

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No. 2962/Del/2010  
Assessment Year: 2003-04**

MR. SANDEEP KUMAR,  
5556, KATRA RATHI,  
NAI SARAk,  
CHANDNI CHOWK,  
NEW DELHI  
(PAN: AALPM1974A)  
**(ASSEESSEE)**

VS. ACIT, CIRCLE 28(1),  
NEW DELHI

**(RESPONDENT)**

**Assessee by:** Sh. Arun Kishore, CA  
**Revenue by:** Sh. S.S. Rana, CIT(DR)

**ORDER**

**PER H.S. SIDHU, JM**

This appeal is filed by assessee against the Order dated 29.3.2010 passed by the Ld. CIT(A)-XXV, New Delhi relating to Assessment Year 2003-04 on the following grounds:-

- 1. That on the facts and circumstances of the case the order of the Ld. CIT(A) dated 29.3.2010, to the extent mentioned*

*hereunder, is illegal, unjust, opposed to facts and is based on conjectures and surmises.*

*2. That the learned CIT (A) has erred in not providing an opportunity to the appellant as required u/s 251 (2) of the Act for fresh additions made on the basis of her own working of G. P. Rate and on her estimation of sales.*

*3) That without prejudice to the above contentions the Ld. CIT(A) has erred: .*

*i) in adopting highly excessive G.P. Rate of 20.81% for whole sale cloth trade and in summarily rejecting appellant's the explanation for low GP rate for post survey period.*

*ii) in excluding freight and cartage in her working of GP rate.*

*4) That without prejudice to the above contentions, the addition for alleged suppression of sales is made without placing*

*any corroborative evidence on record of equivalent value of assets.*

*5) That without prejudice to the above contentions, the learned CIT (A) has again erred: -*

*i) In accepting the remand report of the A.O. in toto, without considering the material placed before her for adjudication.*

*ii) In not adjudicating on following two claims of the appellant: -*

*a) Duplicate entry taken in stock list at S.No.49 & 54, Rs.480000/-.*

*b) Erroneous inclusion of stock of JC Textiles of Rs.975205/-.*

*iii) In not accepting the Sales Return of Rs.110643/- (45024+65619).*

*iv) In riot accepting the explanation of the appellant for the balance un-reconciled difference of Rs.9547 1/-*

*6)i) That without prejudice to the above contentions, the learned CIT(A) has erred in rejecting the books results of Post Survey Period, when for Post Survey Period, trading results were accepted by the AO and were even not agitated by the appellant.*

*ii) That the addition of Rs.3516266/- made by learned CIT(A) is in contravention of sec. 145(3) and 251(1)(a) of the LT. Act by erroneously travelling beyond the source of income, which was not in appeal be deleted.*

*7) That the addition of Rs. 35,16,266/- be deleted.”*

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. At the time of hearing, Ld. Counsel of the Assessee has only argued ground no. 2 i.e. challenging the impugned order on the ground that Ld. CIT(A) has not provided the opportunity to the assessee, as required u/s. 251(2) of the I.T. Act, 1961 for fresh additions made on the basis of her own working of GP rate and

her estimation of sales. Therefore, he requested that the issues involved in the appeal may be set aside to the file of the Ld. CIT(A) to decide the same afresh, after giving adequate opportunity of being heard to the assessee.

4. On the contrary, Ld. DR relied upon the order passed by the Ld. CIT(A) and stated that assessee was given sufficient opportunity as required u/s. 251(2) of the Act for substantiating his claim, but he could not avail the same. Therefore, the order of the authorities below especially the impugned order may be upheld and appeal of the assessee may be dismissed.

5. We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). After examining the impugned order, we find that Ld. CIT(A) has not given any show cause notice to the assessee u/s. 251(2) of the Act for enhancement, which is very much required as per law and made the additions in dispute, which is contrary to the law and facts. Therefore, in the interest of justice, we set aside the issues in dispute to the file of the Ld. CIT(A) with the directions to issue notice as required u/s. 251(2) of the I.T. Act to the assessee and after seeking the reply from the assessee, decide the issues in dispute as per law.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 05/10/2017.

**Sd/-**

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 05/10/2017*

**“SRBHATNAGAR”**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches