a certificate, issued by the Railway authorities, indicating the nature of demurrage. The assessee had filed detailed submissions before the CIT(A), which has been reproduced in the impugned order of the CIT(A), containing date-wise proceedings, before the AO and the details filed before him. It is mentioned therein that notice u/s 271(1)(b) of the Act was issued, but later on proceedings were dropped, in view of reply dated 6.11.2008. It was, further, mentioned that on 28.8.2008, the assessee appeared, but on that date, room of the ACIT was found locked and 'show cause notice'

was issued and for which, assessee replied and the proceedings u/s 271(1)(b) were dropped. It is mentioned that on 19.12.2008 i.e Friday, assessee's counsel requested for a short adjournment, to file the information, but it was declined. On 22.12.2008 i.e. Monday, the reply alongwith detail was sought to be submitted by 11 AM, alongwith reply dated 20.12.2008 and the same was not accepted by the AO. The assessment order was passed on 22.12.2008.

6. The Id. CIT(A) has admitted the additional ground of appeal, after recording the reasons, as is evident from the relevant part of his findings, reproduced hereunder:

“k) I have gone through the detailed submissions of the Id. Counsel of the assessee and the different remand reports of the Assessing Officers and also the replies of the assessee to the remand report as mentioned above. The assessee submitted a date-wise sequence of events chart which summarizes the proceedings of the hearing on different dates and the AO has not been able to rebut the same and I find that penalty proceedings U/s 271(l)(b), which were initiated on account of the alleged default of the assessee for non-appearing were dropped by way of order, dated 24.06.2009 and for which the copy of the order has been placed in the paper book filed before me.

1). I also find that substantial information has been given to the Assessing Officer and on 19.12.2008, the date was refused but, then the order was received by the assessee on 29.12.2008 and, though, the assessee had also appeared before the AO on 22nd of December 2008 and on the refusal of the Assessing Officer to take the information, the same was sent by speed post and which has also been mentioned in the report of the AO.

*m). I have also gone through the various submissions and case laws as cited by the assessee for admission of additional evidence and the reliance by the assessee on different case laws and on the facts and circumstances of the case and sequence of events, **I am of the opinion that the additional evidence deserves to be admitted and the AO in his-remand report has also given comments on the merits of addition, as well and, therefore, the ground No.1 in assessee's appeal is allowed***

and, now, each of the ground of appeal as taken by the assessee is being discussed as under:-

i) The ground No. 2 relates to allowance of depreciation @ 15% in respect of 30% on trucks, trallas and Mobile crane and it is admitted here that for Asstt. Year 2001-02 in the order as placed before me at pages 44 to 49 of paper book, the AO has deliberated this issue and have relied upon on the board circular 652, dated 14.06.2003 for which the reliance has also been placed by the assessee, the depreciation @ 40% has been allowed. The reliance by the assessee on different case laws as mentioned in the submissions dated, 6.10.2009 in para-5 as reported in 226 ITR 914 (GAU) and of Gujarat High Court as reported in 256 ITR 50 (GUJ) is quite apt. Besides, I have also been informed that the AO while assessing the case for Asstt. Year 2008-09 of the same assessee, has allowed 30% depreciation as claimed by the assessee and for which the assessment has been framed u/s 143 (3) vide order, dated 8.12.2010 and thus, on the basis of consistency as per various judgments cited before me, it is hereby directed that the AO should allow the depreciation @ 30% against 15% allowed earlier and this ground of appeal is, therefore, allowed.”

7. It is further mentioned that the AO was given due opportunities and he submitted remand report. Therefore, the CIT(A) has given due opportunity to the AO, within the meaning of Rule 46A. On plain reading of Rule 46A, it is clear that this Rule is introduced to place fetters on the right of the appellant, to produce before First Appellate Authority, any evidence, whether oral or documentary, other than the evidence produced by him, during the course of proceedings before the AO, except in the circumstances set out therein. It does not deal with the power of the first appellate authority, to make further enquiry. In the present case, the assessee has already filed requisite details before the AO and further detail was to be filed before the AO, and the AO refused to accept the same. Therefore, the assessee was compelled to file details by way of Speed Post. Further, new

evidence filed by the assessee is from the government agency and the same are essential for disposal of the appeal. Ld. CIT(A) has considered the new evidence and the facts and circumstances of the case in entirety and validly, after recording reasons, admitted the new evidences. In view of this, we do not find any infirmity in the admission of the new evidence by the CIT(A), as the interest of the quasi judicial proceedings is to render justice and not to deny justice by declining to admit new evidence. The circumstances of the case, duly justify admission of the new evidence by the CIT(A), hence, these two grounds raised by the revenue are dismissed.

8. In Ground No.3, it is contended by the revenue that CIT(A) erred in deleting the addition of Rs.2,10,170/- on account of demurrage paid to the railways when no evidence was produced by the assessee before AO to prove this claim.

9. We have heard the rival submissions and carefully perused the evidence and available record in the matter. The AO deleted the addition of Rs.2,10,170/- as no evidence was filed before him and treating the same as penal in character. However, the assessee has filed certificate from railway authorities indicating the nature of demurrage. Demurrage is compensatory in nature and CIT(A) has placed reliance on the decision of the jurisdictional High Court in the case of CIT V Indo Asian Switchgear 222 ITR 272. Therefore, the CIT(A) has deleted the impugned addition, after appreciation of the relevant material filed before him. In view of this, we do not find any infirmity, in the findings of the CIT(A) and

hence, the same are upheld. However, the relevant part of the findings of the CIT(A) are reproduced hereunder :

ii). The ground No. 3 relates to addition of Rs. 2,10,170/- and the assessee has filed before me certificate from the Railways Authority for a claim of Rs. 68,770/- and besides that at pages 9 to 14, the evidence has been placed before me regarding the demurrage of other items which have been claimed by different Semi Govt. Agencies from the assessee and, though, the AO has mentioned about the certificate from the Railways Authority to the tune of Rs. 68,770/-, but no comments have been given to the Assessing Officer of the other positive and documentary evidence as adduced before me and copy of the same was given for its comment. Then again, demurrage is not in the nature of penalty and no infraction of law has taken place and the judgment of Punjab & Haryana High Court in the case of CIT vs Indo Asian Switchgear as reported in 222 ITR 772 and other judgments as cited before me vide reply dated 06.10.2009, clinch the issue in favour of the assessee and, therefore the addition of Rs.2,10,170/- is ordered to be deleted.”

10. In Ground No.4, ld. 'DR' contended that CIT(A) erred in law and on facts in deleting the addition of Rs. 4,36,632/- made by AO on account of unexplained addition to capital account, when no evidence was produced by assessee before AO. The ld. CIT(A), on appreciation of the documentary evidence filed in the form of Paper Book at pages 15 to 16, deleted the impugned addition. The relevant findings of the ld. CIT(A) are reproduced hereunder :

“iii). Regarding the addition in the capital account of the assessee, a copy of the capital account is available at pages 15 to 16 of Paper Book and wherein a sum of Rs. 41,350/- is on account of remittance from LIC of India and amount of Rs. 68,600/- is on account of constituency allowance received by the assessee being an Municipal Counselor, which has been

credited to his capital account and which income has also been offered under the head Miscellaneous Income while filing the return of income and a sum of Rs. 3,32,382/- is on account of transfer of brought forward balance from Modern Motors, which is a transfer entry only from earlier year and, thus, the said explanation is bonafide and deserves to be considered and, as such, the AO is directed to delete the addition of Rs. 4,36,632/-”.

11. We have carefully perused the rival submissions, facts of the case and the relevant record and the findings of the CIT(A) including the submissions filed before him and found that the addition has been deleted on the basis of corroborative evidence. Consequently, we do not find any infirmity in the findings of the CIT(A) and the same are upheld. This Ground of appeal raised by the revenue is dismissed.

12. In Ground No.5, revenue contended that *CIT(A)* erred in law in deleting the addition of Rs.8.00,000/- made by the Assessing Officer u/s 68 of the Act, 1961 by ignoring the fact that the assessee had failed to file any confirmation before the AO, and had, further, failed to establish the identity & creditworthiness of the investor and genuineness of the transaction. The *ld. CIT(A)* has upheld the addition of Rs.5 lacs each, in the name of Shri Baldev Raj and Shri B.C.Tiwari, totaling to Rs.10 lacs. *Ld. CIT(A)* has deleted addition of Rs.8 lacs, on the ground that a certificate from Shri Gurdip Singh had been furnished before the AO and the AO did not consider the same. Shri Gurdip Singh is assessed to income tax and he has confirmed the loan granted to the assessee and further quoted his PAN number. In view of

such evidence filed, CIT(A) deleted the impugned addition. Findings of the CIT(A) are reproduced hereunder :

“iv). The next ground relates to addition to the tune of Rs. 18 lacs and which are cash credits in the names of Sh. Baldev Raj to the tune of Rs. 5 lacs, in the name of Sh. B.C.Tiwari to the tune of Rs. 5 lacs and Rs. 8 lacs in the name of Sh. Gurdip Singh. The assessee has filed before me confirmations from all the three persons and, in fact, certificate from Sh. Gurdip Singh had been furnished before the AO also and which reply was not considered by the AO. Sh. Gurdip Singh is being assessed to tax and he has confirmed the advancement of loan and his PAN number is quoted and therefore, the said addition of Rs. 8 lacs deserves to be deleted. As regards the confirmations from Sh. Baldev Raj and Sh. B.C.Tiwari are concerned, though, the confirmations have been filed, but no PAN numbers or GIR Numbers or sources of their amount having been advanced to the assessee have been furnished and mere advancement of amount by way of account payee cheques does not specify the requirement of section 68 and, accordingly, the addition of Rs. 5 lacs each in the name of Sh. Baldev Raj and Sh. B.C.Tiwari totaling to Rs. 10 lacs is hereby confirmed”.

13. We have carefully perused the rival submissions, facts of the case and the relevant record and find that the CIT(A) has granted partial relief to the assessee and the deletion has been made on the foundation of requisite material on record in respect of Shri Gurdip singh. Therefore, the findings of the CIT(A) are upheld and ground of appeal of the revenue is dismissed.

14. In CO No.52/Chd/2011, the assessee has contended in the grounds of appeal of the CO that CIT(A), erred in sustaining the addition of cash credits during the year under consideration in the name of Shri Baldev Raj to the tune of Rs. 5 lacs and another addition of Rs. 5 lacs in the name of

Shri B.C.Tiwari. In view of the findings recorded by us, while adjudicating the appeal of the revenue, in the immediately preceding para of this order, the issue raised in the CO, is dismissed, as the same has been duly adjudicated therein.

15. In Ground No. 6 in the appeal of the revenue, the revenue contended that CIT(A) erred in law and facts in allowing relief of Rs.7,24,478/- out of the total disallowance of Rs.7,30,033/- made by the A.O. on account of interest paid on non-business interest free advances. In this case the AO noticed that an interest of Rs.7,30,033/- has been debited to Profit & Loss Account. It was further observed by the AO that debit balance of Rs.9 lacs and Rs.22,500/- is against the account of Shri Hakam Singh and Smt. Ravinder Kaur respectively. The assessee has not filed copy of account nor books of account were produced. In view of this AO found that such transaction of advance remains unverifiable. Consequently, it was inferred by the AO that assessee had made advances for the purpose of, other than business and consequently disallowed the impugned interest. Findings of the CIT(A), are reproduced hereunder :

v). As regards the disallowance of entire bank interest of Rs.7,30,033/-, though, the assessee has submitted that the capital of assessee has increased from 46,59,077/- as on 31.3.2005 to ' 72,02,979/- as on 31.3.2006 besides that non-interest bearing unsecured loans are also there and that sum was also available and outstanding against limit from the bank has been reduced from 50,45,786/- as on 31.3.2005 to 46,85,050/- as on 31.3.2006, but the plea of the assessee that interest should not be disallowed cannot be accepted in toto. However, there is force

in the alternative plea of the assessee that the amount of Rs. 9 lacs was advanced to Sh. Hakam Singh on 21.03.2006 to the tune of Rs. 6 lacs and Rs. 3 lacs on 22.03.2006 and amount of Rs. 22,500/- standing in the name of Smt. Ravinder Kaur is the balance brought forward from earlier year and, therefore, I am of the view that the proportionate interest needs to be disallowed from the date when the amount was advanced to Sh. Hakam Singh and for full one year in the name of Smt. Ravinder Kaur. The Assessee has worked out the disallowance of Rs. 2860/- in the name of Sh. Hakam Singh and Rs. 2700/- in the name of Smt. Ravinder Kaur and the AO is directed to rectify the same and disallow the interest as per the same rate of interest, which is being charged by the bank from the assessee.

vi). With regard to the claim of various expenses, the assessee has filed before me the detail of all such expenses along with other documentary evidences i.e. wages register, copies of the bills and vouchers, which were forwarded to the AO including the detail of freight paid and the detail in respect of other heads as pointed out by the AO. The AO in his assessment order has not specifically doubted the genuineness of the expenses or made any disallowance in respect of said expenditure under each head as per Para 5 of Page 5 of the Assessment Order, but has only stated that no separate addition out of these major expenses is being made, since the same is covered by the addition in respect of in genuine credits.

vii). After going through the submissions and the "details filed by the assessee, it is held that all the expenses under the heads such as consumable stores, freight paid, oil and lubricants, repair and maintenance and wages are genuine and justified. However, since I have separately confirmed the addition of Rs. 10 lacs on account of two in genuine credits in the name of Sh. Baldev Raj and Sh. B.C. Tiwari and accordingly, it is held that the said addition in respect of two cash credits shall cover the disallowance, if any, out of various heads as mentioned above."

16. Id. CIT(A) has directed the AO to disallow interest as per the same rate of interest which is being charged by the

bank from the assessee. We do not find any infirmity in the findings of the CIT(A), in the light of the fact-situation of the case. Therefore, this ground of appeal is dismissed.

17. Ground Nos. 7 & 8 are general in nature and need no separate adjudication. Consequently, same are dismissed.

18. In the result, appeal of the revenue as well as CO of the assessee are dismissed.

Order pronounced in the Open Court on 9th May,2012.

Sd/-

Sd/-

(H.L.KARWA)
VICE PRESIDENT

(MEHAR SINGH)
ACCOUNTANT MEMBER

Dated: 9th May,2012.

'Poonam'

Copy to:

The Appellant, The Respondent, The CIT(A), The CIT,DR

Assistant Registrar, ITAT
Chandigarh