

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-II": NEW DELHI  
BEFORE SHRI I.C.SUDHIR, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 4180/Del/2015  
(Assessment Year: 2010-11)

Roshan Motors, Opposite Vikas Bhawan, Meerut Road, Muzaffarnagar, PAN:AAGFR4087C <b>(Appellant)</b>	Vs.	ITO, Ward-2(2) Muzaffarnagar <b>(Respondent)</b>
--	-----	---

Assessee by : Sh. Ankit Gupta, CA  
Respondent by : Sh.Gaurav Dudeja, Sr. DR

Date of Hearing	30.11.2015
Date of pronouncement	02.12.2015

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. The present appeal filed by the assessee is directed against the order of learned CIT(A), Muzaffarnagar dated 25.03.2015 passed for the assessment year 2010-11. The assessee raised the following grounds of appeal:

- "1 That assessment order passed u/s 143(3) by the Assessing officer is illegal, bad in law and without jurisdiction and the CIT(A) has also erred in upholding the same.*
- 2. The addition/ disallowances made by the assessing officer are illegal, unjust, highly excessive and are not based on any material on record by the assessing officer. The total income of the assessee appellant has been wrongly and illegally computed by the assessing officer at Rs. 6,78,780/- as against declared income of Rs.4,77,890/-*
- 3. That, in view of the facts and circumstances, the CIT(A) has erred in law and on facts in making, the enhancement of Rs.2,00,000/- to the income of the appellant , which purely illegal, bad in law, estimation and based on surmises and conjectures.*
- 4. That, The CIT(A) erred in making the enhancement to the income of the assessee appellant without giving proper opportunity, which is illegal, bad in law and against the Principle of Natural Justice.*
- 5. That the CIT(A) failed to appreciate while making the enhancement of RS.2,00,000/- to the income that under which source he is proposing and making the enhancement, which is illegal, bad in law and without jurisdiction.*
- 6. That, without prejudice to the above, in view of the facts and circumstances, the CIT(A) has erred in law and on facts in making the*

addition of Rs.2,00,000/- on account of enhancement by the estimation, which is unjust, arbitrary, unlawful, highly excessive, based on surmises and conjectures and cannot be justified by any material on record.

7. That, in view of the facts and circumstances, the assessing officer has erred in law and on facts in making the addition of Rs.49,504/- to the income of the appellant on the account of free insurance scheme and the CIT(A) has also erred in upholding the same.
8. That, in view of the facts and circumstances, the CIT(A)/ AO has erred in law and on facts in making the addition of Rs.40,000/- on account of depreciation claimed on car and scooter due to personal use, which is unjust, arbitrary, unlawful, highly excessive, based on surmises and conjectures and cannot be justified by any material on record.
9. That the Assessing Officer, in view of the facts and circumstances of the case erred on facts and in law in making the addition/ disallowance of Rs.6,988/- on account of misc. expenses and the CIT(A) has also erred in upholding the same.
10. That the Assessing Officer, in view of the facts and circumstances of the case erred on facts and in law in making the ad-hoc addition/ disallowance of Rs.20,101/- on account of generator running and maintenance expenses and the CIT(A) has also erred in upholding the same.
11. That the Assessing Officer, in view of the facts and circumstances of the case erred on facts and in law in making the ad-hoc addition/ disallowance of Rs.83,699/- on account of advertisement expenses and the CIT(A) has also erred in upholding the same.
12. That the Assessing Officer/ CIT(A), in view of the facts and circumstances of the case erred on facts and in law in making the ad-hoc addition/ disallowance on estimated basis, which is unjust, arbitrary, unlawful, highly excessive, based on surmises and conjectures and cannot be justified by any material on record.
13. The additions made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.
14. That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.
15. That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.
16. That the interest u/s 234B 234C& 234D has been wrongly and illegally charged as the appellant could not have foreseen the

*disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out."*

2. The facts in brief of the case are that the assessee is engaged in the trading of Honda Scooters, Moto Cycle, its parts and accessories. The assessee e-filed return of income declaring total income of Rs.4,77,890/- on 22.09.2010. The return of income was processed u/s 143(1) of the Income tax Act, 1961. The case was selected in scrutiny after taking necessary approval from Id CIT, MZR and statutory notice u/s 143(2) of the Act was issued. Further notices u/s 142(1) along with detailed questionnaire were issued. The assessing officer noted in his order that the assessee has debited an amount of Rs.1,98,017/- under the head free insurance scheme. On verification of books of account, it had been found that no name and complete address of the persons had been mentioned. Mostly payment of this expenditure was made in cash. Though this facility may be provided to enhance the sale of the firm as per company's scheme however in absence of proper bills and vouchers the actual amount of this expenditure cannot ascertained. Therefore to cover up any discrepancy one fourth of this expenditure is disallowed and added in assessee's total income which comes to Rs.49,504/-. The assessee had debited an amount of Rs.61,373/- on account of car and scooter running expenses. The personal use of car and scooter can not be ruled out by the partners of the firm. Further the assessee has claimed depreciation on car at Rs.1,01,014/-. On fourth of depreciation claimed is disallowed on account of personal use of car by the partners. Thus the total disallowance under these heads worked out at Rs.40,597/- which is added in assessee total income. Further the Assessing Officer disallowed 10% on expenses on generator running and maintenance expenses because no proper bills and vouchers were provide. Therefore, the Assessing Officer disallowance the expenses and added Rs.20,101/- on the total income of the assessee. Further the Assessing Officer asked the assessee to furnished the justification of advertisement expenses of Rs.8,36,991/-, but the assessee failed to furnish any justification in this regard. So, the Assessing Officer disallowed and added Rs.83,699/- to the total

income of the assessee. The assessing officer completed the assessment on total income of Rs.6,78,780/- u/s 143(3) of the Act.

3. Aggrieved the assessee filed an appeal before the learned Commissioner of Income-tax (Appeals), who upheld the order of the Assessing Officer and confirmed the disallowance and also further made the enhancement to the income of the assessee by RS 2,00,000/-. Aggrieved by this the assessee has filed this appeal.
4. Before us Ld AR submitted that the learned Commissioner of Income-tax (Appeals) has made enhancement of income to the tune of Rs.2 lac without issuing any notice and without providing adequate opportunity of hearing. He further submitted that CIT (A) has merely on the part of remand report obtained by him in appellate proceeding has enhanced the income of the assessee to the tune of Rs.2 lac. He further submitted that in fact the AO has asked for the further time for submitting the remand report. He further submitted that CIT (A) has not decided the grounds of appeal on merit and not granted an opportunity of rebutting the remand report. Regarding the difference of amount paid as per salary registered and the amount of salary shown cash book in respect of four months, The Id AR of the assessee stated that in fact there is no difference in the amount of salary paid and in absence of any opportunity given by the learned Commissioner of Income-tax (Appeals), assessee could not explain the difference point out by AO in remand proceeding. He further stated that the finding pointed out by Assessing Officer regarding printing and stationery expenses, miscellaneous expenses, miscellaneous deduction against cash less policy, scooter repair and maintenance in remand report also could not be met with by assessee as no opportunity was granted by CIT (A). He submitted that there is no difference. He submitted that the ledger account submitted by the assessee are duly supported by vouchers and bill. Further looking into the circumstances of the case it can be possible that during the remand report it could not be produced. Therefore he submitted that enhancement made by the learned Commissioner of Income-tax (Appeals)

without proper opportunity to the assessee and other disallowances as well as enhancement made at Rs.2 lac may be deleted.

5. The Id Departmental Representative supported the order of the learned Commissioner of Income-tax (Appeals) stating that the assessee has agreed before the learned Commissioner of Income-tax (Appeals) for enhancement there is no reason in the appeal now to be filed before ITAT. Therefore same may be dismissed.
6. We have carefully considered the rival contention, the power of the Commissioner of Income-tax (Appeals) are enshrined in section 251 of The Income Tax Act which are as under :-

**Powers of the [Principal Commissioner or Commissioner] (Appeals)].**

(1) In disposing of an appeal, the Commissioner] (Appeals)] shall have the following powers—

.....

(2) The [Principal Commissioner or Commissioner] (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

7. According to provisions of sub-section 2 of section 251 of the Income Tax Act , the learned Commissioner of Income-tax (Appeals) shall not enhance the assessment unless the appellant had a reasonable opportunity of showing cause against any such enhancement. On reading the order of the learned Commissioner of Income-tax (Appeals) we did not find any mention about the show cause notice issued by him giving the reasons for enhancement and the manner of determining the amount of enhancement. There is no opportunity granted to the assessee at all. According to the order of the learned Commissioner of Income-tax (Appeals), on 25.03.2015 the appellant was confronted with the remand report and learned Commissioner of Income-tax (Appeals) has passed the order on the same day. Therefore it is apparent that on 25.03.2015 the assessee was shown remand report and on the same day the appellate order was passed by the learned Commissioner of Income-tax (Appeals)

enhancing the income of the assessee by Rs.2 lacs. We also could not gather from the order of the learned Commissioner of Income-tax (Appeals) that how the sum of Rs.2 lac was arrived at. We are not at all concerned with whether the assessee agreed with the enhancement or not. In absence of show cause notice to the assessee stating the defects, allegation and the manner of determining the amount of enhancement and then fixing the date of hearing after affording reasonable time to the assessee to rebut the allegations and then passing a speaking order making enhancement of income is mandatory. Further on the grounds raised before CIT (A) there is no finding given by him whether confirming or deleting disallowance. We are not in a position to sustain the order of CIT (A) confirming other additions as well as the amount of enhancement of Rs.2 lac. However, we are also of the view that in the remand report placed by the AO certain discrepancies were noticed in each of the five heads of expenses which are appealed against by the assessee before the learned Commissioner of Income-tax (Appeals). The discrepancies so noticed requires to be verified by learned Commissioner of Income-tax (Appeals) in appellate proceeding before him. Therefore, in the interest of justice we set aside the matter back to the file of learned Commissioner of Income-tax (Appeals) with a direction to pass a speaking order on each of the grounds raised 4following the procedure prescribed u/s 251 of the Act and then to decide the appeal of the assessee on merit after affording reasonable opportunity of being heard to the assessee.

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

**Order pronounced in the open court on 02.12.2015.**

**-Sd/-**

**(I.C.SUDHIR)  
JUDICIAL MEMBER**

**-Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated:02/12/2015  
*A K Keot*

Copy forwarded to

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi