

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RANCHI BENCH, RANCHI**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER AND  
PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos.34,35 & 36/Ran/2017**

Assessment Years: 2011-12, 2012-13 & 2013-14

Vidhu Bhushan Srivastava, C/O. Sri Jagmohan Poddar, Adv., 10, Shradhanand Road, Ranchi.	Vs.	ACIT, Circle-3, Ranchi.
PAN/GIR No. ABUPS 2391 H		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by: Shri Ajay Poddar, Adv

Revenue by : Shri A.K.Mohanty, JCIT

**Date of Hearing : 30/05/ 2018**

**Date of Pronouncement : 25 /06/ 2018**

**ORDER**

**Per P.K.Gadale, JM**

These are appeals filed by the assessee against the separate orders of the CIT(A) Ranchi all dated 15.11.2016 for the assessment years 2011-12, 2012-13 & 2013-14, respectively.

2. The assessee has raised the following grounds of appeal:

**Asst. Year: 2011-12.**

- "1. For that the impugned appellate order 8k assessment order are contrary to law & against the facts on record.
2. For that the Ld. C.I.T.(Appeals) erred in law in dismissing the appeal filed by the assessee against the assessment order passed u/s. 143(3)/147 of the I.T.Act, 1961, making addition on the basis of AIR report.
3. For that the Ld. C.I.T.(Appeals) should have appreciated that the appellant was prevented by sufficient cause from producing additional evidences before the Ld. A.O. which were produced before Ld. CIT(A) in support of the grounds of the appeal.
4. For that the addition of withdrawals made by credit card amounting to Rs.4,10,365/-as undisclosed expenditure U/s. 69A of the Act is totally arbitrarily, illegal, without any basis or nexus to any material on record because actually the credit card withdrawal is of Rs. 2,10,365/- only and that too the assessee has shown total withdrawal of Rs. 10,20,000/-during the year for expenses etc. including credit card withdrawals.
5. For that the addition of Rs.4,00,000/- alleged to be undisclosed investment u/s. 69 of the Act made in the mutual fund by the appellant is also arbitrarily, illegal, without any basis or nexus to any material on record because actually the amount invested is Rs. 1.00 lac only and that too is out of returned income Rs. 26,11,684/- shown by the appellant.

**Relief Sought for:-**

That the entire addition amounting to Rs. 7,85,365/- made under different heads by the Ld. A.O. may be fully deleted and the returned income as shown by the assessee may be accepted as true & correct."

**Asst. Year: 2012-13.**

- "1. For that the impugned appellate order 8k assessment order are contrary to law & against the facts on record.
2. For that the Ld. C.I.T.(Appeals) erred in law in dismissing the appeal filed by the assessee against the assessment order passed u/s. 143(3)/147 of the I.T.Act, 1961, making addition on the basis of AIR report.
3. For that the Ld. C.I.T.(Appeals) should have appreciated that the appellant was prevented by sufficient cause from producing additional evidences before the Ld. A.O. which were produced before Ld. CIT(A) in support of the grounds of the appeal.



4. For that the addition of R.6,00,000/- alleged to be undisclosed investment not fully disclosed in the books of account u/s.69B of the Act made in the mutual fund by the appellant is also arbitrarily, illegal, without any basis or nexus to any material on record because the assessee having salary income is not required to maintain books of account under the Act.

5. For that the investment in mutual fund amounting to Rs.6 lakhs was made out of income earned during the year as well as past earnings & savings as the assessee filed his return showing Rs.32,29,830/- as returned income for the assessment year 2012-13.

6. For that therefore it is respectfully submitted that the entire addition of Rs.6 lakhs may be deleted fully and income returned may be accepted."

**Asst. Year: 2013-14.**

"1. For that the impugned appellate order 8k assessment order are contrary to law & against the facts on record.

2. For that the Ld. C.I.T.(Appeals) erred in law in dismissing the appeal filed by the assessee against the assessment order passed u/s. 143(3)/147 of the I.T.Act, 1961, making addition on the basis of AIR report.

3. For that the Ld. C.I.T.(Appeals) should have appreciated that the appellant was prevented by sufficient cause from producing additional evidences before the Ld. A.O. which were produced before Ld. CIT(A) in support of the grounds of the appeal.

4. For that the addition of withdrawals made by credit card amounting to Rs.6,93,770/- as unaccounted expenditure is totally arbitrarily, illegal, without any basis or nexus to any material on record as the withdrawal shown by the assessee amounting to Rs.12,40,000/- was sufficient to meet the credit card withdrawals & day to day expenses of the assessee.

5. For that the addition of Rs.43,00,000/- alleged to be unaccounted investment made in the mutual fund by the appellant arbitrarily, illegal, without any basis or nexus to any material on record because actually the amount was invested out of income earned during the year amounting to Rs.26,34,560/- shown in his income tax return & partly out of Rs.28,57,219/- received from Provident Fund & Rs.10,00,000/- as gratuity on retirement from service."

**Relief Sought for:-**

That the entire addition amounting to Rs.49,93,770/- made under different heads by the Ld. A.O. may be fully deleted and the returned income as shown by the assessee may be accepted as true & correct."



3. At the outset, before us, the learned authorised representative for the assessee has filed additional evidences/documents in the form of balance sheet, profit and loss account alongwith details of mutual fund, details of fixed asset etc., for the assessment year 2011-12, 2012-13 & 2013-14 and submitted that the additional evidences reflect income, expenses & investment made by the assessee during the years.

4. Ld A.R. also has raised the additional ground that the charging of interest u/s.234B & C on the assessed income is in contrary to the decision of Hon'ble Jharkhand High Court in the case of Ajay Prakash Verma dated 25.7.2013 in Tax Appeal No.38 of 2010.

5. Ld A.R. submitted that the assessee was prevented by sufficient cause from producing the additional evidences before the Assessing Officer as well as the CIT(A) and, prayed that they may be entertained for adjudication. In support of such contention, the learned authorised representative for the assessee relied upon the decision of Hon'ble Supreme Court in case of National Thermal Power Co., reported in 229 ITR 383.

6. The learned Departmental Representative objected to the admission of the additional ground/additional evidences.

7. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find that the assessee has filed additional evidences before the Tribunal in the form of balance sheet,



profit and loss account alongwith details of mutual fund, details of fixed assets, etc for the assessment years under consideration. On perusal of the order of the CIT(A), we found that the assessee had also filed the documents as was claiming to be filed before the CIT(A) and prayed that the same be admitted as additional evidence. However, the CIT(A) rejected the plea of the assessee on the ground that no such plea has been raised in the grounds of appeal. It has been held by various Courts that whenever additional evidence is produced, it is the duty of the assessee to establish why such evidence could not be produced before the Lower Authorities. Moreover, it is not the inherent right which is given to the assessee to submit the additional evidence, it is fettered with certain restrictions and therefore, the assessee has to establish why the additional evidences could not be produced before the Lower Authorities.

8. The Hon'ble P&H High Court in the case of Commissioner of Income-tax Vs Central Mall [2011] 332 ITR 320 (P&H) has held that " the law that the first appellate authority has the right or indeed the duty to admit additional evidence is now well-established, subject, no doubt, to rule 46A, which is intended to rule out evidence which is willfully withheld from the Assessing Officer. Rule 46A also permits such additional evidence subject to the condition intended to rule out admission of what was wilfully withheld at the lower stage. Crucial evidence is a matter necessary for rendering justice, so that no objection could ordinarily be taken, where the appellate



authority in its discretion chooses to admit relevant evidence. In fact, he may be expected to call for such evidence, even where neither party has produced the same, where such evidence is necessary for rendering justice.". Therefore, in order to render substantial justice, we set aside the orders of the CIT (A) and restore the matter to his file with the direction that he should admit the additional evidences filed by the assessee and re-decide the issue afresh in accordance with law after allowing reasonable and proper opportunity of hearing to the assessee.

9. In the result, appeals filed by the assessee are allowed for statistical purposes.

*Order pronounced on 25/06/2018 under Rule 34(4) of ITAT Rules by putting in the Notice Board at Ranchi.*

Sd/-

(N.S Saini)  
**ACCOUNTANT MEMBER**

sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Ranchi; Dated 25 /06 /2018  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The appellant: Vidhu Bhushan Srivastava,  
C/O. Sri Jagmohan Poddar, Adv., 10,  
Shradhanand Road, Ranchi.
2. The respondent: ACIT, Circle-3, Ranchi.
3. The CIT(A), Ranchi
4. Pr. CIT, Ranchi
5. DR, ITAT, Ranchi
6. Guard file.  
//True Copy//

BY ORDER,

SR.PS, ITAT,  
CAMP AT RANCHI