

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 455 of 2009 (O&M)

Date of decision: November 10, 2009

Commissioner of Income Tax-I, Amritsar ...Appellant

Versus

M/s Central Mall ...Respondent

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE GURDEV SINGH**

Present: Ms. Naveender P.K. Singh, Advocate, for the appellant.

ORDER

1. The revenue has preferred this appeal under Section 260A of Income Tax Act, 1961 (for short, "the Act") against the order of Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, dated 22.1.2009 passed in ITA No. 433/ASR/2008 for the assessment year 2003-04, proposing to raise the following substantial questions of law:-

“(i) Whether on the facts and in the circumstances of the case, the ITAT Amritsar Bench, Amritsar was justified in law while deleting the additions of Rs. 20,21,710/- by including the provision for future expenses in the value of the work in progress as on 31.03.2003 relying on the affidavit filed by the assessee which was never produced before the AO and which is in contravention of Rule 46A of the I.T.Rule 1962.

ii) Whether on the facts and in the circumstances of the case,

the ITAT Amritsar Bench, Amritsar was justified in law by accepting evidence by way of an affidavit which was not produced before the AO contrary to the provisions as laid down in rule 46A of the I.T. Rule, 1962.”

2. The assessee is a builder. In the course of assessment the Assessing Officer made addition to the declared income on the basis of the valuation of the work in progress. CIT (A) upheld the valuation of the assessee. The CIT (A) took into account affidavit filed before it by the assessee reiterating its stand. The view taken by the CIT (A) was upheld by the Tribunal, rejecting the contention that additional affidavit could not be taken into account, as doing so would violate Rule 46A of the Income Tax Rule 1962. The Tribunal observed as under:-

“...16. The affidavit filed by the assessee before the learned CIT (A) was in reiteration of the above contention. Therefore, there was no error on the part of the CIT (A) in admitting such affidavit. Rather, it was erroneous on the part of the A.O. To hold that the third and fourth floors of the Central Mall had not been constructed during the year under consideration. That the provision was allowed for the common facilities and amenities, as above, is also patent on record.”

3. We have heard learned counsel for the revenue.

4. It is clear that the affidavit filed by the assessee was mere reiteration of the contention raised before the Assessing Officer. Rule 46A applies when there is additional evidence and not when there is affidavit reiterating the submissions.

5. No substantial question of law, thus arise for consideration.

6. The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

November 10, 2009
prem

(GURDEV SINGH)
JUDGE