IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

ITA.No. 84 of 2015

AGAINST THE ORDER IN ITA 612/2013 of I.T.A.TRIBUNAL, COCHIN BENCH DATED 10.10.2014

APPELLANT/RESPONDENT/REVENUE:

THE COMMISSIONER OF INCOME TAX ,
TRICHUR

BY ADVS.SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT/APPELLANT/ASSESSEE:

SHRI. E. D. BENNY
EDASSERY CHANGAN HOUSE P.O.,
PALAYAMPARAMBU,
CHALAKUDY
THRISSUR - 680 741.

R1 BY ADV. SRI.JOSEPH KODIANTHARA (SR.)
R1 BY ADV. SRI.M.V.DAS
R1 BY ADV. SMT.LEKSHMI SWAMINATHAN
R1 BY ADV. SMT.MARIAN G.M.THARAKAN
R1 BY ADV. SRI.S.JAYAKUMAR
R1 BY ADV. SRI.V.S.CHANDRASEKHARAN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 17-08-2015 ALONG WITH I.T.A.Nos.140, 142, 146, 147, 149, 150, 151, 156, 167, 166, 169, 170, 172, 186, 165, 180, 187, 188, 189, 195, 216, 204, 205, 210, 213, 206, 207, 211, 222, 232, 190, 193, 185, 179, 148, 157, 164, 173, 181, 212, 175, 219, 103, 104, 105, 106, 108, 110, 117, 126, 132, 135, 141, 168, 171, 174, 177, 178, 182, 191, 194, 201, 202, 203, 208, 223, 233, 237, 234, 238, 239, 240, 241, 137, 118, 130, 133, 138, 139, 125, 134, 129 & 136 of 2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY F THE ASSESSMENT ORDER.

ANNEXURE B: TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS).

ANNEXURE C: TRUE COPY OF REMAND REPORT OF ASSESSING OFFICER.

ANNEXURE D: TRUE COPY OF GROUNDS OF APPEAL FILED BY REVENUE BEFORE INCOME TAX APPELLATE TRIBUNAL.

ANNEXURE E: TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 10.10.2014.

// TRUE COPY //

P.A. TO JUDGE

'CR'

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

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I.T.A.No.84, 140, 142, 146, 147, 149, 150, 151, 156, 167, 166, 169, 170, 172, 186, 165, 180, 187, 188, 189, 195, 216, 204, 205, 210, 213, 206, 207, 211, 222, 232, 190, 193, 185, 179, 148, 157, 164, 173, 181, 212, 175, 219, 103, 104, 105, 106, 108, 110, 117, 126, 132, 135, 141, 168, 171, 174, 177, 178, 182, 191, 194, 201, 202, 203, 208, 223, 233, 237, 234, 238, 239, 240, 241, 137, 118, 130, 133, 138, 139, 125, 134, 129 & 136 of 2015

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Dated this the 17th day of August, 2015

JUDGMENT

Antony Dominic, J.

The issues raised in these appeals are connected. Therefore, these appeals were heard together and are disposed of by this common judgment treating, with the consent of the parties, ITA 84/15 as the leading case.

2. ITA 84/15 is filed by the Revenue, challenging the order passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA No.612/2013. The respondent assessee is a partner in various business concerns and the other partners of these firms are the family members of the assessee. A search under Section 132 of the Income Tax Act (hereinafter referred as 'the Act') was conducted in the business premises of various firms and the residences of the partners on 26.3.2008. During the course of the search,

various incriminating documents were found and seized and statements of the partners were also recorded. Consequent to the search, notices under Section 153A of the Act were issued for the assessment years 2002-2003 to 2007-2008 and notice under Section 142(1) of the Act was issued for the assessment year 2008-2009. In response to the notice under Section 153A of the Act, the assessee filed his returns of income on 10.7.2009 and on 13.7.2009, filed his regular return of income in response to the notice under Section 142(1) of the Act, for the assessment year 2008-2009.

3. The Assessing Officer completed assessment under Section 153A read with Section 144 of the Act vide his order dated 18.12.2009. The assessment in respect of the assessment year 2008-2009 was also completed under Section 143(3) read with Section 144 of the Act on 29.12.2009. The assessee filed appeals before the Commissioner of Income Tax (Appeals). In the appeals, paper books containing detailed written statements on various issues raised, cashflow statements filed before the Assessing Officer, replies filed in response to various notices

issued by the Assessing Officer and the evidences/workings in support of various claims made in the appeals were also filed.

4. On the filing of the additional evidence before him, the Commissioner of Income Tax (Appeals) forwarded the paper books itself to the Assessing Officer and required the Assessing Officer to examine the new evidences/details/submissions of the assessee and to give a report. Accordingly, the Assessing Officer submitted his report, a copy of which is Annexure C in this appeal. In this report, insofar as the new evidences that were produced before the Commissioner of Income Tax (Appeals) are concerned, the Assessing Officer has stated thus:

> *"20. The written submission filed by the assessee along with 5 paper books the whole group of individual cases and one paper book in the case of the assessee were verified. These are fresh evidences filed by the assessee before the Appellate Authority. None of them were filed during the course of assessment proceedings. Detailed investigations were made on the fresh evidences placed by the assessee on record. They are summarized as under:*
>
> ***21. AGRICULTURAL INCOME EARNED BY THE ASSESSEE:***
> *The Inspector attached to this Circle was deputed to inspect the various agricultural land holdings of the*

assessee and to verify the genuineness of the bills produced as fresh evidences claimed by the assessee.

As per this report dated 23.2.2011 submitted by the Inspector, he visited the agricultural lands held by the assessee on 22.2.2011 and reported as under:

As per the direction of the Dy.CIT, Central Circle, Thrissur, I had visited the agricultural lands of the assessee situated in various villages and satisfied with the documents produced by the assessee. The assessee hold approximately 13.5 acres of cultivable land in different villages in which 12 acres are paddy field. The agricultural income claimed by the assessee as per bills/vouchers produced as fresh evidences were verified with the original bills/vouchers with dealers and the genuineness was verified. I have verified the original bills/vouchers from the following dealers for the period from 2.4.2010 to 3.8.2010 and found genuine.

Sl. No	**Name of trader/dealer**	**Period**	
		From	**To**
1	KPK Oil Mills	2.4.2010	15.6.2010
2	Kottayam Rubbers	28.4.2010	19.7.2010
3	Anna Coconut Products	1.5.2010	3.6.2010
4	St.Joseph Oil Mills	2.5.2010	22.6.2010
5	Aloor Service Co.Op. Bank	1.6.2010	3.8.2010
6	Jeeva Bonemeal	21.7.2010	30.7.2010

It is pertinent to state that the agricultural income claimed to have earned by the assessee is for the assessment year 2010-2011 and not for the period under the search assessment period.

22. Receipt from sale of trees:

The required particulars i.e. inflow in the cash flow statement, details of sale of tree and agreement with purchasers etc. were produced before the appellate authority as fresh evidence. These were not produced at the time of assessment proceedings.

23. Investment in immovable properties:

The investment in immovable property was ascertained on the basis of seized documents. For the AY 2007-08, the assessee had invested Rs.7,15,887/- in immovable property for which he had shown only Rs.85,687/- in cash flow statement. For the AY 2008-09, the assessee had invested Rs.4,27,749/- in immovable property where as the cash outflow as per cash flow statement is Rs/5,00,558/-. This cash flow statement was produced as a new evidence which was not produced at the time of assessment. Hence, this claim of the assessee may be rejected.

24. Investment in movable properties

The addition on investment in movable properties were made on the basis of the sworn statement recorded from the assessee on 26.3.2008. Now the assessee had filed cash flow statements before the appellate authority to prove his claim. This may be rejected on the ground that this is a fresh evidence.

25. Opening Balance in the cash flow statement.

The opening cash balance of Rs.25,000/- shown by the assessee in the cash flow statement can not be accepted on the ground that the cash flow statement is a fresh evidence filed before the CIT(A). He has not even produced the copy of his balance sheet for the financial

year ended 2001-2002 relevant to the AY 2002-03 for verification. Hence, this can not be accepted as genuine.

26. In view of the observations it is prayed that all the evidences now filed before the appellate authority are fresh and not produced at the time of assessment proceedings. They are prima facie inadmissible in view of provisions of Rule 46A of IT Rules 1962. Hence, they may be rejected and assessment orders sustained."

5. The Appellate Authority considered the matter in the light of the provisions contained in Rule 46A of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') and passed Annexure B order, in which after dealing with each of the justification offered by the assessee, he concluded that:

"Considering these circumstances, I am of the opinion that the appellant was prevented by reasonable and sufficient causes from furnishing various details/evidences at the assessment stage.

. . . . . .

Therefore, considering the totality of the facts and circumstances of the case, the additional evidences/details filed by the appellant are admitted and adjudicated in this appeal."

6. Challenging Annexure B order, Revenue filed appeals before the Tribunal. Cross Objections were also filed by the assessee impugning Annexure B to the extent it was against him. By Annexure E common order rendered on 10th October 2014, the appeal and Cross Objection were dismissed by the Tribunal.

7. In its order, the Tribunal has stated that the first common ground in all the appeals that were considered was with regard to the admission of fresh/new evidences filed by the assessee before the Commissioner of Income Tax (Appeals) without satisfying the conditions laid down in Rule 46A of the Rules. In paragraph 4 to 9 of its order, the Tribunal dealt with the above contention in the light of the provisions contained in Section 250 of the Income Tax Act and Rule 46A of the Rules. In conclusion, the Tribunal held that it did not find any merit in the contention urged by the Revenue and accordingly, the contention was rejected. Thereafter, the Tribunal examined the other contentions and, as already stated, dismissed the appeals and cross

objections. It is aggrieved by these orders passed by the Tribunal that the Revenue has filed this appeal.

8. We heard the Senior Standing Counsel appearing for the Revenue and the learned Senior Counsel appearing for the respondent assessee.

9. Although in the impugned order various issues were decided by the Tribunal, when the appeals were heard, the sole contention raised by the Senior Counsel for the Revenue was that the Commissioner of Income Tax (Appeals), ought not have admitted additional evidence that were produced by the assessee and that even if it was decided to admit the additional evidence, the Commissioner of Income Tax (Appeals) ought to have remanded the cases leaving to the Assessing Officer, to consider the additional evidence produced and to render his findings thereon. In support of this contention, learned Senior Counsel for the Revenue relied on the provisions contained in Section 250 of the Act, Rule 46A of the Rules, the decision of the Apex Court in *Commissioner of Income Tax v. McMillan & Co. [1958] 33 ITR*

182, Smt.Prabhavati Shah v. CIT [1998] 231 ITR 1 (Bom.) and *Commissioner of Income Tax v. United Towers (I.) P. Ltd. [2008] 296 ITR 106 (Delhi)*.

10. On the other hand, learned Senior Counsel appearing for the assessee contended that this is a case in which the grounds provided under Rule 46A of the Rules were established by the assessee and, therefore, the First Appellate Authority was entitled to admit the documents in evidence. He also pointed out that before deciding to admit the additional documents and considering the same, the First Appellate Authority had complied with the principles of natural justice. Therefore, according to the learned counsel, no grounds have been made out for interference with the orders impugned.

11. We have considered the submissions made. It is evident from paragraph 3 of Annexure B order passed by the First Appellate Authority itself that when the authorised representative of the assessee appeared in response to the notice of hearing, he filed paper books containing detailed written submissions on various issues raised in the

appeal, cashflow statements filed before the Assessing Officer, reply filed in response to various notices issued by the Assessing Officer and evidences/working in support of various claims made in the appeal. On production of these materials, admittedly, the First Appellate Authority forwarded the paper books to the Assessing Officer and required the Assessing Officer to examine the new evidences/details/submissions and to give his report.

12. It was in response to that letter of the First Appellate Authority that the Assessing Officer submitted Annexure C Remand Report. Reading of this Report shows that in paragraphs 1 to 19, the Assessing Officer has justified his conclusions in the assessment order. Thereafter, from paragraph 20 onwards, extracted above, he dealt with the additional materials that were produced by the assessee before the First Appellate Authority. This report shows that insofar as the agricultural income earned by the assessee, after stating that the bills/vouchers produced by the assessee were found genuine, all that the Assessing Officer has stated is that the period pertains to the

assessment year 2010-2011 and not the period under the search assessment. Insofar as the remaining issues are concerned, although each one of them were separately dealt with, all that he has stated is that the claim of the assessee may be rejected for the reason that the materials mentioned were not produced at the time of assessment.

13. It was considering this report submitted by the Assessing Officer that the First Appellate Authority passed Annexure B order. In this order, the First Appellate Authority considered the circumstances pleaded by the assessee and held that the assessee was prevented by reasonable and sufficient causes from furnishing the details/ evidences at the assessment stage. Based on that finding, the First Appellate Authority admitted the evidence produced and adjudicated the appeal. It is this order passed by the First Appellate Authority which was confirmed by the Tribunal.

14. Rule 46A of the Income Tax Rules read thus:

"(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 t 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.]"

15. Reading of this provision shows except on establishing the circumstances enumerated in clauses (a) to (d) under sub rule 1, an appellant shall not be entitled to produce the Commissioner (Appeals) any evidence whether oral or documentary. Sub rule 2 mandates that the Commissioner (Appeals) shall not admit any evidence, unless he records in writing the reasons for its admission. Once the documents are so admitted, sub rule 3 comes into operation, which further mandates that 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 to examine the evidence or document or to cross examine the witnesses produced by the appellant or to produce any evidence in rebuttal of the additional evidence. Insofar as this sub rule is concerned, as we have already seen, on admission of the additional evidence, the Commissioner (Appeals) forwarded the paper books itself to the Assessing Officer calling for his report. It was in response to the letter calling for remand report that the Assessing Officer submitted Annexure C report.

16. Therefore, this is a case where the Commissioner (Appeals) has allowed the Assessing Officer adequate opportunity as provided under sub rule 3 to examine the evidence produced by the appellant. In the remand report that he has furnished apart from requesting for its rejection, the Assessing Officer did not, either dispute the genuineness of the documents nor did he ask for cross examination of the witness, or to adduce any evidence in rebuttal of the documents produced by the appellant. In other words, sub rule 3 has been fully complied with. It

was thereafter, that the First Appellate Authority proceeded to adjudicate the appeal, duly taking into account the additional evidence produced by the appellant.

17. One of the contentions raised in these appeals is that having admitted the additional evidence, the Commissioner (Appeals) should have remanded the case to the Assessing Officer for his consideration. In our view, this contention cannot be accepted in the light of sub rule 4, a reading of which shows that it was open to the Commissioner (Appeals) to dispose of the appeal by himself or even to remit the matter to the Assessing Officer. This power of the Appellate Authority is also evident from Section 250 of the Act, which reads thus:

> *"250. Procedure in appeal:*
>
> *(1) The [Commissioner (Appeals)] shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the [Assessing] Officer against whose order the appeal is preferred.*
>
> *(2) The following shall have the right to be heard at the hearing of the appeal--*
>
> *(a) the appellant, either in person or by an authorised representative;*

(b)the [Assessing] Officer, either in person or by a representative.

(3) The [Commissioner (Appeals)] shall have the power to adjourn the hearing of the appeal from time to time.

(4) The [Commissioner (Appeals)] may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the [Assessing] Officer to make further inquiry and report the result of the same to the [Commissioner (Appeals)]

(5) The [Commissioner (Appeals)] may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the [Commissioner (Appeals)] is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the [Commissioner (Appeals] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

[(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A.]

(7) On the disposal of the appeal, the [Commissioner (Appeals)] shall communicate the order passed by him to the assessee and to the [Principal Chief Commissioner or]

[Chief Commissioner or [Principal Commissioner or Commissioner]"

18. Reading of sub section 4 shows that the Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals). From the above provision, it is clear that neither the admission of the additional materials nor the decision of the Commissioner (Appeals) to adjudicate the appeals himself rather than remanding the same to the Assessing Officer can be faulted.

19. Learned Senior Counsel for the Revenue relied on the Supreme Court judgment in *Commissioner of Income Tax v. McMillan & Co. [1958] 33 ITR 182* to support his contention that when documents are produced before the First Appellate Authority, the matter should have been remanded to the Assessing Officer. In our view, this judgment does not support the proposition canvassed by the learned Senior Counsel. This judgment was rendered by the Apex Court in the

background of the Income Tax Act,1922 and Income Tax Rules, 1922. The facts of this case show that assessment was completed and appeal was filed by the assessee. The Appellate Authority, after issuing notice to the assessee, fixed the income of the assessee enhancing the tax liability, presumably relying on the proviso to Section 13 of the Act and Rule 33 of the Rules. This was confirmed by the Tribunal and the High Court. In the judgment, while interpreting the provisions of Section 13 of the Act, the Apex Court has highlighted the requirement of satisfaction by the Income Tax Officer. In our view, that finding of the Apex Court does not suggest that in every case where additional materials are produced before the First Appellate Authority, the Appellate Authority is bound to remit the case to the Income Tax Officer for fresh consideration. Therefore, this judgment does not support the contention raised by the learned Senior Counsel for the Revenue.

20. Insofar as the Bombay High Court judgment in *Smt.Prabhavati Shah v. CIT [1998] 231 ITR 1 (Bom.)* is concerned that was a case where the provisions contained in Section 250 of the Act and

Rule 46A of the Rules were dealt with. The relevant paragraphs of the judgment reads thus:

> *"On a plain reading of rule 46A, it is clear that this rule is intended to put fetters on the right of the appellant to produce before the Appellate Assistant Commissioner every evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the Income-tax Officer, except in the circumstances set out therein. It does not deal with the powers of the Appellate Assistant Commissioner to make further enquiry or to direct the Income tax officer to make further enquiry and to report the result of the same to him. This position has been made clear by sub rule (4) which specifically provides that the restrictions placed on the production of additional evidence by the appellant would not affect the powers of the Appellate Assistant Commissioner to call for the production of any document or the examination of any witness to enable him to dispose of the appeal. Under sub-section (4) of section 250 of the Act, the Appellate Assistant Commissioner is empowered to make such further inquiry as he thinks fit or to direct the Income tax officer to make further inquiry and to report the result of the same to him. Sub-section (5) of section 250 of the Act empowers the Appellate Assistant Commissioner to allow the appellant, at the hearing of the appeal, to go into any ground of appeal not specified in the grounds of appeal, on his being satisfied that the omission of the ground from the form of appeal was not wilful. It is clear from the above provisions that the powers of the Appellate Assistant Commissioner are much wider than the powers of an ordinary court of*

appeal. The scope of his powers is coterminous with that of the Income-tax Officer. He can do what the Income-tax Officer can do. He can also direct the Income tax Officer to do what he failed to do. The power conferred on the Appellate Assistant Commissioner under sub-section (4) of Section 250 being a quasi-judicial power, it is incumbent on him to exercise the same if the facts and circumstances justify. If the Appellate Assistant Commissioner fails to exercise his discretion judicially, and arbitrarily refuses to make enquiry in a case where the facts and circumstances so demand, his action would be open for correction by a higher authority.

On a conjoint reading of section 250 of the Act and rule 46A of the Rules, it is clear that the restrictions placed on the appellant to produce evidence do not affect the powers of the Appellate Assistant Commissioner under sub-section (4) of Section 250 of the Act. The purpose of rule 46A appears to be to ensure that evidence is primarily led before the Income tax officer."

21. This judgment also does not lead to the conclusion that in every case where additional evidence are produced, the Appellate Authority is bound to remand the case to the Assessing Officer.

22. However, in paragraph 9 of the order passed by the Tribunal it has stated thus:

"In the instant case the entire additional evidence has come on the record of the first appellate authority

because the first appellate authority decided to examine the facts of the case in depth and adjudicate upon the matter on the basis of evidence and material thus gathered. The learned CIT(A) was empowered to do so under the provisions of Section 250(4). The results of enquiry conducted by him could either go to further cement the case made out by the assessing officer or to help out the assessee against the findings of the assessing officer. The mere fact that the results of the enquiries thus conducted supported the case of the assessee and not that of Revenue has no bearing on the jurisdiction and powers of the learned CIT(A). The learned CIT(A) has confronted the assessing officer with the evidence thus received and the material thus gathered and allow the assessing officer to have his say in the matter vide remand report dated 29.4.2013 and being done so this dispute have no merits. We do not see any requirement in law that the first appellate authority should invariably consult or confront the assessing officer every time an additional evidence that was not filed before the assessing officer comes on the record of the first appellate authority. Where the additional evidence is obtained by the first appellate authority on its own motion, there is no requirement in law to consult/confront the assessing officer with such additional evidence. There may be cases where additional evidence is admitted by the first appellate authority on a request or application being made by the assessee. In such cases sub rule (2) of rule 46A requires the first appellate authority to allow the assessing officer a further opportunity to rebut the fresh evidence filed by the assessee. Even that requirement cannot be said to be a rule of universal application. If the additional evidence furnished by the assessee before the

appellate authority is in the nature of clinching evidence leaving no further room for any doubt or controversy in such a case no useful purpose served on performing the ritual of forwarding the evidence/material to the assessing officer and obtain his report. In such exceptional circumstances the requirement of sub-rule (3) may be dispensed with."

23. Reading of the aforesaid finding of the Tribunal would suggest that according to it, if additional documents are summoned by the Commissioner (Appeals) and produced or if the additional evidence produced by the assessee are in the nature of clinching evidence leaving no further room for any doubt or controversy, it is not necessary to give an opportunity to the Assessing Officer to contradict the same. In other words, the finding of the Tribunal would suggest that in cases where documents are summoned by the Commissioner (Appeals) and in cases where the documents produced are conclusive, the principles of natural justice are excluded. We are unable to enclose these finding of the Tribunal. As held by Delhi High Court in *Commissioner of Income Tax v. United Towers (I,) P. Ltd. [2008] 296 ITR 106 (Delhi)*, Rule 46A(4) of the Rules does not specifically exclude the principles of natural justice and,

therefore, these principles are to be read into the Rules. Therefore, we disprove the finding of the Tribunal as contained in paragraph 9 of the order extracted above.

24. Having considered the sole contention urged, we do not find any merit in these appeals. Appeal, therefore, fail and is accordingly dismissed.

25. The issues involved in all other cases are similar. In view of the dismissal of the leading case ITA 84/2015, all other appeals are also dismissed.

All pending interlocutory applications in these cases stand closed.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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