

आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
श्री बी. आर. बास्करन, लेखा सदस्य एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE S/SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.5138/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2007-08)

Smt. Avan Gidwani 92-B, Embassy Apartments, 46, Nepean Sea Road, Malabar Hill, Mumbai - 400036	बनाम/ Vs.	Asstt. Comm. Of Income Tax Central Circle 22 Room No.466, Aayakar Bhavan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACPG4060C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Prakash Jotwani
Department by:	Shri Ganesh Bare

सुनवाई की तारीख / Date of Hearing: 07.01.2016

घोषणा की तारीख /Date of Pronouncement: 06.04.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The appeal filed by the assessee is directed against the order dated 24.09.2015 passed by the Commissioner of Income Tax (Appeals)-51, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2007-08.

2. The assessee is aggrieved by the decision of learned CIT(A) in not admitting additional evidences produced before him and also in

confirming the addition of Rs.10.06 crores made by the Assessing Officer.

3. The learned counsel appearing for the assessee submitted that the Assessing Officer has assessed an amount of Rs.10.06 crores alleging that the assessee is the beneficial owner, settler and beneficiary of a bank account maintained with HSBC Bank, Geneva on the basis of certain documents available with him(which is referred to as base note in the order). The learned counsel submitted that the assessee was not provided with the information that was available with the Assessing Officer at the time of assessment proceedings, even though it was only shown to the assessee at the time of recording statement. In the absence of the relevant details, the assessee could not effectively controvert the said documents. The Ld A.R submitted that the Assessing Officer, on the contrary, has alleged that the assessee has not provided the information relating to bank account and accordingly made the impugned addition.

4. The learned AR submitted that the assessee has required to move an application before Hon'ble High Court of Bombay for obtaining the alleged incriminating information from the Assessing Officer. The said incriminating information was provided to the assessee only after the completion of the assessment and during the pendency of the appeal with Ld CIT(A). Upon receipt of the same the assessee has collected necessary details from various sources. Accordingly, the assessee moved an application before learned CIT(A) for admitting the same as additional evidence. The Ld CIT(A) accordingly called for a remand

report from the assessing officer in respect of the petition filed by the assessee for admission of additional evidences. The AO, however, objected to the same and accordingly, on the basis of remand report given by the Assessing Officer, the learned CIT(A) has refused to admit the additional evidences. In this connection he held that conditions prescribed in Rule 46A of the Income Tax Rules has not been satisfied by the assessee. The learned AR submitted that the assessee would be in a position to give necessary explanations with regard to the materials on the basis of which the addition has been made by the Assessing Officer, only if the additional evidences are admitted. Accordingly the learned AR submitted that learned CIT(A) was not justified in refusing to admit the additional evidences.

5. The learned DR, on the contrary, submitted that the admission of additional evidence under rule 46A of the Income Tax Rules is not automatic and it is the duty of the assessee to properly make out a reasonable case in order to show that the conditions prescribed under rule 46A of the Income Tax Rules have been satisfied. The learned DR placed reliance on the decisions rendered by the Hon'ble Gauhati High Court in the case of CIT Vs. Ranjit Kumar Choudhary 288 ITR 179 and also decision of Hon'ble Bombay High Court in the case of Smt. Prabhavati S. Shah 231 ITR 01 and submitted that the production of additional evidences is not a matter of right available with the assessee. The learned DR also placed reliance on the decision rendered by Hon'ble Gujarat High Court in the case of Fairdeal Filaments Ltd. Vs. CIT 302 ITR 173 and also the decision rendered by Hon'ble Allahabad

High Court in the case of Ram Prasad Sharma Vs. CIT 119 ITR 867 and also decision rendered by Hon'ble Rajasthan High Court in the case of CIT Vs. Rao Raja Hanutsingh 252 ITR 528 other case laws in support of the above said proposition. The learned DR further submitted that circumstantial evidence can be used to make assessment and in this regard, he placed reliance on the decision rendered by Income Tax Appellate Tribunal, Delhi Bench in the case Hersh W. Chadha [2011] 9 taxmann.com 1 (Delhi)/ [2011] 43 SOT 544 (Delhi)/ [2011] 135 TTJ 513 (Delhi). The learned D.R further submitted that an identical issue was considered by the co-ordinate bench in the case of Mohan Manoj Dhupelia in ITA No. 3544/Mum/2011 dated 31.10.2014 and the same was decided against the assessee. The learned DR further submitted that the learned CIT(A) has passed the reasoned order for refusing to admit additional evidences and accordingly contended that the order passed by learned CIT(A) on this issue should be upheld.

6. The learned AR, in the rejoinder, submitted that the principle of natural justice demands that various evidences furnished by the assessee are required to be considered before adjudicating the issue. The AR submitted that the assessee could collect various documents only after passing of the assessment order and non-consideration of the same would result in violation of principles of natural justice. The learned AR further contended that rule 46A of the Income Tax Rule cannot be over ride the principles of natural justice.

7. We have heard the rival contentions and perused the record. According to the assessee, the details and evidences which were relied

upon by the Assessing Officer was provided to him only after passing of assessment order. It was submitted that the information available with the AO was only shown to the assessee at the time of recording statements from the assessee, but the copy thereof was not given. This shows that the assessee was not given the incriminating documents and hence, the assessee was not in a position to controvert the same. It was submitted that the assessee was given the copies of incriminating documents that were relied upon the Assessing Officer after certain Court proceedings, that too after the completion of the assessment. Thereafter, the assessee has collected various details from various sources and compiled the same in the form of additional evidences. Accordingly, the assessee has moved a petition before the learned CIT(A) for admitting the same as additional evidence. As noticed earlier, the objected to the admission of the same in the remand report given by him. The learned CIT(A) has also expressed the view that the assessee has failed to satisfy the conditions prescribed under Rule 46A of Income Tax Rules. Accordingly he has refused to admit the additional evidences.

8. From the facts narrated above, we notice that the assessee could collect various evidences only after passing of the assessment order. According to the assessee, these additional evidences are vital documents which are required to be considered in order to adjudicate the issue in a judicious manner. The principle “Audi alteram partem”, *i.e.* no man should be condemned unheard is the basic canon principles of natural justice and accordingly we find merit in the contentions of the

assessee that Rule 46A of the Income Tax Rules cannot be over ride the principles of natural justice. Hence we are of the view that the learned CIT(A) was not justified in refusing to admit the various additional evidences furnished by the assessee. Since the assessee was not given opportunity to contradict the findings given by the AO by not admitting the additional evidences, we are of the view that the Ld CIT(A) should re-adjudicate all the issues afresh by admitting the additional evidences. Accordingly, we set aside the order of learned CIT(A) and restore all the issues to the file of the learned CIT(A) with the direction to admit the additional evidences that may be furnished by the assessee. After admitting the same, the learned CIT(A) may call for the remand report from the Assessing Officer, if he found the same necessary. After confronting with the remand report, if any, that may be furnished by the AO with the assessee, the learned CIT(A) may take appropriate decision in accordance with law.

9. In result the appeal filed by the Assessee is treated as Allowed for statistical purpose.

Order pronounced in the open court on 6th April, 2016

Sd/-

Sd/-

(B.R.BASKARAN)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 6th April, 2016

MP

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai