

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 2108/Del/2015
Assessment Year: 2010-11**

Ravi Saxena, 12-A, Ground Floor, Sector 30-33, Indraprastha Colony, Faridabad. PAN- ACNPS4187P. (Appellant)	vs.	Income-tax Officer, Ward 38(2), New Delhi (Respondent)
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Appellant by	Sh. Ved Jain, Advocate and S/Sh. Ashish Goel, & Nishchay Kantoor, CA
Respondent by	

Date of Hearing	19.02.2019
Date of Pronouncement	27.02.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order of the CITI(A)-XX, New Delhi dated 01.01.2015 for the assessment year 2010-11 on the following grounds :

- 1. On the facts and circumstances of the case, the order passed by the Learned CIT(A) is bad both in the eyes of law and on the facts.*
- 2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of AO in rejecting the books of accounts of the assessee despite the same have been properly maintained by the assessee.*

3. *(i) On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and in law in making an addition of an amount of Rs.43,46,840/-, apply the G.P. rate of 5% on gross turnover.*
(ii) That the addition has been confirmed despite the same having been made arbitrarily without there being any basis for the same.
(iii) That the addition has been made rejecting the detailed explanation and evidences brought on record by the assessee.
4. *(i) On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.38,33,872/- made by AO on account of sundry creditors.*
(ii) That the addition has been confirmed despite the fact that the same had been made arbitrarily @25% of total sundry creditors without there being any basis for the same.
(iii) That the addition has been made rejecting the detailed explanation & evidences brought on record by the assessee.
5. *(i) On the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the addition of Rs.10,16,000/- made by the AO on account of fixed assets.*
(ii) That the addition has been made rejecting the detailed explanation & evidences brought on record by the assessee.
6. *(i) On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and in law in confirming the disallowance of deduction amounting to Rs.1,00,000/- made by AO, claimed under section 80C of the Act.*
(ii) That the addition has been made rejecting the detailed explanation & evidences brought on record by the assessee.

2. The brief facts leading to the present appeal are that the assessee filed its return of income declaring income of Rs.10,18,720/- on 20.11.2010. During the course of the assessment proceedings the assessee was asked to produce the books of accounts. As per the assessment order, the assessee failed to produce the same on 08.03.2013, the final date of hearing. The AO invoked the provision of section 145(3) and estimated the profit of the assessee at the rate of 5% of the total gross receipt and made trading addition of Rs.43,46,840/-. The AO further made an addition of Rs.38,53,872/- being 25% of the total creditors of Rs.1,54,15,487/- on lump sum basis to cover up any leakage of Revenue. The AO further made addition of Rs.14,71,025/- on account of unexplained investment in the capital assets shown in the balance sheet of the assessee. The assessee carried the matter in appeal before the Id. CIT(A), who after considering the submissions of the assessee and the order of Assessing Officer, partly allowed the appeal of the assessee giving partial relief in the addition made on account of unexplained investment in the fixed asset but confirmed other two additions, as noted above. Aggrieved by the impugned order, the assessee is in appeal before the Tribunal.

3. The Id. AR of the assessee submitted that both AO and CIT(A) have gone wrong in rejecting the book version of the assessee and making addition on that account. The Ld. AR submitted that the assessee has in fact produced the books of accounts. This issue was also raised before the CIT(A). In this regard, the Ld. AR invited our attention to para 5.1 of the CIT(A)'s order where the CIT(A) has taken cognizance of the contention of the assessee as under:-

“In appeal, it was claimed that the assessee had submitted all the accounts books, balance sheet, profit and loss account, schedule of fixed assets, list of sundry creditors, debtors, loans and advances and the relevant bills, vouchers etc. but the Ld. AO failed to take cognizance the same and proceeded to assess and increase the income by Rs.43,46,840/- without giving any logical norms or trends of such business.”

4. It was further submitted by the Ld. AR that after recording the above submissions the Ld. CIT(A) has pointed out that appellant was therefore, asked to give comparative GP and NP for the last three years. Thereafter, the CIT(A) without deciding this issue whether assessee has produced the books of accounts has endorsed the decision of the Assessing Officer for rejecting the books of accounts and making arbitrarily addition. The Ld. AR also invited attention to para 6.1 of the CIT(A) order where the CIT(A) has upheld the decision of AO in making adhoc addition of 25% of the creditors just by pointing out that in few cases confirmation was not available. It was submitted that the decision of CIT(A) is arbitrary and shows adhoc addition without examination of the facts. It was also submitted that addition on account of unexplained investment in fixed assets has been confirmed without appreciating that when these fixed assets are appearing in the balance sheet, there can't be an allegation of unexplained investment. The debit side shows application of the credit side. Thus this addition is also not tenable.

5. The ld. DR, on the other hand, relying on the orders of the authorities below, submitted that considering the arguments of the Ld. AR itself, the ld. CIT(A) was not justified in deciding the issue whether the assessee had produced its books of accounts before the Assessing Officer or not. He, therefore, submitted that the matter may be remitted back to the file of Assessing Officer

for verification of assessee's contentions in the light of books of accounts, which were not submitted before the Assessing Officer.

6. Having considered the rival submissions and gone through material available on record, we find considerable force in the contention of the Id. DR that once the assessee pleaded before the Id. CIT(A) about production of books of account before the Assessing Officer, it was incumbent upon him to decide this issue first. Therefore, before deciding the core issue, the decision on additions made cannot be sustained at all. In such circumstances, the request of the Id. DR that the matter should go back to the file of Assessing Officer for passing the assessment order de novo, cannot be said to be unjustified. The Id. AR of the assessee has also not vehemently objected to the restoration of appeal to the file of Assessing Officer. We, therefore, set aside the impugned order and remit the case back to the file of Assessing Officer for making the assessment afresh after due verification of assessee's claim from the books of accounts. The assessee is directed to produce all the books of account and evidence in its support. Needless to say, the assessee shall be given reasonable opportunity of being heard.

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

Order pronounced in the open court on 27.02.2019.

Sd/-

(Amit Shukla)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 27.02.2019

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