

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

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER &  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 4480/Del/2016  
(Assessment Year: 2012-13)**

Avnish Kumar Yadav, RZ-E-774/25, Gali No.14, Raj Nagar 1, Palam Colony, New Delhi-110045. PAN-ADHPY2090C	Vs	ITO, Ward-44(4), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		None
<b>Respondent by</b>		Shri Anil Kumar Sharma, Sr.DR

**ORDER**

**PER ANADEE NATH MISSHRA, AM**

[A]. This appeal has been filed by the assessee against the order dated 22/06/2016 passed by Learned Commissioner of Income Tax(Appeals)-15, New Delhi [in short, "Ld.CIT(A)"] pertaining to 2012-13 assessment year.

The assessee has raised following grounds of appeal:-

1. *"That the order of assessment passed by the Respected Commissioner of Income Tax (Appeal) u/s 250 is against facts and law of the case.*

*That the Respected CIT(A) has passed order against the facts and circumstances of the assessee's case in making addition of a sum of Rs.11,80,448/-, the detail of this sum is as follows:*

<i>Nature and description of Addition</i>	<i>Amount of Addition made</i>	<i>Our explanation</i>
<i>Addition is made as unexplained Income</i>	<i>11,80,448.00</i>	<i>Point No.3.0</i>

*3.0. As per Individual Transaction Statement (ITS) available on system that cash totaling Rs. 3,03.45.700/- has been deposited in the bank account with Syndicate Bank. Palam Village, New Delhi and the bank has filed CIB details against the PAN of the assessee. The bank has wrongly filed the CIB details against the PAN of the assessee. In actual the CIB details relates to the Partnership Firm Rudra Pharmaceuticals. Thus the addition made on the basis of CIB details is erroneous. Copy of the Ledger of Bank Account of Partnership Firm is attached. Please refer "Annexure -A" also."*

[B]. Vide assessment order dated 30/03/2015 passed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act'), income of the assessee was determined at Rs.1,16,24,770/- as per following computation of income:-

a) Closing Stock	Rs.50,61,355/-	
b) Unexplained income	Rs.60,69,140/-	Rs.1,11,30,945/-
<b>Total Income</b>		<b>Rs.1,16,24,765/-</b>

[C]. The relevant portion of the assessment order is reproduced as under:-

Return declaring income of Rs. 4,94,270/- was filed on 28.07.2012. Subsequently the case was selected for scrutiny on the basis of CASS and first notice u/s 143(2) of the I.T Act dated 23/09/2013 was issued and served upon the assessee within the stipulated time. However, there was no compliance to this notice. Notice u/s 142(1) was issued on 08/07/2014 calling for compliance on 25/07/2014. However, there was no compliance to this notice as well. Fresh notice u/s 142(1) was issued on 13/08/2014 fixing the case for hearing on 27/08/2014. On this date Sh. Pankaj Kumar Vats, CA/AR appeared. He was asked to submit details as per questionnaire (including sources/narration of entries in bank account) and reason for difference in opening stock of the year under consideration (Rs. Nil) and the closing stock of the previous year 2010-11 (AY 2011-12) i.e. Rs. 50,61,355/-. The case was adjourned for 09/09/2014. On this date Sh. Pankaj Kumar Vats, CA/AR appeared and requested for adjournment. The case was adjourned for 06/10/2014. However, no one appeared on this date nor any request for adjournment was filed.

Fresh notices u/s 142(1) were issued on 15/10/2014 and 02/12/2014 fixing the case for hearing on 22/10/2014 and 11/12/2014. However, still there was no compliance on the part of the assessee. On 18/02/2015, Sh. Pankaj Kumar Vats, CA/AR appeared and filed only copy of return and capital account of the firm, whereas, no details as per questionnaire and explanation with respect to reason for difference in opening stock of the year under consideration and the closing

stock of the AY 2011-12 were filed. On request the case was adjourned for 24/02/2015.No one appeared on this date. On 26/02/2015 Sh. Pankaj Kumar Vats, CA/AR appeared but did not file any details. Vide order sheet entry dated 26/02/2015, the assessee was once again asked to explain the reason for difference in opening stock of the year under consideration and the closing stock of the AY 2011-12 as well as other requisite details. The case was finally adjourned for 02/03/2015 clearly spelling out that the case will be decided on the basis of material available on records as already sufficient opportunities have been allowed. However, still the assessee preferred only not to comply. Considering these facts I have no option but to complete the case on the basis of material available on record.

As per system there is difference in opening stock of the year under consideration (Rs. Nil) and the closing stock of the previous year 2010-11 (AY 2011-12) i.e. Rs. 50,61,355/-. The assessee had no reason to explain the above glaring difference. The only reason could be the assessee has failed to declare the above stock of Rs. 50,61,355/-, hence, concealing the particulars of income on this account. Since the closing stock of Rs. 50,61,355/- is glaringly concealed by the assessee in his return of income this amount of Rs. 50,61,355/- is added to the total income of the assessee as undeclared/explained income u/s 68 of the I.T. Act.

I am also satisfied that the assessee has submitted inaccurate particulars of income on this account, therefore, penalty proceedings u/s 271(1)(c) of the I.T. Act are initiated separately.

**(Total addition: Rs. 50,61,355/-)**

Further, Individual Transaction statement (ITS) available on system reveals that cash totaling Rs. 3,03,45,700/- has been deposited in bank account with syndicate bank, palam village, New Delhi and the bank has filed CIB details against the PAN of the assessee. The assessee was asked to submit the details/sources of these transactions as well. However, as already stated above the assessee has chosen not to submit any details in this regard as well inspite of several opportunities allowed to the assessee as narrated above. Failure to explain the same leaves no option but to treat the same as related to the assessee but not reflected in the return of income. In the absence of necessary details these transactions are treated as business receipts and 20% of these transactions i.e. Rs. 60,69,140/- is estimated as margin and added to the total income of the assessee.

I am also satisfied that the assessee has submitted inaccurate particulars of income on this account, therefore, penalty proceedings u/s 271(1)(c) of the I.T. Act are initiated separately.

**(Total addition: Rs. 60,69,140/-)**

With these remarks the total income of the assessee is computed as under:

Total income as per return of income	Rs. 4,94,270/-
Add:	
1. Closing stock (as discussed above)	Rs. 50,61,355/-
2. Unexplained income (as discussed above)	Rs. 60,69,140/-
	Rs. 1,11,30,495/-
<b>Total Income</b>	<b>Rs. 1,16,24,765/-</b>
<b>R/O</b>	<b>Rs. 1,16,24,770/-</b>

Assessed at Total Income of Rs. 1,16,24,770/- .Charge interest as per law. Give credit to pre paid taxes, if any. Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 are initiated separately for concealing the particulars of income and for furnishing inaccurate particulars of income. Penalty proceedings u/s 271(1)(b) of the I.T. Act, 1961 are also initiated separately for non-compliance to statutory notices. Penalty proceedings u/s 271B are also initiated for failure to get accounts audited. Issue necessary forms

[D] Aggrieved by the assessment order, the assessee preferred appeal before the Ld. CIT(A). Vide order dated 22/06/2016, the Ld. CIT(A) partly allowed the assessee's appeal. The relevant portion of the order of the Ld. CIT(A) is reproduced as under:-

2. For admitting appeal, information was sought for from AO vide letter dated 14.09.2015 (served on 15.09.2015) to certify that Form No.35 (as per Rule 45) has been filed in time and all the taxes have been paid on returned income, but no reply has been received till date. In absence of such details, it

is deemed that the appeal is filed in time and all the taxes on returned income have been paid by appellant. Therefore, appeal is admitted on the basis of information provided by appellant.

3. The grounds of appeal taken by appellant are as under:

**1.0 That the order of assessment passed by the Ld. AO u/s 143(3) is bad in law.**

**2.0 That the Learned AO has erred in law and on the facts and circumstances of the assessee's case in making addition of a sum of Rs.1,11,30,495/-, the detail of this sum is as follows:**

Nature and description of Addition	Amount of Addition made	Our Explanation
Disallowance is made on account of closing stock	50,61,355.00	Point No. 3.0
Disallowance is made as unexplained Income	60,69,140.00	Point No. 4.0

**3.0 During the Assessment Year 2011-12, the assessee filed the Income Tax Return. In that ITR, closing stock was shown amounting to Rs.50,61,355.00. During the A.Y. 2012-13 the ITR was filed and the stock of Rs.50,61,355.00 was not shown anywhere. The reason behind so was this that during the A.Y. 2011-12 the business of the assessee was taken over by the "Partnership Firm namely Rudra Pharmaceuticals". This firm was formed by the assessee. Since the entire business was transferred into the Partnership Firm, thus the assessee was not required to show the stock of in his own ITR. The stock have been showing the ITR of Partnership firm. We explained the same matter to the AO but failed to produce the documents to substantiate the same. The assessee had undergone the various surgeries during the Assessment Proceedings as was not in a position to provide the relevant documents. The evidence in support of the above facts are as follows and attached:**

- > Partnership Deed
- > Income Tax Return and Audit Report of Partnership Firm for the A.Y. 2011-12 and Income Tax Return and computation of Income for the A. y. 2012-13.
- > Income Tax Return and Audit Report of Sh. Avnish Kumar Yadav for the A.Y. 2011-12 and Income Tax Return and Computation of Income for the A.Y. 2012-13.

**4.0 As per Individual Transaction Statement (ITS) available on system that cash totaling Rs.3,03,45,700/- has been deposited in the bank account with Syndicate Bank, Palam Village, New Delhi and the bank has filed CIB details against the PAN of the assessee. The bank as wrongly filed the CIB details against the PAN of the assessee. In actual the CIB details relates to the Partnership firm Rudra Pharmaceuticals. Thus the addition made on the basis of CIB details is erroneous. The assessee had undergone the various surgeries during the Assessment Proceedings and was not in a position to provide the relevant documents. So we do request to please accept the evidences now. The copy of ledger of Bank Account of Partnership Firm is attached.**

**5.0 That the penalty proceedings initiated by relying on Sec 271(1)(c) is on wholly illegal and untenable grounds since there was no concealment of any income nor submission of inaccurate particulars of income, nor any default according to law by the assessee."**

4. Ground No. 1 and 5 are of general/consequential in nature and, therefore, separate adjudication of the same is not required.

5. Ground No. 2, 3 and 4 deal with two additions made in the assessment order. The closing stock in the return for A.Y. 2011-12 of ₹50,61,355/- was not shown as opening stock of A.Y. 2012-13. Therefore, the AO added the same u/s 68. Moreover, as per system cash deposits of ₹3,03,45,700/- were made in the bank account with Syndicate Bank. The AO added 20% of the same as net profit by treating the deposits as undisclosed business turn over.

6. Though the assessment order mentioned that no explanation was furnished during the course of assessment proceedings, the appellant submitted that letters dated 10.03.2014, 12.03.2014 and 16.03.2014 were given to the assessing officer. However, he did not take it on record. On merits, the appellant submitted that his proprietorship concern M/s Rudra Pharmaceuticals was converted into a partnership firm with the same name w.e.f. 20.05.2010 with PAN AANFR4129C and return for A.Y. 2011-12 and AY 2012-13 of the said firm were electronically filed

on 27.09.2011 and 27.09.2012 respectively. From the audited accounts of A.Y. 2011-12 it is noticed that the opening stock in the said firm was ₹50,61,355/- and closing stock was ₹76,27,412/-. The total sales of 4.27 crores were shown. The accounts were audited u/s 44AB. As regard A.Y. 2012-13 the audit report of M/s Rudra Pharmaceuticals, partnership firm has not been filed but the returned income of the firm was ₹50,245/-. In the appellant's return for A.Y. 2012-13 i.e. year under appeal remuneration, interest and profit from M/s Rudra Pharmaceuticals have been shown. Therefore the assessing officer action of addition of closing stock of A.Y. 2011-12 is not justified when the audited accounts of appellant show that the F.Y. of M/s Rudra Pharmaceuticals; the erstwhile proprietorship firm had ended on 19.05.2010. Even otherwise Section 68 does not apply in such a situation as it was not a case of unexplained credit. Considering the same the addition of ₹50,61,355/- is deleted.

7. As regard the second addition, there have been cash deposits of ₹3,03,45,700/- in the bank account in the name of M/s Rudra Pharmaceuticals, the erstwhile proprietorship concern with PAN of the appellant. The Assessing Officer has accepted the deposits to be the sale proceeds. The issue involved is whether the sale proceeds belong to M/s Rudra Pharmaceuticals, the partnership firm or the appellant. The appellant claims that it gave the partnership deed to the bank along with PAN of the firm. However, the bank continued the bank account in the name of the erstwhile proprietorship concern with the PAN of the assessee. As per the appellant, since the names of proprietorship concern and partnership concern were same the appellant was not aware of this mistake by the bank.

7:1 The appellant's contention has been examined. No evidence has been furnished regarding communication to the bank for change of PAN in the bank account. The appellant has also not co-related the deposits in the bank account with the audited books of account of M/s Rudra Pharmaceuticals, the partnership firm. Therefore, it cannot be verified

whether the deposits of ₹3,03,45,700/- have been disclosed in the books of account of partnership firm or not. As a result, the addition made is confirmed to principle. However, estimation of net profit at 20% is unreasonable. In the A.Y. 2011-12 the proprietorship firm M/s Rudra Pharmaceuticals had worked for till 19.05.2010 and the net profit of the same was 3.89% on a turnover of ₹66,15,455/-. Therefore, the net profit on turnover of ₹3,03,45,700/- is estimated at 3.89% only which comes to ₹11,80,448/-. Consequently, the addition of ₹60,69,140/- is reduced to ₹11,80,448/-.

8. As a result, the appeal is partly allowed.

[E] This present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 22/06/2016 of the Ld. CIT(A). At the time of hearing, Revenue was represented by Shri Anil Kumar Sharma, the Ld. Departmental Representative (in short 'Ld. DR'). However, none was present from the assessee's side. In the absence of any representation from assessee's side, at the time of hearing before us, we heard the Ld. DR. The Ld. DR relied upon the order of the Assessing Officer and the aforesaid impugned order dated 22/06/2016 of the Ld. CIT(A). After perusal of the order of the AO and the aforesaid impugned order dated 22/06/2016 of the Ld. CIT(A), we find that the Ld. CIT(A) has passed speaking order on merits. Relevant portion of the impugned order of the Ld. CIT(A) has already been reproduced in foregoing paragraph (D) of this order. We find that the Ld. CIT(A) has given detailed reasons for his decision on merits in the aforesaid impugned appellate order dated 22/06/2016 of Ld. CIT(A). During appellate proceedings in Income Tax

Appellate Tribunal ("ITAT", for short) no material has been brought for our consideration to persuade us to take a view different from the view taken by the Ld. CIT(A) in the impugned order on merit. After hearing the Ld. DR and after perusal of materials on record, and further, in view of the foregoing discussion, we decline to interfere with the aforesaid impugned appellate order dated 22/06/2016 of Ld. CIT(A).

[F] In view of the foregoing discussion, the appeal filed by assessee is dismissed. Before we part; we explicitly clarify that the assessee will be at liberty to approach ITAT for restoration of the appeal in accordance with Proviso to Rule 24 of Income Tax (Appellate Tribunal), Rules, 1963. If the assessee does approach ITAT for restoration of the appeals in ITAT, the matter will be considered in accordance with law having regard to the facts and circumstances.

[G] In the result, appeal filed by Assessee is dismissed.

Order pronounced in the open court on 03/092019.

Sd/-  
**(H.S.SIDHU)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 03/09/2019  
Shekhar, Sr. P.S  
Copy forwarded to:  
1. Appellant  
2. Respondent  
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI