

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

**BEFORE SH.R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.3073/Del/2016  
Assessment Year: 2011-12

Power House A-2/48, Prateek Apartments, Paschim Vihar New Delhi -110063 PAN AALFP0063H	Vs	ACIT Circle . 38 (1) New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Vanktesh Chaurasia, Advocate
Respondent by	Sh. K. Tiwari, Sr. DR

Date of hearing:	18/06/2018
Date of Pronouncement:	18/06/2018

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the assessee is directed against the ex-parte order dated 31.03.2016 passed by the Ld. CIT (A)-XX, New Delhi relating to A. Y. 2011-12.

2. This appeal was earlier dismissed by the Tribunal for non appearance. Subsequently, the Tribunal vide M. A. No. 199/Del/2018 order dated 05.06.2018 recalled its earlier order. Hence, this is a recalled matter.

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of trading and installations of UPS and Invertor system comprising of two partners. It filed its return of income on 22.09.2011 declaring total income at Rs. 43,34,900/-. The Assessing Officer completed the assessment u/s. 143 (3) on 29.03.2014 determining the total income at Rs. 72,65,640/- wherein he made addition of Rs. 29,02,330/- on account of suppressed profit by estimating the income, Rs. 21,746/- on account of disallowance of interest and TDS of Rs. 6,664/- on account of disallowance out of interest on VAT. Since there was no compliance, the CIT (A) in the ex-parte order sustained the addition made by the Assessing Officer.

4. Aggrieved with such order of the CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds :-

*1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eyes of law and on facts.*

*2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in passing the ex-parte order, without giving the assessee a proper and adequate opportunity of being heard, in clear violation of the principles of natural justice.*

*3. On the facts and circumstances of the case, the Ld. CIT(A) has erred, both on facts and in law by confirming the action of AO in rejecting the books of accounts, despite the fact that the books are properly maintained by the assessee as per the law.*

*4. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an*

*amount of Rs.29,02,330/- made by AO on account of low Net Profit (NP) rate.*

*(ii) That the above said addition has been confirmed by the learned CIT(A) by arbitrarily adopting the NP rate of 4.5%.*

*5. On the facts and circumstances of the case, the learned CIT(A) has erred, both n facts and in law in confirming the above addition by disregarding the explanations and evidences submitted by the assessee in support of its contention.*

5. Ld. Counsel for the assessee at the outset submitted that due to non appearance of the previous counsel before the CIT (A), he passed the ex-part order sustaining the various additions made by the Assessing Officer. He submitted that the assessee in the meantime has changed the counsel. Therefore, in the interest of justice the assessee should be granted an opportunity of being heard before the CIT (A).

6. The Ld. DR on the other hand strongly opposed the arguments advanced by the Ld. Counsel for the assessee. Referring to the assessment order he submitted that despite repeated opportunities given by the Assessing Officer the assessee never bothered to file the requisite details which shows the negative attitude of the assessee. He submitted that Ld. CIT (A) had given number of opportunities and the assessee did not avail of those opportunities. He accordingly submitted that the order of the CIT (A) be upheld. In his alternate contention, he submitted that the assessee may be directed to appear before the CIT (A) without seeking any adjournment failing which the addition made by the Assessing Officer should be sustained.

7. We have considered the rival arguments made by the both the sides and perused the material available on record. It is an admitted fact that despite opportunities granted by the CIT (A) there was non compliance from the side of the assessee for which he had passed the ex-parte order. It is the submission of the Ld. Counsel for the assessee that given an opportunity the assessee is in a position to substantiate its case. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the CIT (A) with a direction to grant one final opportunity to the assessee to substantiate its case. The assessee is hereby directed not to seek any adjournment and appear before the CIT (A) to substantiate its case. In case the assessee fails to appear before CIT (A) for whatever reason, the CIT (A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 18.06.2018.

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

*\*NEHA\**

*Date:- 18.06.2018*

Copy forwarded to:

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

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	18.06.2018
Date on which the typed draft is placed before the dictating Member	18.06.2018
Date on which the typed draft is placed before the Other member	18.06.2018
Date on which the approved draft comes to the Sr.PS/PS	18.06.2018
Date on which the fair order is placed before the Dictating Member for Pronouncement	18.06.2018
Date on which the fair order comes back to the Sr. PS/ PS	18.06.2018
Date on which the final order is uploaded on the website of ITAT	18.06.2018
Date on which the file goes to the Bench Clerk	18.06.2018
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

