

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-I' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-6850/Del/2014
(ASSESSMENT YEAR-2009-10)**

Irshad, C/o-M/s. RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049. PAN-AANPI4503M (APPELLANT)	vs	ITO, Ward-1(3), Ghaziabad (RESPONDENT)
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Appellant by	Sh.Tarun Kumar, Adv.
Respondent by	Dr.B.R.R.Kumar, Sr.DR

Date of Hearing	07.09.2015
Date of Pronouncement	09.10.2015

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 12.09.2014 of CIT(A), Ghaziabad pertaining to 2009-10 assessment year on the following grounds:-

1. *“That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in taking the turnover at Rs. 1,37,87,580/- instead of Rs.35,29,210/- as claimed by the assessee and accordingly made the impugned addition of Rs.9,65,131/- (i.e. 7% of Rs. 1,37,87,580/-) and that too without confronting any adverse material on record and without giving opportunity of cross examination and without considering the submissions of the assessee.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making estimated addition of Rs.2,50,000/- on account of alleged unexplained capital employed and that too without any basis and without providing any adverse material on record and by recording incorrect facts and findings and without considering the submissions of the assessee.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in making addition of Rs.3,155/- on account of bank interest.*
4. *That in any case and any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making the impugned*

addition and framing the impugned assessment order is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.

5. *That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in not reversing the action of Ld.AO in charging interest u/s 234A and 234B of the Income Tax Act, 1961.*
6. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

2. A perusal of the record shows that in the case of the assessee who had declared an income of Rs.1,49,980/- the income was assessed by the AO by his order u/s 143(3) at Rs.13,68,270/-. The following additions were made by the AO:-

<i>Income declared by the assessee</i>	<i>Rs. 1,49,980/-</i>
<i>Add as per para 2 above</i>	<i>Rs. 9,65,131/-</i>
<i>Add as per para 3 above</i>	<i>Rs. 2,50,000/-</i>
<i>Add as per para 4 above</i>	<i>Rs. 3,155/-</i>
<i>Total Income</i>	<i>Rs.13,68,266/-</i>
<i>Or</i>	<i>Rs.13,68,270/-</i>

3. These additions were challenged in appeal before the CIT(A). The grounds raised were supported by written submissions as per record by the assessee and these are infact found reproduced from pages 5 to 11 of the impugned order. A perusal of the same shows that while deciding the issue at page 11 the CIT(A) vide para 5.1 – 5.3 only considers the arguments in regard to addition of Rs.9,65,131/-. Reading from the order, Ld AR states that even for this addition, no basis for the estimate of 7% applied has been given.

3.1. The Ld. Sr. DR considering the material available on record could not advance any arguments in support of the said application of NP rate. On a perusal of the impugned order also he was unable to point out whether arguments assailing the other additions have been considered on merit by the CIT(A) or not.

4. In the light of the above-mentioned common position of facts taken by the parties before the Bench, it is considered appropriate to set aside the impugned order and restore the issue back to the file to the CIT(A). The assessee has placed a Paper Book running into 43 pages and Ld. CIT(A) while passing the order is directed to address the additions made by the AO in the light of the

pleadings made before him and also justify the application of the NP rate of 7% decide by the AO for which no basis or reference is available on record. The assessee at the same time is also directed to participate meaningfully in the proceedings before the CIT(A) so as to enable the said authority to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The said order was pronounced in the open Court at the time of hearing itself.

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

The order is pronounced in the open court on 09th of October, 2015.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Dated:09/10/2015

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI