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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 245/2017**

PR. COMMISSIONER OF INCOME TAX CENTRAL-2, NEW DELHI ..... Appellant

Through: Mr. Asheesh Jain, Senior Standing Counsel

versus

BRIJ KISHOR KOCHAR ..... Respondent

Through: Mr. Mayank Negi, Advocate

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% **25.04.2017**

1. One of the points urged by Mr. Asheesh Jain, learned Senior Standing Counsel for the Revenue in the present appeal preferred by the Revenue against the order dated 26th August, 2016 passed in ITA No.3826/Del/2013 for the Assessment Year (AY) 2008-09 is that the Commissioner of Income Tax (Appeal) [CIT(A)] denied an opportunity to the Assessing Officer ('AO') to respond to the documents produced by the Assessee before him for the first time and that this was in violation of Rule 46 A of the Income Tax Rules, 1964 ('Rules').

2. When asked whether there was any specific averment in the memorandum of appeal that the documents that were produced before the CIT (A) by the Assessee were not already on the record of the AO, Mr. Jain was unable to

point out any such averment. On the contrary, Mr. Mayank Negi, learned counsel for the Respondent/Assessee stated that there was no occasion for the Assessee to file any such application under Rule 46 A because the documents relied upon by the Assessee before the CIT (A) were those that were already on record before the AO.

3. Indeed, in the order of the CIT(A) dated 11th February 2013, which allowed the Assessee's appeal, there is no reference to any application having been filed by the Assessee for placing on record any documents that were not already before the AO.

4. It was next urged by Mr. Jain that the ITAT, in the impugned order, has shifted the burden of proof under Section 69 C on the Revenue, when, in fact, it was the Assessee which had to give a satisfactory explanation for not offering to tax an amount of expenditure, which in the present case, was evident from a note recovered from the Office of Ms. Real Gain Estates Pvt. Ltd.

5. As has been noted by the CIT(A) in the order dated 11th February 2013, there was an unsigned note which was recovered neither from the office of the M/s. AMR Infrastructure Ltd., which had accepted the application of the Assessee for the booking of space or the office of the Assessee. The CIT(A) has referred to the two Memorandum of Understanding (MoUs) entered into between the Assessee and M/s. AMR Infrastructure Ltd. with regard to the two areas, i.e., plot of 5000 sq. ft. and another of 1000 sq. ft., both being booked @ Rs.1,500 sq. ft. through the documents placed before the

CIT(A), which were also before the AO, the Assessee was able to demonstrate that it had not paid any sum over and above what was reflected therein. Consequently, there was no occasion to make any addition under Section 69 C of the Act.

6. The net result is that the Court finds no substantial question of law arising from the concurrent orders of the CIT(A) and the ITAT.

7. The appeal is dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 25, 2017/tp