



also specifically asked to produce certified copy of all agreements signed with persons/entities to whom loans and advances have been given and with whom investment have been made since date. The directors did not appear despite repeated opportunities granted. In view of the above and observing that the assessee company and its directors were not found existing at the address provided by the assessee during the assessment proceedings and the financials of the company and the ITR for the last ten years do not show any business activity carried on by the assessee, the Assessing Officer held that the assessee company is a paper/bogus/dummy company and is being used as a conduit to provide entries to various entities. He, therefore, determined the income at Rs.4,60,000/- by estimating the commission @ 2% of the transaction of Rs.2,30,00,000/- made during the year. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer.

3. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1 .That Ld CIT(A) erred in law as well as in fact by upholding the addition of Rs 4,60,000/- being 2% of the amount of Rs.2,30,00,000/- invested in the shares of M/s Pioneer Deal Trade Pvt Ltd by holding the appellant as paper company.

2. That Ld CIT(A) failed to consider the legal position that such investment of Rs.2,30,00,000/- in shares of M/s Pioneer Deal Trade Pvt Ltd. was found to be genuine as the assessment in that case was made u/s 143(3) for which the copy was already enclosed with paper book. Hence, the action of Ld CIT(A) upholding the addition of Rs.4,60,000/- is against the principal of consistency.

3. That Ld CIT(A) while upholding the addition of Rs 4,60,000/- failed to appreciate the legal position that it was made in violation to principle of Natural justice.

4. Ld CIT(A) failed to appreciate that the addition of Rs 4,60,000/-was

made merely on presumption by determining the notional commission, which was not permissible in the eye of law.

5. The appellant reserve the right to add, alter, modify or delete any of the grounds.”

4. I have considered the rival arguments made by both the sides and perused the relevant material on record. I find the Assessing Officer, in the instant case, made addition of Rs.4,60,000/- being 2% commission on the investment of Rs.2,30,00,000/- made by the assessee company in M/s Pioneer Dealtrade P. Ltd. It is the submission of the ld. counsel for the assessee that assessment of M/s Pioneer Dealtrade P. Ltd. was completed u/s 143(3) vide order dated 20<sup>th</sup> December, 2016 and the investment made by the assessee company in M/s Pioneer Dealtrade P. Ltd. was not doubted. Therefore, it is his submission that no disallowance is called for. However, it is an admitted fact that the directors of the assessee company have never appeared before the Assessing Officer despite summons issued and neither the assessee company nor its directors were found existing at the address provided by the assessee during the course of assessment proceedings. To a pointed query raised by the Bench as to whether the assessee is in a position to produce the directors before the Assessing Officer for his examination, the ld. counsel for the assessee submitted that given an opportunity, he will produce the directors before the Assessing Officer for his examination. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to give an opportunity to the assessee to produce the directors and

substantiate its case. The Assessing Officer is directed to decide the issue as per fact and law after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

The decision was pronounced in the open court on 16.05.2019.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 16<sup>th</sup> May, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi