

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E', NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.5457/Del/2012
Assessment Year: 2007-08

Income Tax Officer, Ward-13(4), New Delhi	Vs.	M/s. Optima Webtech Pvt. Ltd., 3775/3, Kanahiya Nagar, Tri Nagar, New Delhi
PAN :AAACO7509F		
(Appellant)		(Respondent)

Appellant by	Shri P.C. Gupta, Sr.DR
Respondent by	None

Date of hearing	27.05.2019
Date of pronouncement	10.06.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against order dated 22/06/2012 passed by the Ld. Commissioner of Income-tax (Appeals)-XVI, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2007-08, raising following grounds:

1. *Whether on the facts & in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 1,80,00,000/- u/s 68 of the IT Act on account of unproved credits in the grab of share application money/ share capital and share premium by allowing the alleged investors of share capital and premium without allowing the AO an opportunity to cross examine them.*
2. *Whether on the facts & in the circumstances of the case, the Ld.CIT(A) has erred deleting the addition of Rs. 6,14,000/- made by*

the AO as income from other sources on account of amount credited in the P& L account as sales.

3. *Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has erred holding that the assessee had submitted all books of account before the Assessing Officer, when he had clearly failed to do so.*
4. *The appellant craves to be allowed to add any fresh grounds of appeal and /or delete or amend any of the ground of appeal.*

2. Briefly stated facts of the case are that the assessee company filed its return of income electronically on 14/11/2007 declaring total income of Rs.2761/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued on 22/09/2008, which was duly served upon the assessee. During the assessment proceeding, compliance of various notices was made partly by the Authorised Representative appeared on behalf of the assessee. In the assessment completed under section 143(3) of the Act on 21/12/2009, the Assessing Officer made addition of Rs.1,80,00,000/- under section 68 of the Act for the share application money/share capital shown to be received by the assessee during the year under consideration. The Assessing Officer also made addition of Rs.6,14,000/- under the head 'Income from Other Sources' for the amount credited in the profit and loss account as sales. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and produced books of account and vouchers before him. The Ld. CIT(A) after considering submission of the assessee and books of account produced, deleted the additions made by the Assessing Officer. Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

3. At the outset, we may like to mention that this appeal was fixed first time for hearing on 22/05/2013 by way of notice issued through registered post at the address provided in form No. 36, but none attended on behalf of the assessee. Subsequently, the notices were issued through registered post and a copy was provided to the Departmental Representative for service on the assessee through affixure for hearing on various dates i.e. 20/01/2015; 27/05/2015; 12/11/2015; 02/06/2016; 21/07/2016; 26/12/2016; 28/03/2017; 08/06/2017; 27/09/2017; 29/10/2017; 08/02/2018; 18/07/2018;08/10/2018; 18/12/2018; 25/02/2019. The service of notice dated 08/02/2018 through the Department is placed on the file. As per the record, most of the notices sent through registered post to the assessee have not returned back. Despite providing a number of opportunities to the assessee, none attended on its behalf before the Tribunal. The Departmental Representative was directed to serve the notice on the assessee for hearing dated 27/05/2019. A copy of the notice was also sent through registered post. As per the record, notice has not returned back by the postal authorities. In view of the attempts made by the registry of the Tribunal for service of notice through registered post as well as service of notice through the Departmental Representative, it appears that the assessee is not interested in responding to the appeal filed by the Revenue. In such circumstances, we were of the opinion that no purpose would be served in issuing a further notice to the assessee and thus, we heard the appeal *ex parte*, qua the assessee.

4. The Ld. Departmental Representative relied on the order of the Assessing Officer and supported the said order by following decisions:

1. *CIT vs. Navodaya Castle Pvt. Ltd. [2014] 367 ITR 306 (Del.)*
2. *Navodaya Castle Pvt. Ltd. Vs. CIT [2015-TIOL-314-SC-IT]*
3. *Konark Structural Engineering (P.) Ltd. Vs. Deputy Commissioner of Income Tax [2018] 96 taxmann.com 255 (SC)*
4. *Konark Structural Engineering (P.) Ltd. Vs. DCIT, [2018] 90 taxmann.com 56 (Bombay)*
5. *DRB Exports (P.) Ltd. Vs. CIT [2018] 93 taxmann.com 490 (Calcutta)*
6. *CIT Vs. Nipun Builders & Developers (P.) Ltd. [30 taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34]*
7. *CIT Vs. Nova Promotors & Finlease (P.) Ltd. [18 taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187]*
8. *CIT Vs. Ultra Modern Exports (P.) Ltd. [40 taxmann.com 458, 220 Taxman 165]*
9. *CIT Vs. Frostair (P.) Ltd. [26 taxmann.com 11, 210 Taxman 221]*
10. *CIT Vs. NR Portfolio Pvt. Ltd. [2014] 42 taxmann.com 339 (Delhi) [2014] 222 Taxman 157 (Delhi) (MAG)/[2014] 264 CTR 258 (Delhi)*
11. *CIT Vs. Empire Buildtech (P.) Ltd. (366 ITR 110)*
12. *CIT Vs. Focus Exports (P.) Ltd [51 taxmann.com 46 (Delhi)/[2015] 228 Taxman 88]*
13. *PCIT Vs. Bikram Singh [2017] 85 taxmann.com 104 (Delhi)/[2017] 250 Taxman 273 (Delhi)/[2017] 399 ITR 407 (Delhi)*
14. *Rick Lunsford Trade & Investment Ltd. Vs. CIT [2016] 385 ITR 399 (Cal.)*
15. *Rick Lunsford Trade & Investment Ltd. Vs. CIT [2016-TIOL-2017-SC-IT] (SC)*
16. *Hon'ble Delhi High Court Judgment dated 17.01.2019 in the case of NDR Promotors Pvt. Ltd., ITA No. 49/2018*

5. We have heard the submission of the Ld. DR and perused the relevant material on record, including order of the lower authorities. The assessee company in the instant case has filed return of income declaring total income of Rs. 2761/-. During the year under consideration, the assessee company raised share capital of Rs.9,00,000/- and share premium of Rs.1,71,00,000/- from eight parties. The list of the parties, the directors, return of income and mode of receipt of the payment is appearing on page - 6 of the assessment order. For ready reference, the said list is reproduced as under:

S.No	Name of the Indl/company	Name of Director/Indl per confirmation	Income as per copy of ITR Acknowledgement	Amount claimed to have been received
1.	Asthal Spares P.Ltd., 1958/53, Ganeshpura, Tri Nagar, Delhi-35	Krishan Kumar	1,233/-	46,00,000/- cash on 5.5.06
2.	Govindam Apparels P.Ltd., 1958/53, Ganeshpura, Tri Nagar, Delhi-35	Sandeep Kumar	3,638/-	34,00,000/- cash on 5.5.06
3.	Indo Holland Green Houses Ltd. 3522/3, Narang Colony, Tri Nagar, Delhi-35	Naveen Garg	3,138/-	47,00,000/- cash on 5.5.06
4.	Maharaja Soft Solutions P.Ltd., 3522/3, Narang Colony, Tri Nagar, Delhi-35	Naveen Garg	0	1,00,000/- cash on 24.3.07
5.	New Way Steels P.Ltd., L-119, Shastri Nagar, Delhi-CO	Sandeep Kumar	2,178/-	32,50,000/- cash on 5.5.06
6.	Paradise Soft Solutions P.Ltd., 1-3/76, Sector-16, Rohini, Delhi-85	Rakesh Kumar Garg	0	3,00,000/- cash on 20.3.07
7.	Sai Soft Solutions P.Ltd., I-3/76, Sector-16, Rohini, Delhi-85	Sandeep Kumar	0	7,50,000/- cash on 24.3.07
8.	Gulbarga Associates P.Ltd., L-132, Shastri Nagar, Delhi-35	Sandeep Kumar	0	9,00,000/- cash on 5.5.06

5.1 During assessment proceeding, the Assessing Officer asked information from the assessee about the source of share capital/share premium amount for the first time in July 2009

onwards. The case was getting barred by limitation on 31/12/2009, but the assessee filed list of share subscriber alongwith the address only on 24/11/2009, however, but the other information as required under section 68 of the Act including identity, genuineness and creditworthiness of the share subscriber were not filed. Books of accounts were also not produced by the assessee company, though the assessee filed confirmation along with copies of ITR acknowledgement from the share subscribers. The Assessing Officer also issued a final show cause on 02/12/2009, which has been reproduced in the assessment order. The said show cause notice also remained un-complied. According to the Assessing Officer, on 17/12/2009, the authorised representative of the assessee attended however no further information was filed by him. The Assessing Officer made following observations in respect of the share capital/share premium received from the parties:

- (i) During the year assessee has shown sales of Rs.6,14,400/- and against which deduted expenditure of Rs.6,11,639/- claiming net profit of Rs.2,761/- whereas in the immediately preceding year, there was no sale.
- (ii) The amount of income reflected in acknowledgement of return of income filed by the four share subscribers was nil and in respect of the remaining four parties, it was in the range of two to three thousand only.
- (iii) There are common directors in the share subscriber companies.
- (iv) The share capital/share premium has been subscribed in cash and even the assessee company has not shown

any bank account in its balance sheet. The assessee company has further deployed the funds received from share capital/share premium into share purchase of other companies that too in cash.

- (v) In response to summons issued by the Assessing Officer to the share subscriber companies, none attended before him, but identically worded confirmations were filed by them in the dak receipt counter of the Assessing Officer. The Source of investment was not explained by those share subscriber companies. In the confirmations date of investment had not been mentioned.
- (vi) Local enquiries conducted by the Inspector of the Officer of Assessing Officer revealed that no business was carried out at the addresses of the share subscriber companies and the share subscriber companies as well as assessee company was found to be controlled by one Sh. K.K. Bansal, who admitted to have been engaged in providing accommodation entries.

5.2 In view of the above observation, the Assessing Officer concluded that the assessee failed to explain creditworthiness of the share subscriber companies and genuineness of the transactions. The relevant paragraph of the assessment order is reproduced as under:

“The overwhelming circumstantial evidence and the facts discussed above clearly prove that the alleged share holders have no creditworthiness of their own. As discussed above, the identity and creditworthiness have to be seen in their proper perspective in that the persons have either an established source of income or some

standing in a particular line of activity. These signs could be the infrastructure or business, their intellectual capital, place of work, staff members, books of accounts, substantive evidence of the business carried by the persons in the form of tools and apparatus of business, inputs of the business, processes involved etc. or anything which can prove that either some actual activity is going on or the person has got something in the works. Clearly, the existence of the entities at the given addresses, if at all, is limited to the use of the addresses merely as a post-box. Neither the assessee nor the "snare holders" have furnished even an iota of evidence substantiating their capacity and source of cash in hand."

5.3 In view of the conclusions, the Ld. Assessing Officer held that the share capital/share premium amounting to Rs.1,80,00,000/-received was unexplained cash credit in terms of section 68 of the Act.

5.4 Before the Ld. CIT(A), the assessee accepted that due to non-cooperation of the subscribers to share capital, the directors of the assessee company were so perturbed and disturbed that they could not produce the books of accounts and other details as asked by the Assessing Officer. The assessee produced copy of the cashbook of the assessee company for the period from 01/04/2006 to 31/03/2007 before the learned CIT(A) in order to explain the cash received on account of share application money from various subscribers of share capital and further investment in share of various companies. The assessee also accepted that no dividend could be paid by the assessee company on the investment made by the subscribers of the share capital. Before the Ld. CIT(A), the assessee claimed that report of Inspector dated 09/12/2009 regarding no business activity at the addresses of the subscribers of the share capital, was not provided to the assessee. It was also contended that no cross-examination of Sh. K.K. Bansal was provided to the assessee. According to the

assessee, there is nothing illegal to receive the share application money in cash and make further investment in cash. The assessee relied on the decision of the Hon'ble Supreme High Court in the case of CIT Vs Divine Leasing and Finance Ltd (SLP No. CC 375/2008 arising out of ITA No. 53/2005 of the Hon'ble High Court of Delhi) and CIT versus lovely export private limited (SLP No. CC 11993/07 arising out of ITA No. 953/06 of the Hon'ble High Court of Delhi) and other decisions.

5.5 In view of the decisions relied upon by the assessee, the Ld. CIT(A) held that the assessee has discharged its onus provided under section 68 of the Act. The Ld. CIT(A) observed that when the money is received by cheque and is transacted through banking or other undisputed channels, to establish the genuineness of the transaction, submission of shareholder register, share application form, share transfer ratio etc. would be sufficient. As far as creditworthiness of the parties is concerned, same can be proved by producing bank statement of the creditor/subscriber showing that it had sufficient balance in its account to enable it to subscribe to the share capital. Once these documents are produced, the assessee would have satisfactorily discharged the onus placed upon it. In view of the detailed finding in para 3.2 of the impugned order, the Ld. CIT(A) deleted the addition.

5.6 Before us, the Ld. DR has relied on the decision of the Hon'ble Delhi High Court in the case of **CIT Vs Navodya Castle Private Limited** (supra) wherein **the matter of addition under section 68 of the Act was restored back to the Tribunal as the assessee was unable to produce the directors and principal officers of the shareholder companies.** In the case of **CIT Vs.**

Ultra Modern Exports Private Limited (supra) where the notices sent to the share applicants returned answered, still the assessee managed to secure documents such as income tax returns as well as bank accounts from the share applicant companies, the Hon'ble High Court held that *the Assessing Officer was justified in drawing adverse inference and adding the amount in question to taxable income under section 68 of the Act.* The relevant finding of the Hon'ble High Court is reproduced as under:

"9. As noticed previously, the CIT (A) was of the opinion that the assessee had discharged the basic onus which was cast upon it after considering the ruling in Lovely Exports (P.) Ltd.'s case (supra). The material and the records in this case show that notice issued to the 5 of the share applicants were returned unserved. The particulars of returns made available by the assessee and taken into consideration in paragraph 3.4 by the AO in this case would show that the said parties/applicants had disclosed very meager income. The AO also noticed that before issuing cheques to the assessee, huge amounts were transferred in the accounts of said share applicants. This discussion itself would reveal that even though the share applicants could not be accessed through notices, the assessee was in a position to obtain documents from them. While there can be no doubt that in Lovely Exports (P.) Ltd. (supra), the Court indicated the rule of "shifting onus" i.e. the responsibility of the Revenue to prove that Section 68 could be invoked once the basic burden stood discharged by furnishing relevant and material particulars, at the same time, that judgment cannot be said to limit the inferences that can be logically and legitimately drawn by the Revenue in the natural course of assessment proceedings. The information that assessee furnishes would have to be credible and at the same time verifiable. In this case, 5 share applicants could not be served as the notices were returned unserved. In the backdrop of this circumstance, the assessee's ability to secure documents such as income tax returns of the share applicants as well as bank account particulars would itself give rise to a circumstance which the AO in this case proceeded to draw inferences from. Having regard to the totality of the facts, i.e., that the assessee commenced its business and immediately sought to infuse share capital at a premium ranging between Rs. 90-190 per share and was able to garner a colossal amount of Rs. 4.34 Crores, this Court is of the opinion that the CIT (Appeals) and the ITAT fell into error in holding that AO could not have added back the said amount under Section

68. The question of law consequently is answered in favour of the Revenue and against the assessee.”

5.7 Further, in the case of CIT versus N.R. Portfolio Private Limited (supra), the Hon’ble High Court held that if the Assessing Officer doubts the document produced by the assessee, the onus shift on the assessee to further substantiate the facts or producer share applicant in proceeding. The relevant finding of the Hon’ble High Court is reproduced as under:

“30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them. ”

5.8 Further the Hon’ble Supreme Court in the case of recent decision of NRA Iron & Steel Pvt. Ltd. in Civil Appeal of 2019 arising out of SLP (Civil) No. 29855 of 2018 has analysed all the decisions available on the issue of addition or share capital/share premium under section 68 of the Act and held that wherever the creditworthiness or genuineness of the subscriber of the share capital is not found to be satisfied, the addition made under section 68 of the Act, has been held to be justified. The relevant finding of the Hon’ble Supreme Court is reproduced as under:

“11. The principles which emerge where sums of money are credited as Share Capital/Premium are:

- i. *The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
- ii. *The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/ subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
- iii. *If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.*

12. *In the present case, the A.O. had conducted detailed enquiry which revealed that :*

- i. *There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies were non-existent, and had no office at the address mentioned by the assessee.*

For example:

- a. *The companies Hema Trading Co. Pvt. Ltd. and Eternity Multi Trade Pvt. Ltd. at Mumbai, were found to be non-existent at the address given, and the premises was owned by some other person.*
 - b. *The companies at Kolkatta did not appear before the A.O., nor did they produce their bank statements to substantiate the source of the funds from which the alleged investments were made.*
 - c. *The two companies at Guwahati viz. Ispat Sheet Ltd. and Novelty Traders Ltd., were found to be nonexistent at the address provided. The genuineness of the transaction was found to be completely doubtful.*
- ii. *The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90,00,000 to Rs. 95,00,000 in the*

Assessment Year 2009-10, for purchase of shares at such a high premium.

For example:

Neha Cassetes Pvt. Ltd. - Kolkatta had disclosed a taxable income of Rs. 9,744/- for A.Y. 2009-10, but had purchased Shares worth Rs, 90,00,000 in the Assessee Company.

Similarly Warner Multimedia Ltd. - Kolkatta filed a NIL return, but had purchased Shares worth Rs. 95,00,000 in the Assessee Company - Respondent. Another example is of Ganga Builders Ltd. - Kolkatta which had filed a return for Rs. 5,850 but invested in shares to the tune of Rs. 90,00,000 in the Assessee Company - Respondent, etc.

- iii. *There was no explanation whatsoever offered as to why the investor companies had applied for shares of the Assessee Company at a high premium of Rs. 190 per share, even though the face value of the share was Rs. 10/- per share.*
- iv. *Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.*
- v. *The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under Section 68 of the Act.*

13. The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company - Assessee had filed all the primary evidence, the onus on the Assessee stood discharged.

The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assessee Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility.

The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee. 14. The practice of conversion of unaccounted money through the cloak of Share Capital/Premium must

be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.

14. The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.”

5.9 In view of the above judicial decisions, when we examine the facts of the instant case, we find that entire share capital/share premium money of Rs. 1.80 crore has been shown to be received by the assessee in cash from the share subscriber companies. This amount of share capital/share premium money shown to have been received by the assessee company has been further shown to have been invested in purchase of the shares of the other companies that too in cash. In our opinion the investment by cash is not a normal phenomena because both the assessee company and the share subscriber companies in normal course are expected to transact through banking channel. Making investment through cash in itself raises doubt and therefore it was the onus of the assessee to explain the source of cash invested by way of share capital/share premium into its cashbook. The assessee has merely furnished confirmation from said subscriber of the share capital without any detail of source of the cash in the hands of the subscriber companies. The assessee even failed to produce books of accounts and vouchers etc. of the

assessee company before the Assessing Officer. In the independent enquiry made by the Assessing Officer through Inspector, those companies were not found at the addresses given and in response to summons issued, none appeared on behalf of those companies before the Assessing Officer to explain the source of cash in their hands. In such circumstances, it cannot be said that the assessee has discharged its onus of explaining nature and source of the credit as required under section 68 of the Act. In the instant case, the Assessing Officer has not relied only on the report of the Inspector or on the statement of Sri. K.K. Bansal, who was engaged in providing accommodation entries and the Assessing Officer has taken into consideration the failure of the assessee in explaining the creditworthiness of the share subscriber companies as well as genuineness of the transaction. In view of the recent decision of the Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd.(supra), wherein the decision of in the case of CIT versus lovely export P Ltd (supra) has also been considered, we find that the assessee failed to establish the creditworthiness of the share subscriber parties and genuineness of the transaction and accordingly, we set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the finding of the Assessing Officer of making addition under section 68 of the Act. The addition in dispute of Rs. 1.8 crore under section 68 of the Act is accordingly sustained. The ground No. 1 of the appeal of the Revenue is accordingly allowed.

6. In ground No. 2, the Revenue challenged deletion of addition of Rs.6,14,000/-made by the Assessing Officer. According to the Assessing Officer, no books of accounts or vouchers in support of purchase and sales were produced before him, accordingly he

added the entire sales turnover of Rs.6,14,000/- as “Income from Other Sources”. Before the Ld. CIT(A), the assessee produced books of account and vouchers etc. The Ld. CIT(A) deleted that the addition observing as under:

“4.2 I have gone through the discussion in the assessment order and the submissions made by the AR of the appellant and am of the view that the appellant had reasonable cause for not producing before the AO the books of accounts, bills and vouchers. In the interest of natural justice and in exercise of the powers of the CIT (Appeals) u/s 254 (4), these books of accounts, bills and vouchers were required by me to be produced by the appellant. This requirement was duly complied with and after examination of the details, I am satisfied that the appellant was engaged in the activity of sales and purchases during the year and had also incurred expenses as claimed in its duly audited accounts. In view of the foregoing discussion, the benefit of purchases and other expenses is directed to be allowed to the appellant. These grounds of appeal stand allowed.”

6.1 Before us, the Ld. DR submitted that the Ld. CIT(A) has admitted the additional evidence in the form of books of account or bills and vouchers etc., however, no opportunity was provided to the Assessing Officer as required under Rule 46A of the Income Tax Rules, 1962 and thus, matter may be restored back to the Ld. CIT(A) for adjudicating the issue afresh after providing opportunity of being heard to the Assessing Officer.

6.2 We have heard the submission of the learned DR and perused the relevant material on record. There is no doubt that the Assessing Officer made addition in absence of bills of purchase and sales produced by the assessee. The Ld. CIT(A) himself has admitted this fact while adjudicating the issue, however, he failed to follow the procedure provided in Rule 46A of the Income Tax Rules. The relevant rule provides as under:

“[Production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)] .

46A. (1) *The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—*

- (a) *where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or*
- (b) *where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or*
- (c) *where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or*
- (d) *where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

(2) *No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.*

(3) *The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—*

- (a) *to examine the evidence or document or to cross-examine the witness produced by the appellant, or*
- (b) *to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.*

(4) *Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]”*

6.3 In view of the clear violation of the Rule 46A(3) of the Income Tax Rules, we feel it appropriate to restore this issue to the file of the Ld. CIT(A) for deciding afresh after following the due process of law. This ground of the appeal is accordingly allowed for statistical purposes.

7. In the result, the appeal of the Revenue is allowed partly for statistical purposes.

Order is pronounced in the open court on 10th June, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 10th June, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi