

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCHES (CAMP AT MEERUT))**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5848/Del./2018
(ASSESSMENT YEAR : 2010-11)**

Shri Nitin Rastogi,
28, Baba Khaki,
Baghpat Road, Meerut.
(PAN : AANPR7292Q)

vs. ITO, Ward 2 (1),
Meerut.

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vinod Kumar Goel, Advocate
REVENUE BY : Shri Munshi Ram Bihagra, Senior DR

Date of Hearing : 10.01.2019

Date of Order : 24.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Shri Nitin Rastogi (hereinafter referred to as 'the Assessee') by filing the present appeal, sought to set aside the impugned order dated 24.07.2018 passed by Ld. CIT (Appeals), Meerut qua the assessment year 2010-11 on the grounds inter alia that :-

"1. That the assessee counsel properly replied to the A.O. therefore, assessment made under section 144/47 is against the facts of the case and CIT(A) is in error to confirm the same without verifying the facts.

2. That the assessee has shown his income by taking net profit rate more than 8 percent as prescribe in the Act, the A.O. has taken entire cash deposit as undisclosed income. Therefore, addition of Rs.28,28,000/- is against the facts and law and

CIT(A) is in error in confirming the addition after rejection net profit, which is not according to law.

3. That the A.O. has not consider the CIT(A) Order of the earlier year in which assessee appeal was allowed. Therefore, assessment made by A.O. without considering the CIT(A) which is now confirmed by ITAT, the action of the A.O. is against the facts and law and CIT(A) is in error not following the earlier order, which is confirmed by the Hon'ble I.TAT. (on tax effect).”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer framed the assessment under section 147/144 of the Income-tax Act, 1961 (for short ‘the Act’) by making addition of Rs.28,28,000/- on the ground that the assessee has failed to prove purchase and sale bills to prove the fact that the cash deposit was his business receipts.

3. Assessee carried the matter by way of an appeal before the Id. CIT (Appeals) who has confirmed the addition by partly allowing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee has failed to prove his claim before the AO that the cash deposit of Rs.28,28,000/- was his business receipts by producing the purchase and sales bills and expenses bills. It is also not in dispute that during the appellate proceedings, assessee has relied upon the earlier year’s order passed by the Id. CIT (A), available at pages 22 to 24 of the paper book. Assessing Officer also relied upon the bank statement, available at pages 9 & 10 of the paper book, showing peak credit of Rs.1,70,311.39. Ld. CIT (A)

has declined to follow the precedent settled in favour of the assessee in AY 2009-10 qua the identical question of facts but at the same time, the assessee has not brought on record purchase & sale bill and expenses bills before the AO in order to appreciate the real controversy at hand. In the absence of purchase & sale bills and expenses bills, it is difficult to follow the precedent settled in favour of the assessee in AY 2009-10.

6. In these circumstances, we are of the considered view that when assessment in this case was framed u/s 147/144 of the Act at the back of the assessee and the contention raised before the Id. CIT (A) was not got verified by calling a remand report, to meet with ends of justice, adequate opportunity of being heard to the assessee is required to be given. So, the case is remanded back to the AO to decide afresh by following the decision rendered in case of assessee in AY 2009-10 passed by the Id. CIT (A), after providing an opportunity of being heard to the assessee.

7. Resultantly, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in open court on this 24th day of January, 2019.

**Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24th day of January, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Meerut.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.