

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. N. K. Saini, AM And Smt. Beena Pillai, JM

ITA Nos. 1141/Del/2013 : Asstt. Year : 2009-10

Ms. Payal Dayal Mathew D-12, Jangpura-B, New Delhi	Vs	Income Tax Office, Ward-37(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AIWPM3472C		

Assessee by : Sh. V. Raja Kumar, Adv.

Revenue by : Sh. Ved Prakash Mishra, Sr. DR

Date of Hearing : 02.12.2015	Date of Pronouncement : 02.12.2015
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 18.12.2012 of Id. CIT(A)-XXVIII, New Delhi.

2. The only ground raised in this appeal reads as under:

“The Id. CIT(Appeals) is wrong and unjustified in confirming the order of the Ld. ITO at the income assessed at Rs. 23,74,660/- as against Rs. 5,12,390/- returned by the assessee.”

3. Facts of the case in brief are that the assessee filed the return of income on 17.12.2009 declaring an income of Rs. 4,52,390/- which was processed u/s 143(1) of the Income Tax

Act, 1961 (hereinafter referred to as the Act). However, the assessment was framed by the AO u/s 144 of the Act and the income was determined by applying 25% rate instead of 5.39% gross profit declared by the assessee on the gross receipts of Rs. 94,98,663/-.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition by observing in paras 2 to 2.2 of the impugned order as under:

“I have considered the ground raised in appeal. The assessment has been completed ex-parte as the appellant failed to respond to several notices. The assessing officer has pointed out in the order of assessment specific dates for which the case was fixed for hearing and notices issued and served upon the assessee. It is seen that the appellant failed to respond to none of the seven notices issued for hearing of the case. In the circumstances the assessing officer is justified completing the assessment ex-parte.

2.1 The assessing officer has, in the absence of details of expenses, taken the 75% of gross receipts for expenses and 25% is treated as income. Deduction under chapter VIA is also not allowed in the absence of details.

2.2 The appellant has not contested the disallowance under chapter VIA. Regarding the expenses also the appellant has not brought anything on record to disagree with the assessing officer. In the circumstances, I have no reason to interfere with the order of assessment. The ground raised in appeal is dismissed.”

5. Being aggrieved the assessee is in appeal. The Id. Counsel for the assessee at the very outset stated that the order passed by the Id. CIT(A) is a non-speaking order and even the submission of the assessee has not been considered. He requested to remand this issue back to the file of the AO since the assessment was framed u/s 144 of the Act without providing a due and reasonable opportunity of being heard to the assessee.

6. In his rival submissions the Id. DR supported the orders of the authorities below.

7. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the AO framed the assessment *ex-parte* u/s 144 of the Act and enhanced the GP rate to 25% from 5.39% declared by the assessee. However, he has not given any reason for enhancing the GP rate and also did not quote any comparable case or discussed the past history of the assessee's case. Similarly, the Id. CIT(A) sustained the addition made by the AO in a slipshod manner. We, therefore, considering the totality of the facts deem it appropriate to set aside the impugned order and remand the matter back to the file of the AO to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. We also

direct the assessee to cooperate and not to seek unwarranted and undue adjournments.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 02/12/2015)

Sd/-
(Beena Pillai)
JUDICIAL MEMBER

Dated: 02/12/2015

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR