

CIT(A) has to submit additional evidence to AO even if it is nature of clinching evidence

Summary – The High Court of Kerala in a recent case of E.D. Benny., (the Assessee) held that Even if additional evidence produced by assessee are in nature of clinching evidence leaving no further room for any doubt or controversy, Commissioner (Appeals) is under statutory obligation to put additional material/evidence taken on record by him to Assessing Officer

Facts

- The assessee was a partner in various business concerns and the other partners of these firms above the family members of the assessee. A search under section 132 was conducted in the business premises of various firms and the residences of the partners on 26-3-2008. During the course of the search, various incriminating documents were found and seized and statements of the partners were also recorded.
- The Assessing Officer completed assessment under section 153A read with section 144. The assessment in respect of the assessment year 2008-09 was also completed under section 143(3) read with section 144.
- The assessee filed appeals before the Commissioner (Appeals). In the appeals, paper books containing detailed written statements on various issues raised, cashflow statements filed before the Assessing Officer, replies filed in response to various notices issued by the Assessing Officer and the evidences/workings in support of various claims made in the appeals were also filed.
- On the filing of the additional evidence before him, the Commissioner (Appeals) forwarded the paper books itself to the Assessing Officer and required the Assessing Officer to examine the new evidences/details/submissions of the assessee and to give a report. Accordingly, the Assessing Officer submitted his report.
- The Appellate Authority considered the matter in the light of the provisions contained in rule 46A and passed order in which he concluded that the assessee was prevented by reasonable and sufficient causes from furnishing various details/evidences at the assessment stage. Therefore, considering the totality of the facts and circumstances of the case, the additional evidences/details filed by the appellant were admitted and adjudicated in this appeal.
- The Revenue contended that Commissioner (Appeals) could not take evidence on record without giving an opportunity to Assessing Officer to deal with the same.
- On cross appeal, the Tribunal upheld the order of the Commissioner (Appeals).
- On appeal :

Held

- Reading of the finding of the Tribunal would suggest that according to it, if additional documents are summoned by the Commissioner (Appeals) and produced or if the additional evidence produced by the assessee are in the nature of clinching evidence leaving no further room for any doubt or

controversy, it is not necessary to give an opportunity to the Assessing Officer to contradict the same. In other words, the finding of the Tribunal would suggest that in cases where documents are summoned by the Commissioner (Appeals) and in cases where the documents produced are conclusive, the principles of natural justice are excluded. These findings of the Tribunal could not be enclosed. As held by Delhi High Court in *CIT v. United Towers (I.) (P.) Ltd.* [\[2008\] 296 ITR 106/172 Taxman 267](#), rule 46A(4) of the Rules does not specifically exclude the principles of natural justice and, therefore, these principles are to be read into the Rules. Therefore, the finding of the Tribunal set aside.