

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH "F" DELHI)

BEFORE SHRI A.D. JAIN AND SHRI SHAMIM YAHYA

ITA NO. 4690(Del)2009  
Assessment year: 2001-02

Income Tax Officer,  
Ward 28(3), New Delhi.

Shri Pawan Kumar Gupta,  
V. 6114/10 Ram Dev Market Khari Bauli,  
New Delhi.

(Appellant)

(Respondent)

Appellant by: Shri H.K. Lal, Sr. DR  
Respondent by: Shri Piyush Kaushik Advocate

ORDER

PER A.D. JAIN, J.M.

This is Department's appeal for the assessment year 2001-02 against the CIT(A)'s action of deleting addition of Rs. 49 lakhs made by the AO u/s 69A of the Income Tax Act.

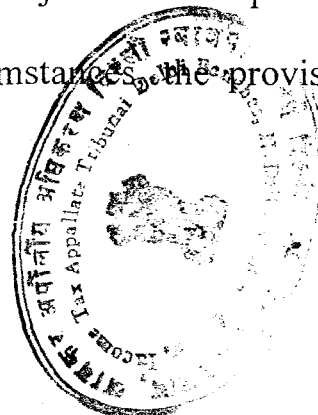
2. The assessee is a partner in the firm M/s. Om Prakash Subhash Kumar, engaged in the business of trading in kirana goods and spices. The completed assessment of the assessee was reopened on the basis of the information received from DCIT, Central Circle-19, New Delhi which referred money lending activity carried out by one Brij Mohan Gupta, in whose case, search operation was carried out on 15.12.2004 u/s 132 of the



Income Tax Act. The said letter of DCIT enclosed two lists containing the names of the parties who have received cash loans from hundies and also names of the parties who had advanced cash loans from Shri Brij Mohan Gupta. The transactions worth Rs. 49 lakhs were, on the basis of the contents of the said letter, observed to have been carried between the assessee and Shri Brij Mohan Gupta, statements on oath of Shri Brij Mohan Gupta, his son and his accountant were recorded. He, inter alia, has admitted having involvement in the unaccounted cash hundi transactions/cash loan transactions on behalf of various parties. It was on this that the assessee's case was reopened. In the assessee's case, on the basis of the said statement, the AO made addition of Rs. 49 lakhs u/s 69A of the I.T. Act, though the assessee had, before the AO, denied having had any transaction with Brij Mohan Gupta and his associates.

3. By virtue of the impugned order, the Id. CIT(A) deleted the addition. This has brought the Department before us by way of the present appeal.

4. Challenging the impugned order, the Id. DR has contended that the Id. CIT(A) has erred in deleting the addition of Rs. 49 lakhs rightly made by the AO u/s 69A of the I.T. Act, ignoring that the assessee had failed to offer any explanation regarding his transactions with Brij Mohan Gupta and his associates; and that in these facts and circumstances, the provisions of



section 69A of the I.T. Act were correctly invoked by the AO and the addition made was on all force.

5. Per contra, the learned counsel for the assessee has placed strong reliance on the impugned order. It has been contended that the addition was rightly deleted by the Id. CIT(A); that the sole basis of the addition was the statement of Shri Brij Mohan Gupta, his son and the accountant, which were never provided to the assessee for rebuttal nor was any opportunity granted to the assessee to cross examine the deponents; that even though the matter was remanded by the CIT(A) to the AO for doing the needful, the situation remained much the same and the addition remained made without opportunity to the assessee despite repeated requests in this regard by the assessee. Reliance has been placed on the following case laws:-

1. "CIT v. Pradeep Kumar Gupta", [2008] 303 ITR 95(Del);
2. "CIT v. Rajesh Kumar", [2008] 306 ITR 27(Del);
3. "CIT v. Dharam Pal Prem Chand Ltd.", [2007] 295 ITR 105(Del);
4. "CIT v. SMC Share Brokers Ltd.", [2007] 288 ITR 345(Del);
5. "S. C. Gupta v. ITO", 2010-TIOL-155-ITAT-DEL;
6. "ACIT v. Anima Investment Ltd.", [2000] 73 ITD 125(Del, TM);
7. "DCIT, Central Circle 11 v. Rohtas Projects Ltd." [2006] 100 ITD 113;
8. "Raj Kumar Jain v. ACIT", 50 ITD 1 (TM); and
9. "Smt. Neena Syal v. ACIT", 70 ITD 62.

6. We have heard the parties and have perused the material on record.

The issue is as to whether the Id. CIT(A) was justified in deleting the



addition made by the AO on the basis of the statements which were never confronted to the assessee for rebuttal nor any opportunity granted to the assessee to cross examine the deponents inspite of repeated requests by the assessee to the AO to allow such opportunity. Undeniably, the statement of Shri Brij Mohan Gupta, his son Rajeev Gupta and the Accountant Ram Avtar Singhal are the basis of the addition made by the AO u/s 69A of the I.T. Act. Undeniably, again, these statements were never provided to the assessee for rebuttal. Also, he was not afforded any opportunity to cross examine the deponents of these statements. This despite the fact that the assessee had made repeated requests to the AO for providing the statements to him and for affording him an opportunity to cross examine these deponents. Pertinently, even at the first appellate stage, the matter was remitted by the Id. CIT(A) to the AO, however, once again, no such opportunity was provided to the assessee.

7. It was on these facts that the Id. CIT(A) deleted the addition. The Id. CIT(A) further observed that the AO had failed to establish any case against the assessee, nor was any corroborative evidence gathered by the AO in relation to the assessee. The AO, as observed by the Id. CIT(A), merely summarized the salient features of the assessment proceedings relating to Brij Mohan Gupta and thereafter, summarily rejected the reply of the



assessee as not acceptable. Though the AO referred to the statement of Brij Mohan Gupta and others admitting their involvement in cash loan transactions, these statements were not provided to the assessee. The allegation of the assessee having entered into loan transaction with Brij Mohan Gupta was not proved, since nothing was brought on record by the AO regarding any further investigations to confirm any such loan transaction.

8. In "Pradeep Kumar Gupta" (supra), it has been held that initiation of reassessment proceedings on the basis of the deposition of the third party, without allowing opportunity of cross examination to the assessee, despite specific demand, is not valid.

9. In "Rajesh Kumar" (supra), it was held that revenue having collected material behind the back of the assessee and hence the same against him without disclosing material to the assessee on giving an opportunity to cross examine the person whose statement had been used against the assessee for making the addition, there was a clear violation of the principles of natural justice, justifying the deletion of the addition.

10. In "Dharam Pal Prem Chand" (supra), "SMC Share Brokers Ltd" (supra) and "S.C. Gupta" (supra) are also to the same effect. "S.C. Gupta" (supra) was authored by one of us (J.M.).



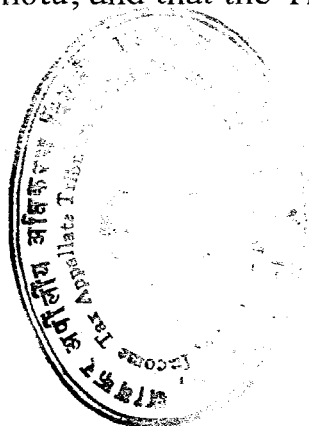
11. For the proposition that the matter now be sent back to the AO for providing requisite opportunity of rebuttal and cross examination to the assessee, the learned counsel for the assessee has vehemently opposed it. He has contended that the deficiency of the Department cannot now be made good. He has relied on the following case laws:-

1. "ACIT v. Anima Investment Ltd.", [2000] 73 ITD 125 (Del, TM);
2. "DCIT, Central Circle 11 v. Rohtas Projects Ltd." [2006] 100 ITD 113;
3. "Raj Kumar Jain v. ACIT", 50 ITD 1 (TM); and
4. "Smt. Neena Syal v. ACIT", 70 ITD 62.

12. In "Anima Investment Ltd." (supra) the Third Member Bench of the Tribunal held that the powers of the Tribunal in the matter of setting aside an assessment cannot be exercised to allow the AO to make up the deficiency of his case.

13. In "Rohtas Projects Ltd." (supra), another Third Member Bench of the Tribunal held that the Department cannot be given a fresh innings in the absence of any material brought on record by the Departmental Authorities.

14. In "Raj Kumar Jain" (supra), yet another Third Member Bench of the Tribunal held that if the additions are not supported by evidence, it is not for the Tribunal to start investigations suo motu; and that the Tribunal is not an



Income Tax Authority and cannot order further enquiry to sustain an addition.


15. Similarly in "Smt. Neena Syal" (supra), it has been held that it is not the function of the Tribunal to allow further opportunity to the AO by restoring the matter back to his file, so as to allow legal lapses made by him to be covered up.


16. No case law contrary to those cited by the learned counsel for the assessee, either for the proposition that where the assessee was not afforded any opportunity of rebuttal or cross examination, the addition was not valid, or for the proposition that in a case of no opportunity provided to the assessee, the matter cannot be set aside to the AO to fill up the lacuna, have been quoted by the Department.

17. In view of the above, finding no error whatsoever with the order of the Id. CIT(A), the same is hereby confirmed.

18. In the result, the appeal filed by the Department is dismissed.

Order pronounced in the open court on 14.06.2010.

  
(Shamim Yahya)  
Accountant Member

  
(A.D. Jain)  
Judicial Member

Dated: 14.06.2010

\*RM



copy forwarded to:

1. ITO, Ward 28(3), New Delhi.

2. Shri Pawan Kumar Gupta, *Regd. No. 1070*  
6114/10 Ram Dev Market Khari Bauli, New Delhi.

3. CIT

4. CIT(A)

5. DR

True copy

By order

**उपायुक्त पंजीवाह**  
Deputy Assistant Registrar  
**जायकर अपीलिय अधिकरण**  
**Income Tax Appellate Tribunal**  
दिल्ली पीठ, नई दिल्ली  
Delhi Bench, New Delhi

