IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:23.08.2018

(1) ITA No. 476 of 2017 (O&M)

M/s Social Promoters (India), Panchkula

.....Appellant

Versus

The DCIT, Panchkula Circle, Panchkula

.....Respondent

(2) ITA No. 499 of 2017 (O&M)

M/s Social Promoters (India), Panchkula

.....Appellant

Versus

The DCIT, Panchkula Circle, Panchkula

.....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mr. Aditya Grover, Advocate
for the petitioner (assessee).

Mr. Yogesh Putney, Senior Standing counsel
for the respondent (revenue).

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AVNEESH JHINGAL, J.

These are two appeals under Section 260A of the Income tax Act, 1961 (for short 'the Act') filed by the assessee against the orders passed by the Income Tax Appellate Tribunal, Chandigarh Bench, dated 16.02.2017 in ITA No. 1299/Chd/2012 and ITA No.1300/Chd/2012. The assessment year involved is 2007-08.

In one appeal challenge is against the assessment proceedings and in the second appeal challenge is against the penalty levied under Section 271(1)(c) of the Act.

For the sake of convenience, the facts are being taken from ITA No. 476 of 2017 challenging the assessment proceedings.

As per the appellant, following substantial questions of law

arise for consideration:

(I) Whether the Ld. ITAT has erred in law in not appreciating the fact that the Appellant-Firm was prevented by sufficient cause to produce evidence in support of its case during the assessment proceedings due to dispute between the partners, the Appellant-Firm was not able to make proper representation before the Assessing Officer?

(II)Whether the Ld. ITAT had erred in law in not appreciating the fact that no sufficient opportunity and sufficient time for the assessment was granted to the Appellant-Firm, as the first effective notice was received by the Appellant-Firm on 03.11.2009 and the Assessment was framed by the Assessing Officer in haste on 17.12.2009?

(III)Whether the Ld. ITAT has erred in law in not appreciating the fact that the Ex-pare order of assessment framed by the Assessing Officer deserves to be set aside on the basis of the facts of the matter?

(IV)Whether the impugned order is sustainable in the eyes of law in light of the fact that before framing the assessment, the Assessing had failed to issue a proper show cause notice with respect to the alleged additions made?

(V)Whether the impugned order is sustainable in the eyes of law in light of the fact that the return of income was filed by the Appellant-Assessee in the wrong form i.e. Form No.VI and before framing the Ex-parte assessment on the basis of his judgment, the Assessing Officer did not call for the Assessee to file its return of income in proper form while issuing a notice under Section 148 of the Act?

(VI)Whether the Ld. ITAT has erred in law in not appreciating the fact that the additional evidence filed by the Appellant-Assessee Firm were not admitted by the CIT(A), despite being qualified under Rule 46A of the Act?

(VII)Whether the Ld. ITAT has erred in law while passing the impugned order and had failed to appreciate that once the remand report was called for by the Ld. CIT(A) from the Assessing Officer, the additional evidences were deemed admitted and the Ld. CIT(A) should have adjudicated upon the matter while considering the additional evidences file by the Appellant in support of its case?

(VIII)Whether the Ld. ITAT has erred in law while passing the

impugned order as the Ld. ITAT itself has held that the disputes between the partners of the Appellant?

(IX)Whether the impugned order is sustainable in the eyes of law in light of the fact that the additional evidences placed by the Appellant before the Ld. ITAT are cogent and well establishes the case of the Assessee?

(X)Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law in holding that the addition on account of salary and interest to the partners of the Appellant-Firm is automatic in the case of Ex-parte assessment?

(XI) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in upholding the additions in demand made by the CIT(A) and Assessing Officer?

(XII) Whether the orders of the ld. Income Tax Appellate Tribunal is perverse as the same is based on incorrect application of the provisions of law?

The brief facts necessary for adjudication of the present appeals are that the assessee was a partnership firm, engaged in the business of outdoor advertisements and other allied activities at Panchkula.

During the assessment year 2007-08, the assessee filed Income Tax return, declaring income of Rs.15,47,989/- and deposited self-assessment tax amounting to Rs.5,21,054/-. The case was taken up in scrutiny and a notice dated 29.09.2008 under Section 143(2) of the Act was issued. Thereafter, another notice dated 30.10.2009 was issued along with a detailed questionnaire. The assessee failed to appear and, further, notice dated 25.11.2009 was issued to show cause '*why penalty proceedings for non-compliance may not be initiated and an ex-parte assessment under Section 144 of the Act, be not finalised*'. Vide order dated 17.12.2009, the Assessing Officer, passed an ex-parte assessment order making an addition of Rs.78,42,059/-. The additions were made by dis-allowing development and other expenses, disallowing salary and interests of the partners and adding Rs.12,43,690/- on account of secured loans.

Aggrieved of the assessment order, an appeal was filed before the Commissioner of Income Tax (Appeal) Panchkula (for short 'CIT(A)').

Learned counsel for the appellant contended that the assesse was prevented by sufficient cause from adducing evidence before the Assessing Officer. The Appellate Authority erred in rejecting the admission of additional evidence. Learned counsel further argued that from the additional evidence produced, the assessee has substantiated the expenses claimed and the loans shown in the accounts.

Learned counsel for the revenue resisted the contention and defended the orders passed by the authorities. Learned counsel further submitted that sufficient opportunities were provided to the assessee but the assessee failed to avail the opportunities, hence, it is not a fit case where additional evidence should be considered.

In appeal proceedings before CIT(A), an application was moved for admission of additional evidence under Rule 46-A of the Income Tax Rules, 1962 (for short 'the Rules'). Vide order dated 01.10.2012, the CIT(A) dismissed the appeal. It was held that additional evidence cannot be permitted as the assessee failed to qualify any of the conditions as laid down under Rule 46-A of the Rules.

Further appeal was preferred before the Tribunal. Vide order dated 16.02.2017, the Tribunal dismissed the appeal and held that additional evidence produced are not enough to prove the assessee's case and no useful purpose would be served by admitting the additional evidence.

The assessee was a partnership firm. There arose serious differences among the partners. The intention to part ways were

communicated to the Banks. Ultimately the relations became sour, even an FIR was registered and there were criminal proceedings. In these circumstances, the asssessee was not able to substantiate the loans shown in the account and various expenses claimed.

From the perusal of the assessment order, it would be evident that all the additions have been made on the ground that the assessee failed to furnish any detail or evidence to substantiate the claims. The CIT(A) rejected the application under Rule 46-A of the Rules on the ground that the assessee did not fulfill any of the conditions mentioned in the Rules.

For ready reference, we quote Rule 46-A of the Rules 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
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> (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.]

Rule 46-A applies to the cases where the appellant was prevented by sufficient cause for producing evidence called upon by the Assessing Officer.

Differences among the partners which ultimately resulted in multifarious litigation was sufficient enough to prevent the assessee from adducing evidence. Moreover, a mere prima-facie look on the additional evidence adduced would show that there were loan of Rs.7,34,230/-, in the previous year also. These loans have been repaid by cheques in the subsequent assessment year. This aspect needs to be considered.

Without expressing any opinion on the merits of the case, the orders of the Assessing Officer, CIT (A) and Tribunal are set aside and the matter is remanded back to the Assessing Officer to finalise the assessment afresh in accordance with law after providing an opportunity to the assessee.

As the assessment order has been set aside and the matter is remanded back to the A.O., accordingly, the penalty proceedings are also remanded back to the A.O. for fresh decision.

Accordingly, both the appeals are disposed of.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

23.08.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No