

## No additions without seeking additional evidence if evidence submitted by assessee was insufficient

**Summary – The Delhi ITAT in a recent case of Zia Ur Rehman, (the Assessee) held that where there was many co-owners of purchased property and assessee-submitted bank certificate as source of fund, Commissioner (Appeals) could not make addition of unexplained investment without seeking supporting evidences if they found assessee's evidence as insufficient**

### Facts

- The Assessing Officer was in receipt of information that a property had been sold by the co-owners being the assessee and three others. He required the assessee to explain the 1/4th share out of total consideration of Rs. 44.10 lakh. The assessee did not explain the availability of the receipt Rs. 11.02 lakh *i.e.*, his share, addition of the said amount was made in his hands.
- Appeal before the Commissioner (Appeals), the assessee submitted that the source in purchase of property was out of loan from Nainital Bank; therefore, the same could not be said unexplained. A copy of bank certificate was enclosed.
- The submission was dismissed by the Commissioner (Appeals) holding that the fresh evidence in the form of term loan certificate from Nainital Bank sought to be filed could not be admitted. The Commissioner (Appeals) further went on to hold that though term loan of Rs. 25 lakh had been taken by the assessee and three others, it could also not be accepted as it was not supported by any application under rule 46A. Thus, it was held that it could not be admitted. The Commissioner (Appeals) further noted that even if the said evidence was admitted, the evidence could not corroborate the facts from the customer ID and account ID details etc. as how the funds were used. Thus, it was concluded that the closure certificate filed from the Bank did not highlight the purpose of the loan and its actual use. Thus, the addition consequently was confirmed.
- On appeal :

### Held

- The Commissioner (Appeals) being aware of the procedures should have provided the assessee a specific opportunity to place its evidences by way of a proper application under rule 46A. Opportunity to do so in all fairness should have been provided. The Commissioner (Appeals) in the discharge of his responsibilities is not visualized to function in a mechanical manner. The Income-tax Act has ensured that in order to achieve an active justice delivery system the Commissioner (Appeals) is more than adequately armed to ensure that only just and due tax are collected. Sub-sections (4) and (5) of section 250 when read along with rule 46A of the rule which govern the production of additional evidences before the Commissioner (Appeals) not only lays down the procedure to be adhered to by the tax payers and the tax authority but also in sub-rule (4) of rule 46A, the legislative intent is more than amply declared which ensure that no constraints on the

power of the Commissioner appeals are visualized in order to fulfil the ends of justice. The Commissioner (Appeals) has been empowered more than adequately to direct the production of any document, examination of any witness etc. 'to enable him to dispose of the appeal, or for any other special cause'. Accordingly in the facts of the instant case one does not find why appropriate directions were not given by the Commissioner (Appeals). Merely because the assessee's counsel apparently ignorant about the procedure relies upon evidences without following the due procedure does not entitle the First Appellate Authority to function mechanically. The Commissioner (Appeals) is expected to act fairly and responsibly utilizing the powers with which he is endowed with the single minded aim that justice is done and not to frustrate a valid claim of the assessee on a hyper technical ground. The Appellate Forum provided under law must perform by ensuring that only just and due taxes for the state are only collected. The orders passed should not rely on the ignorances of the tax payers. The claims of the assessee must succeed or fail on merits, facts and evidences and not on account of the ignorance of the assessee or his counsel.

- In the facts of the instant case, the evidence sought to be relied upon cannot be discarded outrightly as irrelevant. The fact that such evidence may not be sufficient or complete by itself may be true and that is another story which can only be decided after consideration. The evidence admittedly is relevant and crucial and consequently is directed to be admitted. At the cost of reiteration, it is again emphasized that in the eventuality the Commissioner (Appeals) finds that the evidence filed is not sufficient or complete, it is expected that he shall communicate this fact to the assessee and provide the assessee to file further supporting evidence, if any either by way of an affidavit and/or relevant document to explain the purpose of the loan taken and the usage thereof. No doubt it is the duty of the assessee to justify its claims. However, admittedly where the assessee's counsel himself is ignorant about the procedures, the occasion to castigate the assessee for not being conversant with the legal requirements is, in the least, unfortunate. It is further seen that *qua* the specific property there were three other co-owners. The loan as per the claim put forth was from Nainital Bank as per the finding in the impugned order which also has been taken by these persons apart from the assessee. The purpose of referring to the co-sharers is relevant as exercise of administrative and quasi judicial orders passed by the authorities is legitimized only if it is seen to be fair, equal and impartial. If identically situated persons are differently taxed, such orders of quasi Judicial Authority strike at the very root of the principles of legitimate expectation of the tax payers and, thus, is open to the challenge of being whimsical, arbitrary and perverse. Such an approach cannot be given legal sanction.
- Accordingly, in the interest of substantial justice, the impugned order is set aside and remanded back to the file of the Commissioner (Appeals) with a direction to admit the fresh evidences and further provide the assessee to file supporting evidences which go to the root of the matter in case the evidence filed is found to be insufficient or incomplete.