

ITAT remanded matter as addition was deleted without giving opportunity to AO to verify evidence filed before CIT

Summary – The Kolkata ITAT in a recent case of Hind Supply Corporation., (the Assessee) held that where Commissioner (Appeals) deleted addition under section 40A(3) relying on certificate of Military Veterinary doctor certifying that assessee was a producer of meat, thus, eligible for benefit under rule 6DD, since same was done without affording opportunity to Assessing Officer for verifying veracity of certificate filed by assessee as additional evidence before Commissioner (Appeals), matter to be remanded

Facts

- The assessee, a partnership firm was engaged in the business of supplying dressed meat to defence/military authorities in different parts of the country on the strength of annual contracts entered into with those authorities. It was not in dispute that meat would be a product of animal husbandry falling within the ambit of rule 6DD(f)(ii) of the rules.
- In the course of assessment proceedings, the Assessing Officer noticed that the assessee had purchased live goat and chicken from different local farmers and effected supplies to the military authorities and paid the farmers in cash and each of such payments were above Rs. 20 thousand and fell within the ambit of section 40A(3). The Assessing Officer disallowed 20 per cent of the expenses on account of purchases claimed by the assessee as deduction while computing income from business by invoking the provisions of section 40A(3).
- On appeal, before the Commissioner (Appeals), the plea of the assessee was that it was a producer of meat and the persons from whom he effected purchase of livestock insisted on cash payment. The assessee was asked to submit a confirmation from a veterinary doctor certifying that he was a producer of meat and that slaughtering was done under his supervision. A remand report was called for from the Assessing Officer and the Commissioner (Appeals) after considering the remand report was of the view that the assessee did not get certificate of a Veterinary doctor even before the Commissioner (Appeals) and therefore the benefit of rule 6DD(f)(ii) could not be extended to the assessee. Therefore, the Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On further appeal, the Tribunal set aside the orders of Commissioner (Appeals) and remanded the issue to the Commissioner (Appeals) for a fresh consideration. The assessee filed certificate of a Veterinary doctor (Military) before the Tribunal. The Tribunal found that this certificate was new evidence and required verification by the Commissioner (Appeals) and for the said purpose the issue was remanded.
- The Commissioner (Appeals) on remand by the Tribunal deleted the addition made by the Assessing Officer by relying on the certificate of Military Veterinary Doctor certifying that the assessee was a producer of meat.

- In instant appeal, the revenue contended that the Commissioner (Appeals) erred in law by violating rule 46A as fresh evidence was introduced and no remand report was called for. The Commissioner (Appeals) failed to appreciate the fact that no supporting documents to fulfil the conditions of rule 6DD were produced at the assessment/first appellate/first remand stage. The documents were produced before the Tribunal and the case was restored back to the Commissioner (Appeals). The Commissioner (Appeals) erred in law in deleting the entire addition without calling for remand report from the Assessing Officer.

Held

- A perusal of rule 3 would show that whatever may be the circumstance under which additional evidence is admitted by the Commissioner (Appeals), the Assessing Officer should be afforded an opportunity of being heard. The emphasis by the assessee was that the additional evidence in question was not produced under rule 46A but was evidence admitted by the Tribunal. The Tribunal only directed the Commissioner (Appeals) to consider the additional evidence in the form of certificate of veterinary doctor by the Commissioner (Appeals) and that by itself will not make the evidence in question as one not falling within the ambit of rule 46A(1). As far as the contention of the assessee that under section 250(4), the Commissioner (Appeals) has the power to make enquiries and that in exercise of such powers he has power to admit additional evidence even without confronting the same to the Assessing Officer, is concerned, section 250(4) and rule 46A of the rules operate on totally different fields. While section 250(4) deals with power of the Commissioner (Appeals) to make enquiries on his own before deciding an appeal, rule 46A of the rules lays down the manner in which or the restrictions subject to which the Commissioner (Appeals) can exercise his power. While exercising such power under section 250(4) the Commissioner (Appeals) would be subject to the restriction laid down in rule 46A. In other words section 250(4) does not override the duty cast on the part of the Commissioner (Appeals) to afford opportunity to the Assessing Officer to have his say on the additional evidence produced by an assessee before the Commissioner (Appeals). Therefore the issue should be remanded to the Commissioner (Appeals) for the limited purpose to enable the Commissioner (Appeals) to afford opportunity to the Assessing Officer for verifying the veracity of the certificate filed by the assessee as additional evidence before the Commissioner (Appeals). The Commissioner (Appeals) after such an opportunity and getting a remand report from the Assessing Officer is directed to decide the validity or otherwise of the addition made under section 40A(3). The question whether the CBDT Circular No. 8 of 2006 will apply to the facts of the case should also be left open for comments by the Assessing Officer in his remand report. The said CBDT Circular talks of payment by purchaser of meat from a producer of livestock and meat. If applied to the facts of the present case, it might apply to the Military/Defence establishments making payment in cash to the assessee. As to whether it will apply to payments made by a producer of meat or livestock for purchase of livestock and chicken is also an issue which needs to be decided. The scope of remand by the Tribunal includes all aspects of the disallowance under section 40A(3) and since the Assessing Officer was not

afforded an opportunity on the additional evidence filed by the assessee, this aspect also should be left open and cannot be construed as enlarging the scope of the proceedings before Commissioner (Appeals) than what was contemplated by the Tribunal while remanding the issue *vide* its order dated 9-3-2011. The Commissioner (Appeals) after taking into consideration the remand report of the Assessing Officer and after affording opportunity of being heard to the assessee is directed to decide the issue in accordance with law. The appeals of the revenue are thus treated as allowed for statistical purpose. The C.O.s are purely supportive of the order of the Commissioner (Appeals) and do not call for any specific adjudication as such C.O.s are not maintainable.

- The issue in the present appeal is not with regard to power of Commissioner (Appeals) to make further enquiry but is confined only to the question whether there was violation of rule 46A.