

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 720/Del/2016  
(Assessment Year: 2012-13)

Nirav Shah, WZ-516/2, Basai Dara Pur, New Delhi-110015 PAN: AOJPS0712C (Appellant)	Vs.	ITO, Ward-49(2), New Delhi (Respondent)
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Assessee by :	Shri Parimalsingh B. Parmar, Adv
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	11/12/2018
Date of pronouncement	23/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against order of the Id CIT(A)-17, New Delhi dated 05/01/2016, wherein the order passed under section 144 of the Act by the Id Assessing Officer on 08/02/2015 assessing the total income of the assessee at Rs. 19680300/- was challenged and confirmed.
2. The assessee has raised the following grounds of appeal:-
  - "1. *That the order of learned Commissioner of Income Tax (Appeals) is bad in law as well as on the facts and in the circumstances of the case.*
  2. *That the learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal filed by the appellant without allowing a fair opportunity of being heard and sustaining the ex-parte order framed by the Assessing Officer under section 144 of the Income Tax Act, 1961.*
  3. *That the order of learned Commissioner of Income Tax (Appeals) erred in passing the ex-parte order without calling for any material from the Assessing Officer and without going into the merits of the case.*

4. *That the learned Commissioner of Income Tax (Appeals) erred in sustaining the additions made by the Assessing Officer totaling to Rs.1,90,23,754/- being Rs.78,50,547/- on account of gross profit and alleged discrepancy in opening stock of assessment year with the closing stock of preceding year and Rs.1,11,73,207/- on account of additions to capital/ unexplained creditors/unsecured loans etc.*
  5. *The above grounds of appeal are without prejudice to each other.”*
3. The brief facts of the case shows that the assessee is an individual who filed his return of income on 25-9-2012 declaring income of Rs. 556546/-. The Id AO selected the case of the assessee for scrutiny and issued several notices, which remain un-complied with and therefore final show cause notice was issued on 10-02-2015 stating that there is low gross profit earned by the assessee and there is a discrepancy in opening stock of current year with the closing stock of the preceding year. No information was received and therefore the Id AO increased the gross profit of assessee of Rs. 7850547/- on account of difference in stock. Further, with regard to several creditors and unsecured loan and advances to the capital account of the assessee addition of Rs. 11173207/- was made. Several other minor adjustments/ additions were made and assessment under section 144 of the Act was made on 18-02-2015 declaring total income of Rs. 19680300/-.
  4. The assessee preferred an appeal before the Id CIT (A). Even despite several notices the assessee did not remain present before the Id CIT (A) and therefore the vide para No. 5 of the appeal he confirmed all the additions made by the Id AO. Aggrieved, assessee is in appeal before us.
  5. Ld AR submitted that the assessee could not remain present before LD CIT (A) because of some personal difficulties as well as non receipt of notice later on. Even on the merits the LD AR stated that the accounts of the assessee are duly audited and there is no defect in the books of account of the assessee as well as the stock details. He further referred to the audited accounts of assessee and stated that some of the unsecured loans are old loans and not received during the year. With respect to the sundry creditors he submitted that all the sundry creditors are big

companies which are regularly supplying goods to the assessee and no addition is made on account of purchases made. He stated that if the assessee is assessed to such a huge tax liability without hearing it causes a great injustice. He also stated that given an opportunity assessee would represent its case before lower authorities. In the end he submitted that the Id CIT (A) has decided the issue ex parte.

6. The Id DR vehemently stated that assessee has been given enough opportunities before the lower authorities and assessee has failed to take benefit of such opportunities and therefore no purpose would be served in setting aside the issue back to the file of the lower authorities.
7. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Admittedly, the facts shows that the assessee did not comply with various notices before the LD AO and therefore it resulted into passing an order under section 144 of the Act. Similarly, before the LD CIT (A) the assessee did not comply. The assessee has come forward with the relevant details which show that the additions made in the hands of the assessee which is filing return of income of Rs. 5 lacs approximately has been assessed at the astronomical figure at Rs. 1.97 crores deserves to be heard. Further it does not mean that if the assessee is prevented to represent its case before authorities, the assessment could be made at any amount of income. Even otherwise the annual accounts of the assessee in the form of return and balance sheet are available with the AO. On perusal of the balance sheet it is apparent that accounts are duly audited. As the assessee has not availed opportunity of hearing and the huge additions are confirmed therefore in the interest of justice, we set aside the whole issue back to the file of the Id CIT (A) with a direction to the assessee to submit necessary details within three months from the date of this order and then the Id CIT (A) after considering the submission made by the assessee decide the whole issues afresh. Needless to say that assessee may be given properly opportunity of hearing to contest the various additions made by the LD AO.

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

Order pronounced in the open court on 23/01/2019.

-Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 23/01/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi