Serial No. 16
Regular Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

ITA 2/2018

Pr. Commissioner of Income Tax …Petitioner(s)/Appellant(s).

Through: Mr. Umar Rashid Wani, Advocate

Vs.

Kamraz Rural Bank ...Respondent(s).

Through: Ms Saima Mehboob, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

16.04.2026

1. This appeal by the Revenue filed under Section 260-A of the Income Tax Act, 1961 arises from an order dated 29th May, 2018 passed by the Income Tax Appellate Tribunal, Amritsar, ["the Tribunal"] in ITA No. 438/Asr/2017 for assessment year 2006-07.

2. This appeal was admitted to hearing vide order dated 26th October, 2018 on the following substantial questions of law:

(a) Whether the ITAT was right in law and fact in upholding the order of the Ld. CIT(A), which is passed after submitting fresh evidence/details of the assesse, without allowing the opportunity to examine the same by the Assessing Officer as per Rule 46A of the Income Tax Rule?

(b) Whether in the facts and circumstances of the case and in law the ITAT was right in upholding the order of CIT(A), which is given without passing in writing an order under sub-rule (2) of Rule 46A specifying that the assesse was prevented by any reasonable conditions as laid down in Rule 46A(1)(a), (b) or (d) during the assessment proceedings?

3. The impugned order has been assailed by the Revenue on multiple grounds raising the aforesaid two specific questions of law for determination.

4. Before we advert to the arguments of the learned counsel appearing for the parties and determine the formulated substantial questions of law, we deem it proper to briefly narrate the facts as are relevant to the disposal of this Appeal.

5. The respondent-Assessee filed return for the assessment year 2006-07 on 30th October, 2006 declaring the income of Rs. 5,19,46,000/-. The return was processed under Section 143(1)(a) of the Income Tax Act, 1961 ["the Act"] and the case was taken up for scrutiny. The respondent-Assessee was served with a notice under Section 143(2) of the Act and in response thereof the respondent-Assessee attended the hearing before the Assessing Officer. From perusal of the information furnished and the books of accounts produced by the respondent-Assessee, the AO found that the respondent-Assessee had disbursed interest on term deposits amounting to Rs. 7,96,80,000/- but had failed to deduct tax at source as per the provisions of Section 194A of the Act. The assessee-Bank had failed to deduct the tax at source despite having been requested by the Assessing Authority to do so.

6. An explanation was sought from the respondent-Assessee but the same was not found tenable by the Assessing Authority. The Assessing Authority thus came to the conclusion that in view of the failure of the respondent-Assessee to deduct tax at source on interest payments on term deposits the entire amount of Rs. 7,96,80,000/- was to be added and taken into consideration as per the provisions of Section 40(a)(ia) of the Act. It was noted by the Assessing Authority that the representative of the respondent-Assessee could not furnish details of the interest payments in excess of Rs. 10,000/-. It needs to be noticed that no tax was required to be deducted at source where the payment of interest on the term deposits was not exceeding Rs. 10,000/-. The AO framed the order making additions of Rs. 7, 96, 80,000/- and raised demand.

7. The order passed by the AO dated 26th December, 2008 was challenged in an appeal by the respondent-Assessee before the Commissioner of Income Tax (Appeals), Jammu.

8. It seems that during the course of appeal, the appellant-assessee produced certain documents indicating that the income tax to be deducted at source was only in respect of the interest of Rs. 24,18,596/- paid during the assessment year 2006-2007 on the fixed term deposits where the interest paid was exceeding Rs. 10,000/-. It seems that without giving an opportunity to the Assessing Authority to rebut the aforesaid documentary

evidence produced by the respondent-Assessee, the CIT(A) accepted the evidence and, accordingly, allowed the addition of a sum of Rs. 24,18,596/- instead of Rs. 7,96,80,000/-.

9. The order passed by the CIT(A) dated 28th March, 2017 was assailed by the Revenue before the Tribunal in ITA No. 438/Asr/2017. The Tribunal upheld the order passed by the CIT(A) and dismissed the appeal preferred by the Revenue.

10. This is how the Revenue is before us in this Appeal filed under Section 260-A of the Act.

11. Having heard the learned counsel for the parties and perused the material on record, it is necessary to first set-out Rule 46A of the Income Tax Rules which reads as:

> "46A. (1) The appellant shall not be entitled to produce before the 83 [Joint 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 84 [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.
>
> (3) The Joint 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 84 [Joint 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.

12. From plain reading of Sub-rule-1 of Rule 46A, it is abundantly clear that additional evidence can be permitted by appellate authority i.e. Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, only subject to fulfilment of following conditions:

(a). Where the Assessing Authority has refused to admit evidence which he ought to have admitted or;

(b). Where the appellant was prevented by sufficient cause from producing evidence which he was called upon to produce by the Appellate Authority:

(c). Where the appellant was prevented by sufficient cause from producing before the Assessing Authority any evidence which is relevant to any of the grounds of appeal or;

(d). Where the Assessing Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Such permission to lead additional evidence at the appellate stage can only be granted by the Commissioner by passing a reasoned order in writing. Similarly, the additional evidence permitted to be produced at the appellate stage shall not be accepted or taken into account unless the Assessing Authority has been allowed reasonable opportunity to examine the evidence or document or to cross-examine the witness produced by the appellant or to produce evidence or documents in rebuttal. The requirements of Rule 4A (3) are mandatory and not directory. Granting opportunity to Assessing Authority to examine the additional evidence and to lead evidence in rebuttal is not only the mandatory requirement of Rule 46A but is also the demand of Audi Alteram Partem rule of natural justice. It is, therefore, a foregone conclusion that violation of procedure

laid down in Rule 46A specifically failing to give AO opportunity to examine and rebut new evidence vitiates the order.

13. We have carefully gone through the order of the CIT(A). We do not find that the CIT(A) has applied his mind to these aspects of the matter or has given his reasons for allowing the respondent-Assessee to adduce additional evidence at the appellate stage. We also could not discern from the order passed by the CIT(A) that any opportunity was ever granted to the Assessing Authority to rebut the documentary evidence placed on record by the respondent-Assessee at the stage of appeal. There is, however, a reference to the remand report called for by the CIT(A) in the order impugned passed by the Tribunal. On a careful scrutiny, we could not find any such order passed by the CIT(A) nor there is any reflection of any such order passed by CIT(A) in the final order that was passed on the appeal by the CIT(A)**.** Besides the Revenue has, on affidavit, specifically refuted this aspect recorded by the Tribunal. It is stated by the Revenue very empathically that no such order calling upon the Assessing Authority to prepare remand report on the additional evidence produced by the respondent-Assessee was ever passed by the CIT(A).

14. For the foregoing reasons, we are of the considered opinion that the Tribunal was not right in law and fact in upholding the order of CIT(A) which was primarily passed after admitting the fresh evidence/details produced by respondent-Assessee without allowing opportunity to the Assessing Authority to examine and rebut the same as per Rule 46A (3) of the Income Tax Rules.

15. We are also of the clear view that the opportunity to lead additional evidence at the appellate stage could not be granted by the First Appellate Authority under the Act without passing a speaking order indicating clearly that the conditions laid down in Clause 1 of Rule 46A are met.

16. In view of the aforesaid, this Appeal is allowed. The impugned order passed by the Tribunal dated 20th October, 2018 and order passed by the CITA dated 28th March, 2017 are set aside.

17. The matter is remanded back to the Commissioner of Income Tax (Appeals) J&K, Jammu, to proceed in the matter by taking following steps:

i. The CITA shall pass a speaking order on the request of the respondent-Bank to lead additional evidence. This would be in compliance with Sub-rule 2 read with Sub-rule 1 of the Rule 46A of the Income Tax Rules.

ii. If the respondent-Assessee is permitted to lead evidence by such speaking order, the Assessing Authority shall be given opportunity to examine the same or to adduce evidence in rebuttal as is provided in sub-rule 3 of Rule 46A.

iii. Till the matter is reconsidered and fresh order is passed, there shall be no coercive action against the respondent-Assessee.

18. **Disposed of.**

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
16.04.2026
Shahid Manzoor

(I) Whether the order is reportable? Yes
(II) Whether the order is speaking? Yes