

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

**BEFORE SH. R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.1843/Del/2015  
Assessment Year: 2010-11

ITO Ward- 60 (4), Room No.308- F, Vikas Bhawan, I. P. Estate New Delhi -110002 <b>(APPELLANT)</b>	Vs	Brij Gopal Chauhan A-7, Kondli Delhi . 110096 <b>PAN AHFPC5855M</b> <b>(RESPONDENT)</b>
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Appellant by	Sh. Raghunath, Sr. DR
Respondent by	Sh. K. R. Manjani, Advocate

Cross objection No.233/Del/2016  
(In ITA No.1843/Del/2015)  
Assessment year 2010-11

Brij Gopal Chauhan A-7, Kondli Delhi . 110096 <b>PAN AHFPC5855M</b> <b>(APPELLANT)</b>	Vs	ITO Ward- 60 (4), Room No.308- F, Vikas Bhawan, I. P. Estate New Delhi -110002 <b>(RESPONDENT)</b>
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Appellant by	Sh. K. R. Manjani, Advocate
Respondent by	Sh. Raghunath, Sr. DR

Date of hearing:	26/09/2018
Date of Pronouncement:	27/09/2018

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

This appeal filed by the revenue is directed against the order dated 09.01.2015 of the CIT (A)- 19, New Delhi relating to A. Y. 2010-11. The assessee has filed the cross-objection in response to appeal filed by the revenue. For the sake of convenience these were heard together and are being disposed of by this common order.

2. Facts of the case, in brief, are that the assessee is an individual and is engaged in the business of sale and purchase of Paints & Sanitary stores. He filed his return of income on 11.06.2010 declaring total income at Rs.4,62,460/-. The case was selected for scrutiny for the following reasons as mentioned by the Assessing Officer in the body of the assessment order :-

1. "Assessee has filed return of income for the A. Y. 2010-11 manually instead of filing electronically, being auditable case u/s 44 B. Assessee is engaged in Paints & sanitary business. The assessee has declared net profit of Rs.6,05,122/- against gross receipts/ sales of Rs.9,50,01,256/- showing net profit of Rs.0.636%. There is a steep decline in net profit ratio as compared to last year. In the immediately preceding A. Y. 2009-10, the assessee declared gross receipts of Rs.9.45 lacs and profit of Rs.2,74,630/- (N. P. rate 29%). Facts need to be examined.
2. The assessee has also shown proprietors capital amounting to Rs.3,31,61,602/-. Source of funds needs to be verified.
3. The assessee has shown Unsecured loans Rs.1,89,00,000/- which are very high require verification of genuineness.

4. The assessee has shown Sundry debtors and creditors at Rs.25,60,342/- & 7,95,143/- which require verification of genuineness.
5. Fixed assets shown are Rs.34,95,591/- Facts need to be examined.

3. The Assessing Officer during the course of assessment proceedings asked the assessee to produce the information/ details as per questionnaire. Since the assessee during the assessment proceedings failed to produce the books of accounts on the pretext that these are misplaced and failed to produce the audit report u/s 44 AB for which proceedings u/s 271 B are initiated separately, the Assessing Officer made lump sum addition of Rs. 50 lacs on account of suppressed sales. Apart from the above, the Assessing Officer also made various disallowances / additions out of various expenses claimed by the assessee amounting to Rs.11,38,744/-. Similarly the Assessing Officer also made addition of Rs. 1.89 crores on account of unsecured loan. Accordingly the Assessing Officer determined the total income of the assessee at Rs.2,56,43,866/-.

4. Before CIT (A) the assessee made elaborate submissions based on which the Ld. CIT(A) deleted an amount of Rs.2,40,59,190/-and sustained addition of Rs.15,84,676/- by observing as under :-

“7. The appellant himself admits that his earlier Balance Sheet and Profit & Loss Account are bogus and the books of accounts were never produced before the Assessing Officer during assessment proceedings. Therefore, I am of the view that the appellant's books of accounts should be rejected under section 145 (3) of the Income Tax Act, 1961 and appellant's income from business should be estimated. Since the assessment order says that the appellant's sales was Rs.3,16,93,527/-, I am of the view that appellant's net profit can be reasonably estimated at 5% of the above sales considering the nature of appellant's business and the fact that he was planning to expand his business by obtaining bank loans. Therefore, the profit of the appellant from business is estimated at Rs. 15,84,676/- - (5% of 3,16,93,527/-) and the additions/ disallowance made

by the Assessing Officer is deleted. The appellant's income is to be taken as Rs.15,84,676/- instead of Rs. 6,05,122/- taken in the computation of the assessment order based on the net profit shown in the Profit & Loss Account filed along with the return of income. No relief for deduction under section 80D or 80 G is to be granted as no evidence regarding these payments were submitted by the appellant even during the appellate proceedings. Thus, the appellant gets a relief of Rs.2,40,59,190/- (assessed income of Rs.25643866-1584676) and only the addition of Rs.15,84,676/- made by the Assessing Officer is sustained. Therefore, the ground of appeal is partly allowed."

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

1. *"On the facts and in the circumstances of the case, the order of the Ld. CIT(A) is bad in law.*
2. *On the facts and in the circumstances of the case, the Ld. CIT (A) erred in restricting the addition to 5% of gross sale of Rs.3,16,93,257/- without giving any reasonable findings.*
3. *The appellant craves leave to add, allow or amend any / all the grounds of appeal before or during the course of hearing of the appeal."*

4. The assessee has also filed the cross objection by raising the following grounds of appeal :-

1. *The appeal filed by the Department is misconceived, based on wrong facts which is also clear from the statements of Respondent and C. A. even the stock found does not support the grounds of the Appellant.*
2. *The Ld. CIT(A) has erred on facts as well as in law in not admitting fresh evidence and thereby sustaining addition of Rs.15,84,676/- which is arbitrary, unjustified and without any basis.*
3. *The Ld. CIT(A) has erred on facts as well as in law in not allowing deduction U/s 80C and 80D.*

6. The Ld. Counsel for the assessee at the time of hearing submitted that due to wrong representation by the then counsel of the assessee,

various details as called for by the Assessing Officer were not produced for which the Assessing Officer made huge additions. He submitted that despite giving various details before the CIT (A) he did not admit the additional evidences and estimated the income at 5% of the turnover and thereby sustained addition of Rs.15,84,676/-. He submitted that in the interest of justice this matter should be restored back to the file of the Assessing Officer with a direction to give one final opportunity to the assessee to substantiate his case.

7. The Ld. DR on the other hand while supporting the order of the Assessing Officer submitted that despite repeated opportunities granted by the Assessing Officer, the assessee never produced the requisite details. Therefore, the matter need not be restored back to the file of the Assessing Officer and appeal should be decided here. He submitted that the Ld. CIT (A) without any plausible reason has granted substantial relief to the assessee which is not justified under the facts and circumstances of the case. He accordingly submitted that the order of the CIT(A) be reversed and that of the Assessing Officer be restored.

8. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find despite giving number of opportunities the assessee did not produce the requisite details before the Assessing Officer nor produced the books of accounts and the audit report u/s 44AB for which the Assessing Officer determined the total income at Rs. 2,56,43,870/-by making various additions. We find the Ld. CIT (A) granted substantial relief to the assessee by estimating the net profit @ 5% of the turnover and sustained addition of Rs.15,84,676/-. It is the submission of the Ld. Counsel for the assessee that due to wrong representation of the then counsel for the assessee, the case was not properly handled and therefore, the assessee should be given an opportunity to substantiate with evidence to the satisfaction of the

Assessing Officer regarding various items of the profit and loss account and the balance sheet.

9. We find the order of the CIT (A) in the instant case is not a speaking order. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the matter back to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate his case. The assessee is also hereby directed to produce the books of accounts and audit report before the Assessing Officer and substantiate the various expenses claimed in the profit & loss and sundry creditors and other items shown in the balance sheet to the satisfaction of the Assessing Officer failing which the Assessing Officer shall pass appropriate order as per law. Needless to say the Assessing Officer shall give due opportunity of being to the assessee. We hold and direct accordingly.

10. The grounds raised by the revenue and the grounds of cross objection raised by the assessee are accordingly allowed for statistical purpose.

11. Order pronounced in the open court on 27.09.2018

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

*\*NEHA\**

*Date:- 27.09.2018*

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	24.09.2018
Date on which the typed draft is placed before the dictating Member	25.09.2018
Date on which the approved draft comes to the Sr.PS/PS	27.09.2018
Date on which the fair order is placed before the Dictating Member for Pronouncement	27.09.2018
Date on which the fair order comes back to the Sr. PS/ PS	27.09.2018
Date on which the final order is uploaded on the website of ITAT	27.09.2018
Date on which the file goes to the Bench Clerk	27.09.2018
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	