

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. L.P.SAHU, ACCOUNTANT MEMBER
ITA No. 2943/Del/2014
(Assessment Year: 2004-05)**

ITO Ward-6(3) New Delhi	Vs.	Mehrasons Jewellers Pvt. Ltd. 2, Ajmal Khan Road, Karol Bagh New Delhi PAN : AAACM1118L
PAN :		
(Appellant)		(Respondent)

Revenue by	Sh. S.R. Senapati, Sr. DR
Assessee by	None

Date of Hearing	12.03.2018
Date of Pronouncement	26.03.2018

ORDER
PER L.P.SAHU, ACCOUNTANT MEMBER :

This is an appeal filed by the revenue against order of the Id. CIT(A)-IX, New Delhi order dated 07.02.2014 for assessment year 2004-05 on the following grounds of appeal :-

1. *"The order of the learned CIT (APPEALS) is erroneous and contrary to facts and law.*
2. *On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs.95,00,000/- made by the AO on account of unexplained cash credit from an entry operator completely ignoring the findings given by the Hon'ble Delhi High Court in cases like CIT V. Nova Promoters 342 ITR 169, CIT v. NR Portfolio [2013] 29 taxmann.com 291 (Delhi), CIT v. N Tarika Properties (ITA No.2080/2010, dated 28.11.2013) etc. wherein the Hon'ble Delhi High Court has clearly held that reopening of assessment is justified in case of information received from the Investigation Wing and the onus is on the assessee to establish identity & Creditworthiness of Creditors*

and Genuineness of transactions.

3. *Whether in the facts and circumstances of the case & in law, the Ld. CIT(A) erred in holding that the A.O. made no efforts in verifying the facts by summoning the parties by completely ignoring the facts that the assessee was given repeated opportunities but the assessee failed to make compliance of any of the statutory notices as clearly mentioned in the assessment order?*
4. *Whether in the facts and circumstances of the case & in law, the order of the Ld. CIT(A) erred in holding that the case of the assessee is of 'mistaken identity' without providing the A.O. any opportunity to rebut the claim of the assessee under Rule 46A.*
5. *Whether in the facts and circumstances of the case & in law, the Ld. CIT(A) erred in allowing relief to the assessee without calling for Remand report from the A.O. despite the fact that additional evidences were submitted by the assessee and without providing any opportunity to the A.O. under Rule 46A.*
6. *That the grounds of appeal are without prejudice to each other."*

2. The brief facts of the case are that the assessee filed return of income on 01.11.2004 declaring a loss of Rs. 29,90,704/-. The case was processed u/s 143(1) of the IT Act on 29.12.2004.

3. None present on behalf of the assessee despite of many notices were issued to the assessee . Therefore, the case was heard in the absence of the assessee.

4. The brief facts of the case are that a survey operation was conducted u/s 133A on 20.11.2007 by ITO (Investigation), Unit VI(3), New Delhi in the case of Sh. Suresh kumar Gupta at his various business premises, wherein several ledger accounts maintained in tally for the period of 2003-04 were found, it was observed that Sh. S.K.Gupta is engaged as an entry operator and provided accommodation entries to various beneficiaries through a large number of shell companies managed by him. It was further observed by the investigation wing that the assessee company was also a beneficiaries company who have received accommodation entries from Sh. S.K.Gupta and his associates.

5. On the basis of information received from the investigation wing, the case was reopened by issuing notice u/s 147/148 after recording reasons for making reassessment . The ld. Assessing officer issued various statutory notices u/s 142(1). The assessee did not comply to the statutory notices issued by the assessing officer, therefore, assessment proceedings were completed ex-parte after following the due procedures for making assessment U/s 144 and finally on the basis of materials available on record the assessing officer completed the assessment U/s 144 by making addition on account of un-explained cash credit u/s 68 of Rs. 95,00,000/-. Aggrieved by the additions the assessee appealed before the CIT(A). The Ld. CIT(A) after considering the submissions of the assessee, he allowed the appeal of the assessee without verifying the documents submitted by the assessee and deleted the additions The Ld. CIT (A) also accepted the additional evidence filed by the assessee. Feeling aggrieved by the order of the CIT(A), the revenue is in appeal before the ITAT.

6. At the outset of the hearing, the ld. DR submitted that the ld. CIT(A) has deleted the additions without making any verification of the facts as pointed out by the assessing officer. The assessment was completed ex-parte u/s 144 of the Income Tax Act 1961. The assessee did not appear before the ld. Assessing officer and he submitted additional evidence before the ld. CIT(A) . The ld. CIT (A) without calling remand report from the assessing officer accept the additional evidences filed by the assessee. In the interest of natural justice at least the Remand Report should have been called for from the Assessing officer. Therefore, ld. DR requested that the matter should go back to CIT(A) for afresh adjudication after giving due opportunity to the ld. Assessing officer which was not granted earlier.

7. After hearing the arguments of the ld. DR and perusing the materials available on record, we observe that the assessee has filed a paper book which

contains page no. 1 to 49 which has not been certified by the appellant or any other authorized persons. The Id. CIT(A) has decided the issue on the basis of documents filed before him. There is no clear from the order of the Id. CIT(A) that what type of documents were submitted before him by the assessee and on those documents whether the Id. CIT has conducted any enquiry or not . The Remand report were also not called from the Assessing officer where as the assessee has filed additional evidence under Rule 46A which has been accepted by him without conducting any further enquiry. In these circumstances , we think it appropriate in the interest of natural justice to restore the matter back to the file of Id. CIT(A) for deciding the appeal afresh after giving reasonable opportunity of being heard to the assessing officer. The assessee is directed to cooperate with the first appellate authority in hearing the appeal, and shall not seek any unnecessary adjournment. We order accordingly.

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

Order pronounced in the open court on 26th March, 2018.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Date: 26 .03.2018

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copy of order to: -

- 1) The Appellant;
 - 2) The Respondent;
 - 3) The CIT;
 - 4) The CIT(A)-, New Delhi;
 - 5) The DR, I.T.A.T., New Delhi;
- True Copy

By Order
ITAT, New Delhi
Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi

S.No.	Details	Date
1	Draft dictated on	23.03.2018
2	Draft placed before author	23.03.2018
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement on	
7	File sent to Bench Clerk	
8	Date on which the file goes to the Head Clerk	
9	Date on which file goes to the A.R.	
10	Date of Dispatch of order	

