

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 922/Del/2015
AY: 2009-10**

**Abhishek Agarwal,
C/o Atlantis Research,
515, Ring Road Mall,
21, Mangalam Place,
Sector 3, Rohini,
Delhi-110085
(PAN: AJVPA0158P)
(Appellant)**

**vs
Income Tax Officer,
Ward-1(1),
Gurgaon.**

(Respondent)

**ITA No. 937/Del/2015
AY: 2009-10**

**Income Tax Officer,
Ward -1(1), Gurgaon**

**vs
Abhishek Agarwal,
Prop. Atlantis Research,
Ground Floor, K-4/5,
DLF Phase-2, Gurgaon.**

Department by: Ms Ashima Neb, Sr. DR
Assessee by: Ms Sangeeta Singh CA
Ms Kanishka Agarwal, CA

**Date of hearing: 25.06.2018
Date of pronouncement: 24.09.2018**

ORDER

PER BENCH

ITA No.922/Del/2015 is the assessee's appeal preferred against order dated 4.12.2014 passed by the Ld. CIT (Appeals)-I, Gurgaon for assessment year 2009-10 whereas ITA No.

937/Del/2015 is the department's cross appeal for the same year.

2. Brief facts of the case are that the return of income was filed declaring total income of Rs. 8,96,290/- and the scrutiny assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") at a total income of Rs. 95,44,420/- after assessing the net profit @10% of the gross receipts. Apart from this, the Assessing Officer also disallowed/added Rs.60,87,105/- shown as advances from customers by treating the same as assessee's income from undisclosed sources. An addition of Rs. 1,15,000/- was also made for failure to deduct tax at source on payments made towards commission. The assessee's challenge to the assessment order before the Ld. CIT (A) was partly accepted with the Ld. CIT (A) directing the Assessing Officer to estimate the net profit @ 6.5% instead of 10% and this is the sole issue in dispute before us with the assessee challenging the sustenance of estimated net profit addition by the Ld. CIT (A) to the tune of 6.5% whereas the department is challenging the action of the Ld. CIT (A) in allowing relief to the assessee by curtailing the net profit estimation at 6.5% as compared to 10% estimated by the Assessing Officer.

3.0 The Ld. AR submitted that the Assessing Officer was not justified in rejecting the book results of the assessee without assigning any valid reasons and without pointing out any specific defects in the maintenance of the books of accounts. It was also submitted that the books of accounts were duly audited and the audit report was before the lower authorities and, therefore, the same could not have been disregarded and there was no case of estimating the net profit on the ground that some bills were not available/could not be produced before the Assessing Officer. It was also submitted that while estimating the net profit rate @10%, the Assessing Officer did not bring on record any comparable cases in which a similar net profit rate of 10% was disclosed and further the Ld. CIT (A) also did not bring on record any comparable cases where the net profit rate in identically situated business was 6.5% of the gross receipts. The Ld. AR further submitted that if the Assessing Officer was not satisfied with the justification of a particular item of expenditure, he could have disallowed that particular expenditure but the same could not have been the basis for rejecting the books results. It was also submitted that a similar disallowance in assessment year 2010-11 was deleted by the Ld. CIT (A) and our attention was

drawn to a copy of the first appellate authority order for assessment year 2010-11 in this regard. The Ld. AR vehemently argued that mere non-production of supporting bills did not give power to the Assessing Officer to reject the books results and other factors should also have been considered. The Ld. AR submitted that the rejection of book results should not be resorted to unless there were strong and sufficient reasons to indicate that the books of accounts were unreliable and incorrect which was not so in the case of the assessee.

4.0 In response, the Ld. Sr. DR vehemently argued that the assessee was a habitual defaulter and did not cooperate during the course of assessment proceedings and, therefore, the Assessing Officer had no option but to reject the books results of the assessee for want of proper details. She submitted that 10% was a reasonable rate of net profit for a person enjoying gross receipts of Rs. 3,32,35,803/-. The Ld. Sr. DR assailed the action of the Ld. CIT (A) in restricting the estimation of net profit to 6.5% without assigning any specific reason for doing so. The Ld. Sr. DR submitted that the order of the Ld. CIT (A) needed to be set aside and the Assessing Officer's order required to be restored.

5.0 We have heard the rival submissions and perused the material available on record. A perusal of the assessment order shows that a questionnaire was issued to the assessee on 30.09.2011 wherein besides requiring the assessee to submit information and documents, the assessee was asked to produce complete books of accounts but the assessee did not produce the same. It is further mentioned in the assessment order that vide order sheet entry dated 19.10.2011, the assessee was specifically asked to produce complete books of accounts. It was also mentioned that in case of failure to comply with the requirement of producing the books of accounts, the books will be rejected in view of section 145(3) of the Act and net profit @10% will be assessed on the gross receipts. It has been further noted in the assessment order that on the appointed date also, none attended nor were the books of accounts produced and, therefore, the Assessing Officer proceeded to reject the books of accounts u/s 145(3) of the Act and estimated the net profit @10% of gross receipts as against 3% as declared by the assessee. However, we note that while doing so, the Assessing Officer did not give any basis for estimating the net profit @10% by quoting any comparable cases in this regard. Similarly, during the course of

appellate proceedings, the Ld. CIT (A) reached the conclusion that the Assessing Officer had erred in estimating net profit rate @10% of gross receipts since the assessee could produce certain percentage of bills, vouchers, etc. in support of expenses claimed by it and, therefore, it would be prudent to assess the net profit of the assessee between the net profit of 3% shown by the assessee and 10% estimated by the Assessing Officer leading to estimation of income of the assessee @6.5% of the gross receipts of the assessee. Thus, it is very much evident that the Ld. CIT (A) has also not assigned any basis for estimating net profit rate of 6.5%. Although it is apparent from the orders of both the lower authorities that the assessee has been extremely negligent and careless in his approach and even after being given numerous opportunities, he failed to produce the books of accounts. All the same, the action of both the lower authorities in estimating the net profit rate without any basis can also not be approved. Therefore, on the facts of the case and in the interest of justice, we deem it expedient to restore the issue to the file of the Assessing Officer to decide the issue *de novo* after giving due opportunity to the assessee to present its case and we also direct the assessee to produce the books of accounts before the

Assessing Officer, failing which the Assessing Officer shall be at liberty to estimate the net profit rate as per law.

6.0 In the final result, both the appeals stand allowed for statistical purposes.

Order pronounced in the Open Court on 24th September, 2018.

Sd/-

**(G.D. AGRAWAL)
PRESIDENT**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 24th SEPTEMBER, 2018
'GS'

Copy forwarded to: -

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

By Order

ASSTT. REGISTRAR

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