

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI R.K.GUPTA, JUDICIAL MEMBER

ITA No.3707/Del/2011
Assessment Year : 2008-09

Income Tax Officer,
Ward-46(3),
New Delhi.

(Appellant)

Vs. Mrs. Anvita Abbi,
70, Dakshin Puram,
Jawaharlal Nehru University,
New Delhi – 110 067.
PAN : AAFFA0510L.
(Respondent)

Appellant by : Ms. Y.Kakkar, Sr.DR.
Respondent by : Shri P.J.Khanna, CA.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the Revenue is directed against the order of learned CIT(A)-XXX, New Delhi dated 25th May, 2011 for the AY 2008-09.

2. The Revenue has raised the following grounds:-

“On the facts and circumstances of the case and in law, the ld.CIT(A) has erred in :

(I) deleting the addition of Rs.14,00,000/- rightly made by the Assessing Officer on account of unexplained investment in REC Bonds;

(II) allowing the assessee to produce any evidence before him which is in violation of Rule 46A(1) of the I.T.Rules 1962;

(III) admitting the evidences produce by the assessee without recording the reasons in writing for doing so which is in violation of Rule 46A(2) of the I.T.Rules 1962;

(IV) not allowing the Assessing Officer a reasonable opportunity to examine and rebut the said evidences produced by the assessee, which is in violation of Rule 46A(3) of the I.T.Rules 1962."

3. At the time of hearing before us, it was stated by the learned DR that the assessee did not appear before the Assessing Officer and did not explain the source of investment of ₹14,00,000/- in Rural Electrification Corporation Ltd. (REC) Bonds. Therefore, the Assessing Officer rightly made the addition thereof. That the assessee furnished fresh evidence before the learned CIT(A). That the CIT(A) admitted the same and, relying upon the fresh evidence, allowed relief to the assessee. That the action of the CIT(A) is in clear violation of Rule 46A of the Income-tax Rules, 1962. She, therefore, submitted that the order of CIT(A) should be reversed and that of the Assessing Officer may be restored.

4. The learned counsel for the assessee, on the other hand, stated that the assessee is a Professor in Jawaharlal Nehru University. During the relevant time when the assessment proceedings were in progress, she was outside India, therefore, could not appear before the Assessing Officer. That the investment in REC Bonds was not made by the assessee but her husband Mr. Satish Chand Abbi. That Mr. Satish Chand Abbi made the above investment out of the sale of ancestral property. The evidences furnished before the learned CIT(A) were only those details which were already furnished in the income tax record of Mr. Satish Chand Abbi. He, therefore, submitted that the order of learned CIT(A) is quite fair and reasonable. The same should be sustained.

5. We have carefully considered the arguments of both the sides and perused the material placed before us. Rule 46A of the Income-tax Rules reads as under:-

“[Production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)].

46A. (1) *The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—*

(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or

(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or

(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]”

6. Admittedly, learned CIT(A) admitted the fresh evidences but did not allow any opportunity to the Assessing Officer for examining those evidences or furnishing any evidence in rebuttal as required by sub-rule (3) of Rule 46A. Therefore, the order of learned CIT(A) is in violation of Rule 46A. In view of the above, we set aside the orders of authorities below and restore the matter to the file of the Assessing Officer. We direct the assessee to produce all the evidences before the Assessing Officer. The Assessing Officer is also directed to allow adequate opportunity to the assessee to produce all these evidences before him. The Assessing Officer will readjudicate the issue afresh after considering all the evidences as may be furnished by the assessee before him.

7. In the result, the appeal of the Revenue is deemed to be allowed for statistical purposes.

Decision pronounced in the open Court on 20th September, 2013.

Sd/-

(R.K.GUPTA)
JUDICIAL MEMBER

Sd/-

(G.D.AGRAWAL)
VICE PRESIDENT

Dated : 20.09.2013

VK.

Copy forwarded to: -

1. Appellant : **Income Tax Officer,
Ward-46(3), New Delhi.**
2. Respondent : **Mrs. Anvita Abbi,
70, Dakshin Puram,
Jawaharlal Nehru University, New Delhi – 110 067.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar