

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "G": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 6438/Del/2014
(Assessment Year: 2009-10)

Shri Sunil Kumar, Vill-Noorgarh, Gurgaon PAN : ASRPK 4398 N	Vs.	ITO, Ward-1(3), Gurgaon
(Appellant)		(Respondent)

Assessee by :	Shri Satya Ahuja, CA
Department by :	Shri Kaushlendra Tiwari, Sr. DR
Date of Hearing :	14/03/2018
Date of pronouncement :	12/06/2018.

O R D E R

PER PRASHANT MAHARISHI, A. M. :

This appeal is filed by the assessee against the order of the learned CIT (Appeals)-2, Faridabad dated 10.09.2014 for the Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal :-

- " 1. *That the order passed by learned Commissioner of Income-tax (Appeals) is bad in law and on the facts of the case.*
2. *That the learned Commissioner of Income-tax (Appeals) erred in sustaining the estimated income of the appellant of Rs.30,47,633/- @12% of the gross receipts against the declared business income of Rs.12,35,842/-.*

3. *That the learned Commissioner of Income-tax (Appeals) erred in sustaining the addition of Rs.35,528/- on account of unconfirmed purchases. "*

3. The assessee has challenged the estimation of the income at Rs.30,47,633/- and further addition of Rs.35,528/- on account of purchases.

4. The brief facts of the case shows that assessee filed its return of income on 30.09.2009 declaring income of Rs.11,78,750/-. The assessee was asked to furnish the details during the course of assessment proceedings. However, no details were furnished. The learned Assessing Officer also asked assessee to produce the books of accounts. The assessee did not. Therefore, learned Assessing Officer noted that sundry creditors, un-secured loans, advances, expenses payable and expenses claimed are unsubstantiated. Therefore, he assessed the income of the assessee at 12% of the gross receipt of Rs.2,53,96,944/- amounting to Rs.30,47,633/-. The assessee aggrieved with the order of the Assessing Officer preferred appeal before the learned CIT (Appeals). The assessee submitted the additional evidences before him. The Assessing Officer objected to the admission of additional evidence. It was further stated by him that he has taken a net profit @ 12% relying upon the order of the Hon'ble Punjab & Haryana High Court wherein such estimation has been upheld. The learned CIT (Appeals) upheld the estimation of the net profit @ 12%. Further the learned Assessing Officer made the addition of Rs.56,42,280/- on account of un-substantiated cash credit. The learned CIT (Appeals) retained the addition only of Rs.35,528/- holding that most of the creditors are opening balances. Therefore, assessee aggrieved is in appeal before us.

5. The learned authorized representative submitted a detailed paper book before us wherein he has submitted the details of un-secured loans

along with the copy of the confirmation, details of advances from customers duly confirmed, list of sundry creditors along with confirmations. He further submitted the details of expenses payable along with the supporting of such payments. It was submitted that all these information was available before the learned CIT (Appeals). However, it was not looked into by him. He further referred to the copy of the application made before the learned CIT (Appeals) for admission of additional evidences which is placed at page Nos. 98 to 99 of the paper book. He stated that there is sufficient cause for not submitting the details before the Assessing Officer. He further stated that the books of accounts of the assessee are duly audited and are also supported with relevant vouchers. He, therefore, submitted that estimation of the profit @ 10% is not proper. He reiterated his submissions made before the learned CIT (Appeals) which are placed at page Nos. 93 to 97 of the paper book.

6. The learned Departmental Representative vehemently supported the order of the lower authorities. It was stated by him that when the assessee fails to produce the information before the learned Assessing Officer, there is a proper justification for passing an order and estimating the profits of the assessee. He further stated that the rate of 12% taken by the learned Assessing Officer is supported by several judicial precedents. He submitted that the order of the lower authorities may be upheld.

7. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Apparently assessee has filed his return of income on 30th September, 2009 showing income of Rs.11,78,750/-. The assessee could not appear before the learned Assessing Officer and for this it was stated that one Advocate, Shri Bijender Singh, who attended before the learned Assessing Officer on two occasions, did not appear during the assessment proceedings and due to this reason the assessment got

passed under section 144 of the Act. It was submitted that the assessee came to know about the order when it was received. It is also stated that assessee is only 10th Standard pass and is not aware about the intricacies of the Income Tax Act and was principally relying upon his Accountant and Advocate. It is further the fact that before the learned CIT (Appeals) the assessee submitted the complete details duly confirmed by the third parties. He further referred to the Medical Certificate submitted before the learned CIT (Appeals). It is further the fact that despite admission of additional evidences the learned CIT (Appeals) did not consider them. With respect to the gross receipt of the assessee the profit is estimated @ 12% in spite of all the details available before the learned CIT (Appeals). We have also perused the paper book submitted before us which shows that assessee has furnished complete details which are duly confirmed by the third parties. The details of expenses were also submitted with supporting evidences. However, it is apparent that assessee has not produced the books of accounts before the lower authorities. They have estimated the income of the appellant at 12% of the gross receipt in absence of requisite evidences pertaining to various expenses. Looking to the facts and circumstances of the case, where the assessee was prevented because of the non-appearance of the Advocate and Accountant, the level of education of the assessee and the medical conditions of the assessee, in the interest of justice, we set aside the ground No. 2 of the appeal back to the file of the learned Assessing Officer with a direction to the assessee to produce the books of accounts along with requisite vouchers before the learned Assessing Officer. The Assessing Officer is further directed to examine the books of accounts and decide the issue afresh in accordance with law, after granting proper opportunity of hearing to the assessee.

8. In the result, ground No. 2 of the appeal of the assessee is allowed accordingly.

9. Ground No. 3 of the appeal is against the addition of Rs.35,528/- on account of un-confirmed purchases. As we have already set aside the ground No. 2 with some directions to the file of the learned Assessing Officer and ground No. 3 is with respect to the verification of the purchases, therefore, ground No. 3 of the appeal is also set aside to the file of the learned Assessing Officer with a direction to the assessee to substantiate the purchases. Accordingly ground No. 3 of the appeal of the assessee is allowed.

10. In the result, appeal filed by the assessee is allowed, for statistical purposes.

Order pronounced in the open court on : **12th June, 2018.**

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 12/06/2018.

MEHTA

Copy of the order forwarded to :-

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

// True Copy //

BY ORDER
ASSISTANT REGISTRAR

ITAT, New Delhi.

		Date	
1.	Draft dictated on	11.06.2018.	Sr. PS
2.	Draft placed before author	12.06.2018.	Sr. PS
3.	Draft proposed & placed before the second member	12.06.2018.	JM/AM
4.	Draft discussed/approved by Second Member.	12.06.2018.	JM/AM
5.	Approved Draft comes to the Sr.PS/PS	12.06.2018.	Sr.PS/Sr.PS
6.	Kept for pronouncement on	12.06.2018.	Sr. PS
7.	File sent to the Bench Clerk	12.06.2018.	Sr. PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		