

ITAT criticized CIT (A) for accepting additional evidence without affording an opportunity to AO to rebut the same

Summary – The Pardeepa Rani in a recent case of Raj Jain., (the Assessee) held that In view of provisions of sub-rule (3) of rule 46A of Income-tax Rules, 1962, additional evidence shall be taken into account by Commissioner (Appeals) only if it has been confronted to Assessing Officer and a reasonable opportunity to rebut same has been provided to him

Facts

- For relevant year, assessee filed her return declaring certain taxable income. During assessment proceedings, Assessing Officer noticed that assessee had failed to produce necessary documents in support of purchase of house property. He thus added purchase consideration to assessee's income as unexplained investment under section 69.
- The assessee in appeal filed fresh evidences contending that due to her health problems, she had shifted temporarily to her in-laws native village and, thus, notices sent to her address remained uncomplished with.
- The Commissioner (Appeals) having accepted assessee's explanation, admitted additional evidence furnished by assessee.
- The revenue filed instant appeal contending that the Commissioner (Appeals) was not justified in admitting additional evidence without confronting the same to the Assessing Officer.

Held

- It is well settled that though filing of fresh evidences at the first appellate stage is not a matter of right however, if circumstances addressed in clause (a), (b), (c) or (d) on facts can be pleaded then sub-rule (1) of rule 46A of 1962 Rules permit that these evidences can be admitted provided the reasons for admission of fresh evidence are set out in writing by the Commissioner (Appeals) thus fulfilling the requirements of sub-rule (2) of rule 46A.
- Sub-rule (3) of rule 46A necessitates that additional evidence shall be taken into account by the Commissioner (Appeals) only if it has been confronted to the Assessing Officer and a reasonable opportunity to examine said evidence or cross-examine the witness or to produce any evidence or witness in rebuttal is provided by the Assessing Officer.
- Sub-rule (4) makes it clear that rule 46A does not impinge on the powers of the Commissioner (Appeals) to direct production of evidence or witness so as to enable him to dispose the appeal or for any other substantial course including enhancement *etc.*
- Considering the facts as set out hereinabove in the light of the specific provision invoked, it was found that in the peculiar facts and circumstances of the case, the Commissioner (Appeals) has

erred in deleting the addition made without first confronting the fresh evidences to the Assessing Officer. Before admitting the fresh evidences the Commissioner (Appeals) remanded these to the Assessing Officer. The Assessing Officer as per record objected to its admissibility. Thereafter overruling the objection, the Commissioner (Appeals) considering the reasons for filing fresh evidences and the fact that the 'Agreement to sell' 'Possession letter' and 'Power of Attorney in favour of the seller' were crucial and material evidences required to be considered for adjudicating upon the issue, admitted the evidences.

- The decision to admit the evidences is upheld as facts justifying admission of fresh evidences namely the assessee remaining unavailable at her address for reasons beyond her control, *i.e.*, health reasons and thus did not receive the notices which may have been sent have been duly noted and thus the requirements of sub-rule (2) of rule 46A were fulfilled. However, having so concluded, it was incumbent upon the Commissioner (Appeals) to confront the evidences to the Assessing Officer so as to allow him an opportunity to rebut those evidences placed on record which opportunity admittedly has not been provided.
- The Commissioner (Appeals) after overruling the objection of the Assessing Officer on the admissibility of the fresh evidences was required to communicate the decision to admit the evidence to the Assessing Officer and provide him a reasonable opportunity to rebut the same. In the absence of any such exercises the order is in violation of the statutory rules and is open to the challenge of being perverse.
- In the facts of the present case, the procedural lapse is patent and evident on the face of the record itself. Accordingly, the impugned order is set aside and the issue is restored back to the file of the Commissioner (Appeals) to address the procedural lapses and pass a speaking order in accordance with law.
- In the result the appeal of the revenue is allowed for statistical purposes.