

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.2891/Del./2016
(ASSESSMENT YEAR : 2008-09)**

Shri Puneet Pandey, vs. ITO, Ward 3,
C/o Raj Kumar & Associates, CAs Noida (U.P.).
L – 5A (LGF), South Ext. Part 2,
New Delhi – 110 049.

(PAN : AMZPP0202G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Raj Kumar Gupta, Advocate
Shri Sumit Aggarwal, Advocate
REVENUE BY : Shri Amit Katoch, Senior DR

Date of Hearing : 21.01.2019

Date of Order : 19.02.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, Shri Puneet Pandey (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 31.03.2016 passed by the Commissioner of Income-tax (Appeals)-I, Noida qua the assessment year 2008-09 on the grounds inter alia that :-

“1. That under facts and circumstances, Ld. CIT (A) grossly erred in law as well as on merits in dismissing

the appeal as infructuous and non-maintainable and consequently in not deciding the various grounds of appeal preferred before him.

2. That under the facts and circumstances, the ld. AO grossly erred in law as well as on merits in rejecting the books of accounts u/s. 145 (3) of the I.T. Act and in estimating the N.P. from business @ 16% thereby making an addition of Rs.8,04,916/-.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is proprietor of M/s. P.V. Engineers and engaged into the business as “Trading – Retailers”. From the perusal of trading results, Assessing Officer noticed that gross profit of the assessee has been decreased from 34.47% of the total turnover to 26.16% of the turnover whereas turnover has increased from Rs.51,36,448/- to Rs.85,65,633/- during the year under assessment. AO also got the business premises of the assessee inspected through inspector, who has mentioned that it is not possible to carry out the commercial activities in the said premises which is a residential complex. So the AO came to the conclusion that nature of business disclosed by the assessee i.e. retail trading is just a farce as he has no storage or transmission of goods through the business premises. Assessee has also not produced stock register to ascertain the genuineness of the opening and closing stock. Consequently, AO after invoking the provisions

contained under section 145(3) of the Income-tax Act, 1961 (for short 'the Act') proceeded to estimate the net profit from the business at 16% and thereby made addition of Rs.8,04,916/- in addition to the profit of Rs.5,65,585/- already shown by the assessee.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has dismissed the appeal being not maintainable on the ground that since during the pendency of the present appeal CIT, Noida passed an order under section 263 of the Act on 30.03.2013 qua the impugned assessment order, present appeal is not maintainable. 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. Initially, the Id. AR for the assessee contended that since during the pendency of the appeal before the Id. CIT(A) who has passed the impugned order, another order under section 263 of the Act was passed by the Id. CIT holding that the assessment order passed by the AO is erroneous and prejudicial to the interest of the Revenue and directed the AO to modify the assessment order on

the issues discussed in the order under section 263, present appeal be remanded back to AO to decide afresh.

6. However, when ld. AR for the assessee has been confronted with the fact that issues raised by the ld. CIT in the order under section 263 are having separate subject matter, the present appeal has been filed just challenging the estimation of the net profit by the AO and the same can be decided independently, he has agreed with the proposal and then Bench decided to proceed with the present appeal.

7. Undisputedly, the assessee has failed to produce the stock register so as to examine the terms of the sales, purchases, opening stock and closing stock shown by the assessee. It is also not in dispute that the assessee has accepted the fact that the findings returned by the AO that sales, purchases, opening stock and closing stock shown by the assessee is doubtful and has not challenged the rejection of books of account under section 145(3) of the Act.

8. Ld. AR for the assessee has challenged the estimation of the net profit by the AO at 16% on the ground that the same is on higher side as the trading result of a particular year depends upon numerous factors and cannot be compared with trading results of preceding and succeeding years. Ld. AR for the assessee brought

on record trading results of preceding as well as succeeding years which are extracted for ready perusal as under :-

<i>AY</i>	<i>Sales (in Rs.)</i>	<i>GP (in Rs.)</i>	<i>GP (in %)</i>	<i>NP (in Rs.)</i>	<i>NP (in %)</i>
<i>2006-07</i>	<i>3,37,053</i>	<i>2,15,703</i>	<i>64%</i>	<i>1,15,316</i>	<i>34.21%</i>
<i>2007-08</i>	<i>51,36,449</i>	<i>17,70,559</i>	<i>34.47%</i>	<i>6,79,531</i>	<i>13.22%</i>
<i>2008-09</i>	<i>85,65,633</i>	<i>22,40,769</i>	<i>26.16%</i>	<i>5,65,585</i>	<i>6.6%</i>
<i>2009-10</i>	<i>89,75,730</i>	<i>23,94,916</i>	<i>26.68%</i>	<i>7,83,701</i>	<i>8.72%</i>

9. Perusal of the trading results of the assessee extracted above goes to prove that net profit rate of the assessee is not static as in AY 2006-07, the net profit rate was 34.21% whereas in AY 2007-08 it was reduced to 13.22% and in AY 2008-09, the year under assessment, it is shown at 6.6 % and again in the succeeding year 2009-10, it is shown at 8.72 %. Since trading results are certainly depend upon numerous factors and cannot be solely based upon turnover and keeping in view the throat cut competition in the business, we are of the considered view that fair and reasonable net profit during the year under assessment should be 9%. We are of the considered view that Id. CIT (A) has erred in this dismissing the appeal merely on maintainability rather the issue in controversy could have been decided independently even in the face of the order passed under section 263 by the Id. CIT, which is admittedly on different subject matter.

9. In view of what has been discussed above, AO is directed to apply the net profit rate at 9% instead of 16% assessed by the AO. However, it is made clear that AO shall make the assessment first pursuant to the order passed by Id. CIT under section 263 of the Act. Consequently, appeal filed by the assessee is partly allowed.

Order pronounced in open court on this 19th day of February, 2019.

**Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER**

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

**Dated the 19th day of February, 2019
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**