

IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH "E" NEW DELHI
 BEFORE SHRI R.P. TOLANI, JUDICIAL MEMBER
 AND
 SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
 I.T.A. No. 2132/Del/2011
 A.Y. : 2007-08

ACIT, Circle-21(1),
 F-2, Vikas Bhavan,
 New Delhi

(Appellant)

vs. Murli Manohar Dokania,
 R/o C-2/14, Ground Floor, Prashant
 Vihar, Delhi – 110 085
 (PAN/GIR NO. : ADIPD 0524H)

(Respondent)

Assessee by
 Department by

: Sh. Ved Jain & Mrs. Rano Jain, CAs
 : Sh. Raj Tandon, C.I.T.(D.R.)

ORDER

PER SHAMIM YAHYA: AM

This appeal by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals) dated 24.1.2010 pertaining to assessment year 2007-08.

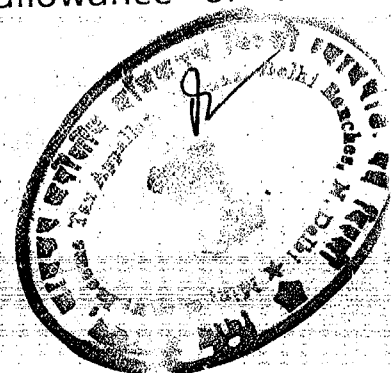
The grounds raised read as under:-

- The Ld.CIT(A) erred in law and on the facts in admitting the additional evidences furnished by the assessee without giving cogent finding as to how the assessee's case was covered by any of the four circumstances mentioned in Rule 46A(1) of Income Tax Rules, 1962.
- The CIT(A) erred in law and facts in deleting the addition ₹ 1,89,064/- made by the A.O. on account of GP Rate applied by the



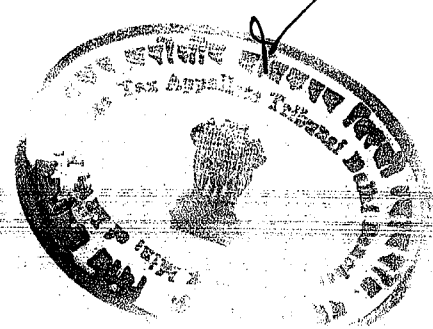
A.O. in respect of M/s Murli Traders, a proprietor ship concern of the assessee after taking into account the higher G.P. Rate as arrived in the assessee's own case of M/s Mangal Traders. The CIT(A) erred in law and on facts in admitting the fresh evidences of books of accounts and profit and loss account etc. under Rule 46A of Income Tax Rules, 1962, since the assessee had failed to produce his books of accounts before the A.O. inspite of several opportunities given during the assessment proceedings.

- The Ld. CIT(A) erred in law and on facts in deleting the addition of ₹ 86,63,000 made by the A.O. on account of unexplained sales made outside books of accounts as the Sales bills from S.NO.1447 TO 1456 had not been entered in the books of account /sales ledger account in respect of M/s Murli Traders, a proprietor ship concern of the assessee in admitting the fresh evidences under Rule 46 A of Income Tax Rules, 1962 without recording cogent reasons for admitting the additional evidences inspite of the fact that the assessee was duly provided with ample opportunities of being heard during the course of assessment proceedings.
- The Ld. CIT(A) erred in law and on facts in reducing the disallowance from ₹ 4,17,982/- to ₹ 22,338/- on account of expenses disallowed by the A.O. namely conveyance, sales promotion, printing and stationery, staff welfare and telephone expenses etc. in violation of provisions of Rule 46A of IT Rules, 1962 in respect of M/s Murli Traders, a proprietor ship concern of the assessee.
- The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition / disallowance of ₹



15,00,000/- of Shri Govind Agencies and ₹ 15,11,451/- of Dokania Brothers made by the A.O. on account of unsecured loans outstanding as no details in confirmation of these loans were filed during the assessment proceedings in respect of M/s Murli Traders, a proprietor ship concern of the assessee in admitting additional evidences under Rule 46A of Income Tax Rules, 1962 without recording cogent reasons thereof.

- The Ld. CIT(A) erred in law and on facts in deleting the addition of ₹ 10,92,93,900/- as un-explained cash credits u/s 68 made by the A.O. on account of un-explained deposit into Bank account in different places all over India and in admitting additional evidences under Rule 46A of Income Tax Rules, 1962 without recording cogent reasons in respect of M/s Mangal Traders, a proprietor ship concern of the assessee.
- The Ld. CIT(A) erred in law and on facts in reducing the disallowance from ₹ 3,87,884/- to ₹ 44,250/- on account of expenses disallowed by the A.O. namely conveyance, sales promotion, printing and stationery, staff welfare and telephone expenses etc. in violation of provisions of Rule 46A of IT. Rules, 1962 in respect of M/s Mangal Traders, a proprietor ship concern of the assessee.
- The Ld. CIT(A) erred in law and on facts in deleting the addition of ₹ 71,00,000/- made by the A.O. on account of un-explained cash deposit under section 68 of Income Tax Act, 1961 consisting of ₹ 12,00,000/- on 06.03.2007 with Kotak Mahindra Bank and ₹ 59,00,000/- deposited on 10.04.2006 with ICICI Bank in admitting additional evidences in violation of Rule 46A of Income Tax Rules, 1962 without recording cogent reasons as the assessee was

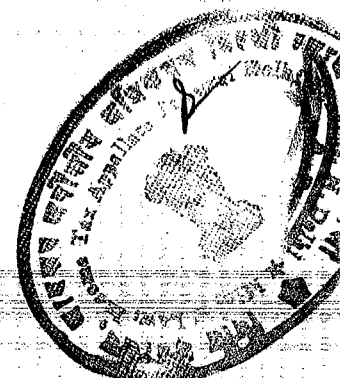


allowed sufficient opportunities of being heard to explain these entries during assessment proceedings by the A.O. in respect of M/s Mangal Traders, a proprietorship concern of the assessee.

- The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition of ₹ 35,51,642/- made by the A.O. u/s 68 being un-explained opening stock of shares held by the assessee in admitting additional evidences in violation of Rule 46A of Income Tax Rules, 1962 without recording cogent reasons in respect of additions made in Individual account of the assessee.
- The appellant craves leave to amend or alter all or any of the aforesaid grounds of appeal and add any other ground of appeal.

3. In this case the assessee is an individual, engaged in the business of trading in bullion, rice, shares, etc. He has three proprietary concerns, M/s Murli Enterprises, M/s Mangal Traders and his 'Individual Account' in his own name. The assessing officer has stated in the assessment order that the books of account were not produced before him, apart from the sales bills, in which discrepancies were noticed. The book results were rejected by invoking the provisions of section 145(3) of the Act, holding that the books of account were not being maintained in a manner to enable the assessing officer to correctly compute the profit.

3.1 In the case of M/s Murli Enterprises, it was noticed that the gross profit rate of 0.051% was lower than 0.063% shown in the case of M/s Mangal Traders, though both were carrying on the same nature of business, under the same proprietor. Hence the gross profit was



estimated at 0.063%, and an addition of Rs.1,89,064/- made on this account.

The assessing officer further found that the sales invoices of a total amount of ₹ 86,63,000/- were not entered in the sales ledger of M/s Murli Enterprises. No explanation being furnished, this sum was added to the income of the appellant. In this connection, it was observed that bill books of the same numbers, with different transactions, were being maintained.

As books of account, bills and vouchers were not produced before the assessing officer, he disallowed the sum of Rs.4, 17,9821-, being 25% of the various expenses claimed.

The assessee's balance sheet showed unsecured loans from four persons of a total amount of ₹ 46,91,451/-. The assessing officer has treated this amount as unexplained cash credits u/s 68 of the Act, as the assessee failed to furnish copy of income tax return and bank statement of these creditors.

3.2 In the case of M/s Mangal Traders, the assessing officer found that the assessee's bank account showed cash deposits at various places all over India of a total amount of ₹ 10,92,93,900/-. The assessee stated that in bullion trade, sales are made through brokers by taking advance payment from the parties. In case of sales to parties outside Noida, the assessee's place of business, payments are made into the bank account of the assessee, after which delivery is made to the brokers. But the assessee did not furnish the names and addresses of the brokers, or of the purchasers, hence the assessing officer added the sum of ₹ 10,92,93,900/- as unexplained cash credits u/s. 68 of the Act.



The assessing officer also disallowed 25% of the expenses debited to the profit and loss account, which worked out to ₹ 3,87,884/-, as unverifiable and not connected with the business.

The assessing officer found that there was a cash deposit of ₹ 59,00,000/- on 10.04.2006 in the assessee's bank account no. 003105009328 with ICICI Bank, and of ₹ 12,00,000/- on 06.03.2007 in the Kotak Mahindra Bank account no. 01812000002524. Prior to these dates, there were no gold sales through these bank accounts. The assessing officer held that these sums represented the assessee's initial investment, out of unexplained sources, and added ₹ 71,00,000/- to the income.

The assessing officer also made an addition of ₹ 30,48,036/- on account of unsecured loans as on 31.03.2007, as the assessee failed to establish the identity and creditworthiness of the persons, and the genuineness of the transactions.

3.3 In the 'Individual' account, the assessing officer has made an addition of ₹ 35,51,642/- as the assessee was unable to prove that this amount represented the opening stock of shares. The assessee also could not explain the source of donation made in respect of deduction claimed u/s 80G of ₹ 41,397/-, and the assessing officer disallowed the claim of deduction.

The assessee failed to provide copies of income tax return and bank statement of persons who had advanced loans to the assessee. As the genuineness of the loans was not proved, the assessing officer added back the unsecured loans of ₹ 8,78,000/- u/s. 68 of the Act.



The assessment was completed at an income of ₹ 13,89,48,900/- as against the returned income of ₹ 6,86,540/-. Aggrieved, the assessee filed appeal before the Ld. Commissioner of Income Tax (Appeals).

4. Before the Ld. Commissioner of Income Tax (Appeals), the counsel of the assessee filed an application for admission of additional evidence under Rule 46A of the IT Rules. It was submitted that the Assessing Officer allowed a very short time to the assessee to file various evidences, confirmations, etc. It was stated that though the return was filed on 15.11.2007, and the first notice u/s 143(2) issued on 26.9.2008, the Assessing Officer issued a detailed questionnaire only on 10.11.2009 and completed the assessment on 30.12.2009. Ld. Commissioner of Income Tax (Appeals) observed that additional evidences were forwarded to the Assessing Officer, asking him to examine the evidence and furnish his report thereon. Considering the remand report and assessee's various submissions and rejoinder to the remand report, Ld. Commissioner of Income Tax (Appeals) proceeded to adjudicate the issue as under:-

(i) Addition of ₹ 1,89,064/- on account of gross profit rate in the case of M/s Murli Enterprises.

"These contentions were verified by, and accepted by the assessing officer in the remand report. He has stated that the assessing officer in the assessment order made a comparison of the results between the two entities of the assessee itself and on that basis came to a conclusion that the gross profit rate stated in the case of M/s Murli Enterprises was less than that declared in the case of M/s Mangal Traders. During the course of the remand



proceedings, the assessee produced the books of accounts of both these entities and the details of purchases and sales, which were verified. Regarding the fact that the gross profit rate in one firm is less as compared to the other, the assessee explained that the periods of sales of these two firms are different and gold being a highly volatile item, the profit or loss depended upon the market, and variation was bound to happen. In support thereof, the assessee produced the invoices of purchases which he had made from ICICI Bank to demonstrate that gold prices were highly fluctuating and as such there could not be a fixed gross profit margin. In view of the verification and report by the assessing officer, the addition of ₹ 1,89,064/- on account of estimated gross profit is deleted."

(ii) Addition of ₹ 86,63,000/- on account of sales made outside books of accounts

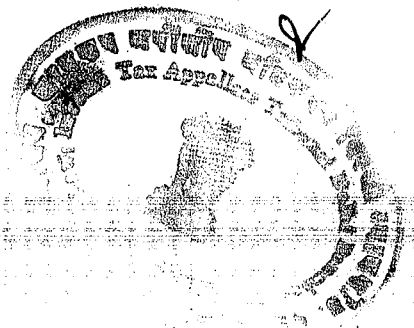
"In the remand report dated 15.12.2010, the assessing officer has verified and found these contentions to be true. He has reported that this addition was made on the ground that sale bills from S.No.1447 to 1456 had not been entered in the books of account. While objecting to this additional evidence produced in appeal proceedings, the assessing officer submitted that, the assessee had produced its books of accounts along with the purchase invoices and the sales ledger. It had been contended that the said sale bills represent the bills which have been cancelled consequent to the non-delivery of the gold by the ICICI Bank Ltd from which the purchases were made. In support thereof, the assessee produced the purchase ledger and the



stock tally and also the copy of account with ICICI Bank Ltd. demonstrating the reversal of the entry in respect of the sales made by the ICICI Bank Ltd. to the assessee. The total amount of the gold of the sale invoices which have been cancelled by the assessee matches with the purchases which have also been reversed by the ICICI Bank Ltd. As this issue has been verified in remand proceedings, and the sales bills in question evidently represent cancelled invoices, the addition made on this account of ₹ 86,63,000/- is hereby deleted."

(iii) Addition of ₹ 4,17,982/- Arbitrary disallowance of 25% of the total expenses.

"In his remand report, the assessing officer has submitted that the disallowance of 25 per cent of the total expenses was made in the absence of the books of accounts. The books of accounts have now been examined by the assessing officer. On the basis of such examination, the assessing officer considered that the following expenditures were not fully verifiable: 35,764/- on account of conveyance, ₹ 12,685/- on sales promotion expenses, 16,785/- on printing and stationery and 16,345/- on Staff Welfare. In the absence of these expenses being fully vouched, a portion of the same were suggested to be disallowed. Further, a sum of ₹ 30,111/- had been incurred on telephone expenses, in which the element of personal use could not be totally ruled out. After considering the above report, it is considered reasonable to disallowance 20% of the expenses pointed out by the assessing officer, which works out to ₹ 22,338/-. This ground of appeal is therefore, partly allowed."



(iv). Addition of ₹ 46,91,451/- on account of unsecured loans

"I have considered the above submissions of the appellant, and the remand report. In view of the fact that loans of ₹ 10,00,000/- from Mrs. Manju Devi and of ₹ 6,80,000/-- from Ms. Shilpi Dokania are old balances, the additions made in this year cannot be sustained. In view of confirmations filed of loans of ₹ 15,00,000/- from M/s Govind Agencies and of ₹ 15,11,451/- from M/s Dokania Brothers, proving identity, creditworthiness and genuineness, the additions made on this account are hereby deleted. The appellant therefore succeeds in ground no. 8."

(v) Addition of ₹ 10,92,93,900/- on account of cash deposited in the bank account

"I have carefully considered the above submissions. As verified by the assessing officer, the cash deposited in the bank account tallies with the sale bills issued by the appellant, and disclosed in its return of income. There can be no basis for presuming that the cash deposits originate from any source other than the recorded cash sales. The appellant has from the beginning explained that it delivers the gold to brokers buyers only after its bank account is credited with the sales amount. It makes no difference to the book results whether these amounts of sales proceeds are deposited in the appellant's bank' account, in Noida or in Jorhat. I find no justification for treating the sales as



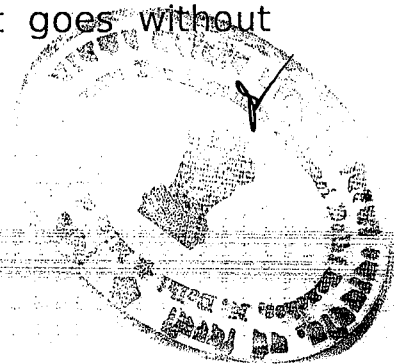
unexplained cash credits, and delete the addition under section 68 of ₹ 10,92,93,900/-."

(vi) Addition of ₹ 3,87,884/- - disallowance of 25% of the total expenses

"The assessing officer, in the remand report, has stated that, as in the case of M/s Murli Enterprises, a sum of ₹ 3.88 lakhs was disallowed in the case of Mangal Trader, as the assessee failed to produce the books of accounts. During the remand proceedings, the assessee has produced the books of accounts which were examined on check basis and were found to be maintained in the normal course of business. On the examination of the various expenses, it was noticed that the assessee has incurred a sum of ₹ 1,13,000/- on account of conveyance expenses, ₹ 26,785/- on account of sale promotion expenses, ₹ 36,125/- on staff welfare and ₹ 9,976/- on printing and stationary, which were not fully vouched. The assessee has further incurred an expenditure of ₹ 35,365/- on account of telephone expenses, in which the personal element cannot be ruled out. Considering the observations of the assessing officer that the above expenditures are not fully verifiable, I direct that 20% thereof may be disallowed, which works out to ₹ 44,250/-."

(vii) Addition of ₹ 71,00,000/- on account of cash deposit

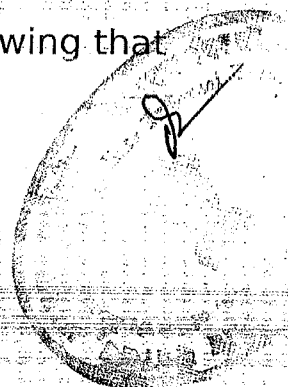
"I have considered all the above facts. From the verification of the appellant's cash book, it is evident that the deposits in the bank accounts, treated as initial investment by the Assessing Officer, were out of accounted cash in hand. It goes without



saying that the cash deposits in the bank account cannot be viewed in isolation from the cash sales through the other bank accounts, or the books of account. The query put by the assessing officer in the notice u/s 142(1) dated 10.11.2009 to explain 'the sources of investment in business alongwith evidences' cannot be equated with asking the appellant to explain the sources of cash deposits in two bank accounts on particular dates during the year. It appears that no actual query regarding these entries was put to the appellant, and no real opportunity granted for explanation thereof. In view of the verification of the cash book carried out in remand proceedings by the assessing officer, the addition made of ₹ 71,00,000/- is hereby deleted, as the sources of cash deposited in the bank accounts are adequately explained."

(viii) Addition of ₹ 30,48,036/- on account of unsecured loans.

"The assessing officer was required to examine this contention in remand proceedings. The assessing officer has reported, vide his remand report, that, the copy of account of M/s N K Traders was examined with the books of accounts and it was verified that out of the total credit of ₹ 30,33,036/-, ₹ 28,06,236/- was the opening balance. ₹ 2,52,561/- was the interest credited by the assessee, and after deducting tax at source of ₹ 25,761/-, the net credit balance was ₹ 30,33,036/-. Confirmation along with address and PAN number were available on the assessment record along with the copy of income tax return. In respect of the credit of ₹ 15,000/- from Mrs. Sharda Dokania, the assessee has filed confirmation and the copy of the bank account, showing that



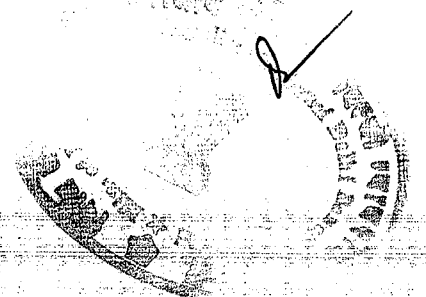
the payment has been received by cheque. Considering that the loan from M/s N.K. Traders is an old balance, and that both loans are supported by confirmations, the addition made of ₹ 30,48,036/- cannot be sustained. The appellant accordingly gets relief of ₹ 30,48,036/-."

(ix) Addition of ₹ 35,51,642/- on account of opening stock

"The additional evidences were forwarded to the assessing officer for verification and report, which was submitted as under:-

'My predecessor has made an addition of this amount since the assessee has not been able to demonstrate that this amount represents the opening stock. During the course of the remand proceedings, the assessee has explained that this fact is verifiable from the balance sheet of the last year where this amount is appearing as a closing stock. The assessee has also filed the DMAT account being maintained with M/s Alankit Assignments Limited from where this opening balance is verifiable. I have verified the books of accounts, the balance sheet and statement of M/s Alankit Assignments.'

Considering the report of the assessing officer, and after examination of the additional evidences, it is held that the



addition of ₹ 35,51,642/- has been made without any basis, and is hereby deleted.”

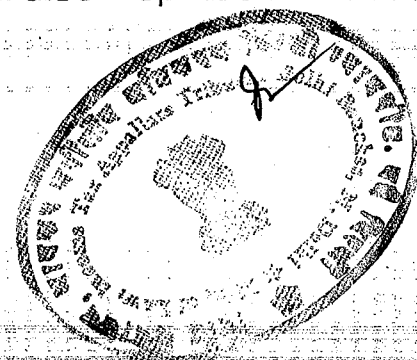
(x) Addition of ₹ 41,397/- on account of donation made u/s 80G

“In his remand report, the assessing officer has stated that, the assessee, in the remand proceedings, submitted the copy of receipt issued by Rohini Education Society to whom he had paid a donation of Rs.5 lakhs vide cheque NO.211314 dated 22.11.2006. The assessee also submitted a certificate issued by the Director of Income Tax granting approval u/s 80G to the Rohini Education Society. It was submitted that, the claim of the assessee may be accepted.”

After considering the above facts and the remand report, the addition made of ₹ 41,397/- is deleted.

(xi) Addition of ₹ 8,78,000/- on account of unsecured loans

“The remand report of the assessing officer was called for on these contentions, and the assessing officer has submitted that, as regards the loan of ₹ 8,63,000/- the sum received from Mrs. Manju Devi Dokania is an opening balance from the last year. Mrs. Manju Devi Dokania is regularly being assessed and she has filed the confirmation and copy of her income tax return. A sum of ₹ 15,000/- has been received from M/s Dokania Brothers of which the proprietor is Mr. Om Prakash Dokania. The assessee has filed confirmation, copy of the bank account and other necessary details, which show that the same also represents opening balance.



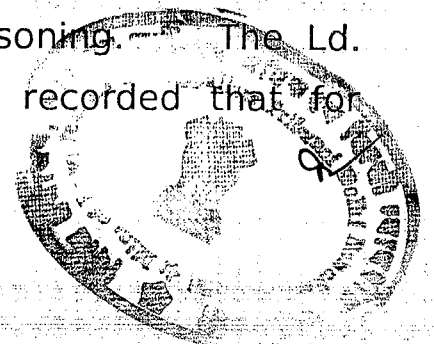
As stated by the assessing officer, both the loans in question are old carried forward balances. They are also supported by confirmations and proof of identity. It appears that these confirmations were filed during the assessment proceedings as well, but the assessing officer still proceeded to make the addition. The appellant gets relief of ₹ 8,78,000/- and succeeds at ground no.15."

5. Against the above order of the Ld. Commissioner of Income Tax (Appeals), the Revenue is in appeal before us.

6. Ld. Departmental Representative contended that adequate opportunity was there before the Assessing Officer, but assessee chose not to furnish the documents. Hence, he pleaded that additional evidences should not have been accepted by the Ld. Commissioner of Income Tax (Appeals). He further contended that in the remand report Assessing Officer has not properly applied his mind and hence he requested that the matter may be remitted to the file of the Assessing Officer to consider the same afresh.

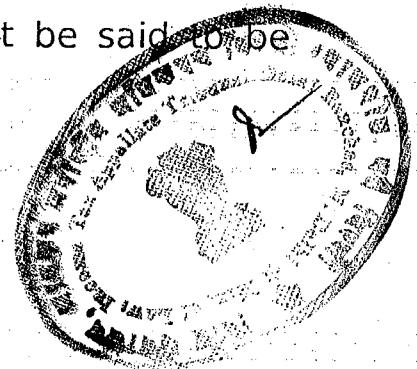
6.1 Ld. counsel of the assessee, on the other hand submitted that the Ld. Commissioner of Income Tax (Appeals) has rightly accepted the additional evidences and after proper consideration of the remand report, he has passed his order. Hence, he argued that order of Ld. Commissioner of Income Tax (Appeals) be sustained.

6.2 We have carefully considered the submissions and perused the records. We find that assessee has submitted additional evidences before the Ld. Commissioner of Income Tax (Appeals) who has admitted the same after recording cogent reasoning. The Ld. Commissioner of Income Tax (Appeals) has recorded that for



sufficient reason being shortage of time assessee was prevented from presenting the evidence before the Assessing Officer. The Ld. Commissioner of Income Tax (Appeals) has obtained the remand report from the Assessing Officer. Thereafter he has adjudicated the issue. In the remand report the Assessing Officer accepted the contention of the assessee and veracity of evidences and documents being submitted.

6.3 In ~~the~~ all the grounds raised before us, it has been urged that Ld. Commissioner of Income Tax (Appeals) has wrongly admitted the additional evidences. But we find that this ground is not sustainable. Further as evident from the Ld. Commissioner of Income Tax (Appeals) adjudication reproduced in the preceding paragraph, in the remand report Assessing Officer has accepted the contention of the assessee and the veracity of evidences and documents submitted. We also do not agree with the plea raised by the Ld. Departmental Representative that in the remand report the Assessing Officer has not applied his mind, hence the matter should be remitted to Assessing Officer. We find that in the remand proceedings all the relevant books and documents were submitted before the Assessing Officer, who has duly considered the same. Hence, the Assessing Officer being the appellant on behalf of the revenue before us, cannot be said to be aggrieved by his own action.



6.4 In our considered opinion, Ld. Commissioner of Income Tax (Appeals) has correctly appreciated the remand report and recorded cogent reasoning in deleting the addition. We do not find any infirmity or illegality in the same. Hence, we affirm the same.

7. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 30/9/2011.

[R.P. TOLANI]
JUDICIAL MEMBER

Date 30/9/2011

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

SRB

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|--------------|---------------|--------|------------|
| 1. Appellant | 2. Respondent | 3. CIT | 4. CIT (A) |
| 5. DR, ITAT | By hand | | |

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches

सहायक पंजीकार

Assistant Registrar

आयकर अपीलारीय अधिकरण

Income Tax Appellate Tribunal

नई दिल्ली/ New Delhi

