

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No. 1807/Del/2010
Assessment Year: 2006-07**

Income Tax officer,
Ward 31(1),
C. R. Building,
New Delhi.
(Appellant)

vs

Bhai Manjit Singh,
28-A, Prithvi Raj Road,
New Delhi.
(PAN No. BBFPS2318A)
(Respondent)

Appellant by: Shri R.S. Negi, Sr. DR
Respondent by: Shri S.R. Wadhwa

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal has been preferred by the Revenue against the order of Commissioner of Income Tax(A)-XXVI, New Delhi dated 24.2.2010 for A.Y. 2006-07 by which the ld. Commissioner of Income Tax(A) deleted the addition made by the Assessing Officer pertaining to the amount of cash deposited. The only ground in this appeal raised by the Revenue is as under:-

“On the facts and in the circumstances of the case, the ld. CIT(A) has erred in deleting addition of Rs.91,08,000/- by accepting the explanation given by the assessee with regard to source of cash deposited in the

F.Y. 2005-06 purported to have been withdrawn from HUF's account in the F.Y. 2003-04 without considering the fact that the assessee was allowed sufficient opportunity to explain the source of the amount of cash deposited."

2. Briefly stated, the facts of the case are that the assessee filed his return for AY 2006-07 on 31.3.2007 declaring an income of Rs.2,45,570 and the return was processed and subsequently selected for scrutiny on the basis of AIR information received. The Assessing Officer issued a show cause notice to explain the source of the payment of cash deposited in the bank account of Rs. 91,08,000/- . Despite several opportunities, the assessee did not support the assessment proceedings and the Assessing Officer had no other alternative but to decide the case on merits u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on the basis of material available on record following the principle of best judgement. The Assessing Officer noted that in the absence of any details, source of information pertaining to the cash deposited by the assessee in his HDFC bank account, Defence Colony, New Delhi Branch on different dates and the same was treated as income of the assessee from undisclosed sources and the same was added to the returned income of the assessee.

3. Aggrieved, the assessee filed an appeal before the Commissioner of Income Tax(A) and the same was allowed by the impugned order. The operative portion of impugned order is being reproduced below:-

“7. In view of the above facts, I hold that during the year, the appellant had deposited Rs.32,86,000/- only in his saving bank account with HDFC bank. This fact has been duly confirmed by the said bank. To this extent, the information contained in the AIR information suffered from arithmetical inaccuracy. Since the Assessing Officer was also not in possession of bank statement or any certificate from the bankers, he had no other alternative but to treat the amount mentioned in that report as the amount of cash deposited by the appellant. The appellant has given a reasonable explanation that some of the entries have been repeated in the AIR information. This fact is clearly proved by the certificate from the HDFC bank dated 23.11.2009, which was furnished before me. Regarding the undisputed amount of Rs.32,86,000/-, I hold that the source of the same gets clearly explained by availability of heavy amount of cash from the bank account of the HUF of which the appellant was the Karta. It was informed that in view of the prolonged illness of the appellant, his wife used to manage even the accounts of the above HUF. The appellant has sufficiently furnished the source for cash withdrawal from the HUF bank account, which was in view of sale of the HUF property at 28A, Prithvi Raj Road, New Delhi, which was received by cheque and for which necessary confirmation from the buyer was furnished.

In view of the above, the cash deposit of Rs.32,86,000/- also get duly explained by the appellant. I have already held that the difference between amount of Rs.91,08,000/- as per the AIR information and the amount of Rs.32,86,000/- as per the HDFC bank, was an arithmetical error inadvertently crept in the AIR report.”

Hence this appeal by the Revenue before this Tribunal.

4. We have heard rival arguments of both the parties in the light of material on record before us. The Id. Departmental Representative submitted that despite several opportunities, the assessee did not support the assessment proceedings and he failed to submit detailed sources and information regarding the cash deposited by him in his HDFC bank account on different dates during the year under consideration. Therefore, the Assessing Officer rightly added this amount to the returned income of the assessee. He further submitted that the Id. Commissioner of Income Tax(A) admitted additional evidence without following Rule 46A of the Income Tax Rules, 1962 and impugned order has been passed on unreasonable and baseless grounds because the assessee intentionally concealed the details and information pertaining to cash deposited by him before the Assessing Officer. Therefore, the impugned order may be set aside restoring the assessment order.

5. The assessee's representative vehemently contested the above submissions and submitted that the Assessing Officer made an addition on the basis of wrong mathematical calculation and misinterpretation of the facts of the case. The AR also submitted that assessee properly and clearly explained the source of cash deposited in HDFC bank account as there was

sufficient availability of cash amount from the bank account of the HUF of which the appellant's wife was Karta and the appellant was Vendor of the HUF. The AR finally submitted that the assessee succeeded to substantiate the fact that the source of cash deposited to his account was withdrawals from the HUF bank account to which sufficient funds were deposited from sale proceed received by the HUF relating to HUF property situated at 28A, Prithviraj Road, New Delhi which was received by cheque and for which necessary confirmation from the buyer was also furnished.

6. At the outset, we note that the Id. AR admitted that there was a calculation mistake by the Assessing Officer and the Id. Commissioner of Income Tax (A) rightly held that the cash which was deposited to the HDFC bank account was of Rs.32,86,000 only, as the figures wrongly taken by the Assessing Officer. We observe that the only dispute in this appeal is pertaining to cash deposit of Rs.32,86,000 which was actually deposited to the assessee's HDFC bank account. The AR has also drawn our attention towards page no. 14 to 16 of Paper Book which shows that there was a Memorandum of Understanding (MOU) dated 21st October, 2003 between Bhai Manjit Singh (HUF) through its Karta Smt. Maheep Manjit Singh wife of the assessee and M/s Yahoo Properties Pvt. Ltd. related to sale of plot and construction thereon situated at 28-A, Prithviraj Road, New Delhi with a

total consideration of Rs.29 crores with an advance of Rs. 01.51 crores at the time of execution of MOU. We have also perused the letter dated 24.12.09 submitted by the Assessing Officer to the Id. Commissioner of Income Tax(A) regarding admissibility of additional evidence available on page 103-108 of the Paper Book which reveals that the Assessing Officer objected to the admission of additional evidence.

7. On bare reading of the impugned order, we observe that the Id. Commissioner of Income Tax(A) considered the assessment order with an open mind and firstly he arrived to the conclusion that the impugned cash deposited was only of Rs.32,86,000 and the Assessing Officer wrongly calculated the figure at Rs.91,08,000/-, and this fact has not been disputed by Id. DR before us. We further observe that the Id. Commissioner of Income Tax(A) admitted the additional evidence with the following observations:-

“On careful consideration of the facts of the case and the various conditions entailed in Rule 46A, I find that the major addition was on account of unexplained cash deposits in the bank statement. For this purpose, examination of the bank statement was a clear must. However, being an old record, the same was not provided by the bank to the appellant during the short period of 3 days between the last 2 hearings. The said bank statement was also sought by the learned Assessing Officer from the bank, however, till the date of assessment the Assessing Officer was not provided with the same by the bank. In view of the above, I find that there was sufficient cause for the appellant for not furnishing the key evidence, i.e. the bank statement

before the learned Assessing Officer which was relevant to the major ground of addition. Moreover, during the time when the assessment proceedings were finalized, the appellant was hospitalized with grave medical ailment. In view of the above, I allow admission of additional evidence under Rule 46A.”

8. Accordingly, the Id. Commissioner of Income Tax(A) admitted evidence accepting the ground that the appellant was hospitalized with grave medical ailment and further noted that the impugned cash deposits were of Rs.32,86,000/- only.

9. Therefore, we observe that the Id. Commissioner of Income Tax(A) admitted additional evidence following Rule 46A(1)(c) of the Income Tax Rules, 1962 (hereinafter referred to as the Rules) but he did not follow mandatory provisions of Rule 46A(3) of the Rules as after admission of additional evidence, the Assessing Officer should be given an opportunity to examine the evidence or document produced by the appellant and to produce any evidence or document in rebuttal of the additional evidence produced by the appellant.

10. At this juncture, we are inclined to take notice of judgment of **Hon’ble Jurisdictional High Court of Delhi in the case of Commissioner of Income Tax vs Manish Build Well (P) Ltd. in ITA No.928/2011 dated 15.11.2011 reported as (2011) 63 DTR Judgements 369** wherein their

lordships held that after admission of additional evidence, it is mandatory to follow Rule 46A(3) of the Rules but in the case in hand, we observe that the Id. Commissioner of Income Tax(A) merely proceeded to decide the matter on the objections of Assessing Officer on admission of additional evidence because as per letter of the Assessing Officer dated 24.12.2009 available on Paper Book from page 103 to 107, we observe that the Assessing Officer only objected the admissibility of additional evidence and restricted himself to comment on the merits of the evidence. Therefore, we finally observe that the Id. Commissioner of Income Tax(A) did not follow the mandatory procedure for consideration of additional evidence at the first appellate stage.

11. During the argument, the Id. DR submitted that the case should be restored to the file of the Assessing Officer for compliance of Rule 46A(3) of the Rules and the AR contended that if we reach to the conclusion that the matter needs to be considered by the authorities below, then the matter should be restored to the file of the Id. Commissioner of Income Tax(A). After careful consideration of above submissions and facts and circumstances of the case, we note that the Id. Commissioner of Income Tax(A) considered additional evidence violating Rule 46A(3) of the Rules but at the same time, we also observe that the appellant filed a Paper Book

containing 99 pages before the Commissioner of Income Tax(A) which he could not submit before the Assessing Officer during the assessment and the Assessing Officer concluded the assessment u/s 144 of the Act on the basis of material available on record before him. Therefore, we find it appropriate to restore the matter back to the file of the Assessing Officer for adjudication afresh after due consideration of additional evidence and affording a due opportunity of being heard to the assessee. In view of above, the appeal of the Revenue is disposed of and accordingly, it is treated as allowed for statistical purposes.

12. In the result, the appeal of the Revenue is allowed as indicated above.

Order pronounced in the open court on 29.8.2012.

Sd/-

(J.S. REDDY)
ACCOUNTANT MEMBER

Sd/-

(CHANDRAMOHAN GARG)
JUDICIAL MEMBER

DT. 29th AUGUST 2012
'GS'

Copy forwarded to:-

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

By Order

Deputy Registrar