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IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)

BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
and
SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No.6250/Del./2013
(ASSESSMENT YEAR : 2005-06)

M/s. ONS Creations Pvt. Ltd., M – 2 / A4, Jhule Lal Apartment, Pitampura, New Delhi – 110 088.	vs.	ITO, Ward 13 (4), New Delhi.
(PAN : AAACO7606H)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, FCA
REVENUE BY : Shri P. Dam Kanunjna, Senior DR

Date of Hearing : 12.06.2015
Date of Pronouncement : 17.06.2015

O R D E R

PER GEORGE GEORGE K., JUDICIAL MEMBER :

This appeal, at the instance of the assessee, is directed against the order of the Commissioner of Income-tax (Appeals)-XVI, New Delhi dated 30.09.2013. The relevant assessment year is **2005-06**.

2. The assessment in assessee's case was completed u/s 144 of the Income-tax Act, 1961 on 28.12.2007 at a total income of Rs.2,54,57,920/- as against the returned income of Rs.1,30,730/-. The ld. CIT, Delhi V, New Delhi passed an order dated 18.05.2009 u/s 263 and directed the

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Assessing Officer to make addition of Rs.61,85,419/- to the assessee's income on account of unexplained loans along with any interest claimed on those loans and a further addition of Rs.40 lacs on account of unexplained share capital as the assessee failed to establish before the CIT during the proceedings u/s 263 the identity and creditworthiness of the persons from whom the aforesaid loans and share capitals shown to have been received. Against the order of the CIT passed u/s 263 of the Act, the assessee filed an appeal before the Tribunal. The Tribunal, justifying the order of the CIT Delhi V passed u/s 263, restored the matter back to the Assessing Officer for providing an opportunity of being heard before making any addition on the issues. In that view of the matter, the Assessing Officer asked the assessee to explain its case on 13.01.2012 but no compliance was made on the said date. The Assessing Officer gave another opportunity and fixed the case for 06.02.2012 but on that day also, nobody appeared on behalf of the assessee. Accordingly, the Assessing Officer passed the assessment order giving effect to the order of CIT Delhi V dated 18.05.2009 as amended by the Tribunal's order dated 27.05.2011 and completed the assessment on total income of Rs.3,56,43,339/- after making addition on account of unexplained loans of Rs.61,85,419/- and on account of unexplained share capital of Rs.40 lacs.

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3. Aggrieved, the assessee preferred an appeal before the CIT (Appeals). The CIT (A) confirmed the additions made by the Assessing Officer.

4. The assessee, being aggrieved, is in appeal before us by taking eight grounds.

5. At the outset of the hearing, the ld. Counsel has raised ground no.4 which reads as under :-

> ***"4. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in not admitting the additional evidences filed by the assessee under Rule 46A of the Act despite the fact that there was a reasonable cause for the assessee for not filing the same before the AO."***

The ld. Counsel submitted that the Tribunal had earlier directed the Assessing Officer to pass the assessment order after providing an opportunity of being heard to the assessee, however, the Assessing Officer passed the order ex-parte. The ld. Counsel submitted that no notice was ever served on the assessee, therefore, there was no occasion for the assessee to appear before the Assessing Officer. The ld. Counsel submitted that additional evidences under Rule 46A of the Act were produced before the CIT (A). The assessee pleaded before the CIT (A) to accept these evidences as the same establishes the genuineness of the transactions done by the assessee and go to the root of the additions made by the Assessing Officer. It was also submitted that since these

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documents/ evidences had been procured after completion of the assessee, there was no occasion to file these evidences during the course of the assessment. Ld. Counsel submitted that CIT (A) has erred in not accepting the additional evidences which goes to the root of the matter. Therefore, he pleaded to admit the additional evidences and restore the matter back to the file of the Assessing Officer.

6. Ld. DR relied on the orders of the authorities below.

7. We have heard both the rival submissions and perused the material on record. We find that the Tribunal has earlier restored the matter to the Assessing Officer for providing an opportunity of being heard to the assessee, however, the order was passed ex-parte. The assessee submitted additional evidences under Rule 46A before the CIT (A) but the CIT (A) has not admitted the same. We find from the order of the CIT (A) that the CIT (A) himself recorded that the evidences filed by the assessee goes to the root of the issues. The relevant finding of the CIT (A) reads as follows:

> ***"4.7 Without prejudice to the above, since the evidences filed by the appellant goes to the root of the issues in appeal, therefore, to decide the issue in appeal on merit, it is necessary to examine the evidences submitted by the appellant. From the original assessment order, it is evident that the books of accounts were never produced before the AO by the appellant, despite several opportunities allowed. As evident from the original assessment, the director and AIR appeared before the AO on several occasions but failed to produce the books of accounts despite repeated reminders by the AO to produce***

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the same. In the absence of books of accounts the transactions of unsecured loans and share application moneys received by the appellant from the cash creditors! share applicants are not verifiable."

In this view of the matter, we admit the additional evidences. Accordingly, we set aside the orders of the authorities below and restore the matter back to the file of the Assessing Officer to decide afresh after providing an opportunity of being heard to the assessee. It is ordered accordingly.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on this 17th day of June, 2015.

Sd/-	**sd/-**
(S.V. MEHROTRA)	**(GEORGE GEORGE K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 17th day of June, 2015
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Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)-XVI, New Delhi
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.