

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.1947/Del/2015
Assessment Year : 2009-10**

The Millennium Builders, 817, Sector- 22, Gurgaon.	Vs.	ACIT, Central Circle- 25(1), New Delhi.
PAN : AAEFT9224D		
(Appellant)		(Respondent)

Appellant by : None
Respondent by : Shri N. K. Bansal, Sr.DR
Date of hearing : 26-09-2018
Date of pronouncement : 26-09-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 13.03.2013 of the CIT(A)- XXIV, New Delhi relating to assessment year 2009-10.

2. Despite service of notice, none appeared on behalf of the assessee, therefore, this appeal is being decided on the basis of material available on record and after hearing the ld. DR.

3. Facts of the case, in brief, are that the assessee is a partnership firm and is engaged in the business of construction and infrastructure development. It filed its return of income on 30.09.2009 declaring total income of Rs.38,78,412/-.

Since there was non-compliance from the side of the assessee to the statutory notices issued by the Assessing Officer from time to time, the Assessing Officer, on the basis of material available on record, disallowed 50% of the expenses of Rs.1,47,61,475/- claimed in the Profit & Loss Account and accordingly made addition of Rs.73,80,738/- to the total income of the assessee. The Assessing Officer accordingly determined the taxable income at Rs.1,12,59,148/-.

4. Since none appeared before the Id. CIT(A), he dismissed the appeal in absence of any cooperation from the side of the assessee.

5. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

6. After hearing the Id. DR and on perusal of the orders of the authorities below, we find that due to non-appearance before the Assessing Officer, he passed the order u/s 144 of the I.T. Act, 1961 determining the total income of the assessee at Rs.1,12,59,148/- wherein he had made disallowance of 50% of the expenses claimed in the profit and loss account. Since nobody appeared before the Id. CIT(A), the Id. CIT(A), in the *ex-parte* order passed by him, dismissed the appeal filed by the assessee but he has not decided the issue on merit. Since the assessee did not appear before the Tribunal, therefore, 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 Id. CIT(A) with a direction

to grant one final opportunity to the assessee to substantiate its case and decide the issue on merit as per fact and law. The assessee is also hereby directed to appear before the Id. CIT(A) without seeking any adjournment under any pretext failing which the Id. CIT(A) is at liberty to pass appropriate order as per law.

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

Order pronounced in the open Court at the time of hearing itself i.e. on this 26th day of September, 2018.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

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

Dated: 26-09-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi