

Accepting fresh evidence by CIT(A) without providing reasonable opportunity to AO not acceptable: ITAT

Summary – The Chandigarh ITAT in a recent case of Genex Industries Ltd., (the Assessee) held that accepting fresh evidence by CIT(A) without providing reasonable opportunity to AO not acceptable

Facts

- The assessee group was subjected to search and seizure operation and during search operation, various documents were found and seized from various business and residential premises of the group. The assessee filed return in response to notice under section 153A wherein a sum of Rs. 2.70 crores was shown as receipt of share application money.
- Despite queries raised in the assessment proceedings, the assessee filed no documentary evidence showing receipt of share application money.
- Consequently, the share application money reflected in its balance sheet, was added as assessee's income under section 68 of the Act.
- The Commissioner (Appeals) taking into consideration certain additional evidence produced by assessee, deleted addition made by Assessing Officer.
- On revenue's appeal:

Held

- The ITAT held that the Commissioner (Appeals) in violation of sub-rule (3) of Rule 46A has accepted fresh evidences without providing the Assessing Officer a reasonable opportunity of examining the evidence and rebutting it etc. The statutory mandate to provide the Assessing Officer opportunity to rebut the evidence is not discretionary. The requirement has been considered to be a 'indispensable requirement'.
- Since fresh evidence has been admitted which has not been confronted to the Assessing Officer to offer his rebuttal etc. the issue is remanded back to the file of the Assessing Officer with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.
- In the result, appeal of the revenue is allowed for statistical purposes.