

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI
BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER**

**ITA No.4431/Del/2017
Assessment Year 2010-11**

Dharmendra Kumar Contractor, Muzaffarnagar PAN-AADFD4950H (Appellant)	Vs.	ITO, Ward-1(2) Muzaffarnagar (Respondent)
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Appellant by :	Sh. Prem Prakash & Sh. Ashish Agarwal, Advs
Respondent by :	Sh. T. Vasanthan, Sr. DR

सुनवाई का तारिख/Date of Hearing : 04/10/2017
घोषणा का तारिख/Date of Pronouncement: 05/10/2017

ORDER

PER B.P. JAIN, A.M.

This appeal of the assessee arises from the order of learned CIT(A), Muzaffarnagar, vide order dated 18.05.2017 for the Assessment Year 2010-11. The assessee has raised the following grounds of appeal:-

- 1) *That the order is against law & facts on the record.*
 - 2) *Ld. CIT(A) was wrong in confirming Net Profit @ 8% as against N.P of 5.15% without any base.*
2. The brief facts of the case are that the assessee is a transport contractor. The assessee has declared a net profit rate of 5.15%. The books of account were rejected which were not challenged by the

assessee. The AO applied a profit rate of 8% which was confirmed by the learned CIT(A).

3. I have heard the rival contentions and perused the facts of the case. There is no dispute as regards the invoking of provisions of Section 145(3) of the Act. As regards the application of net profit rate the past results are the best guide and in the absence of any comparable case brought on record by the AO, the net profit rate applicability @ 8% is not justified. In the circumstances and facts of the case, the matter is set aside to the file of the AO who will apply the average net profit rate declared of preceding five years. The assessee is directed to cooperate in the proceedings. The case before the AO is directed to be fixed on 30.11.2014 on which date the assessee will not seek the adjournment and the AO shall decide the issue as directed hereinabove after providing adequate opportunity of being heard to the assessee. Thus the grounds of the assessee are allowed for statistical purposes.

4. In the result, the appeal of the assessee in ITA No. 4431/Del/2017 is allowed for statistical purposes.

Order pronounced in the open court on 05.10.2017.

Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER

Dated: 05/10/2017
SH

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation	
2.	Date on which the draft is placed before the Dictating Member	
3.	Draft placed before the other Member	
4.	Approved draft comes to the Sr. PS/PS	
5.	Kept for pronouncement on	
6.	Final order received after pronouncement	
7.	File sent to the Bench Clerk	
8.	Date on which files goes to the Head Clerk	
9.	Date on which file goes to the Assistant Registrar	
10.	Date of dispatch of order	

