

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : D : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.2518/Del/2016
Assessment Year: 2011-12

Vinay Jain,
M/s AVJ Developers Pvt. Ltd.,
Plot C, Community Centre,
Anand Vihar,
New Delhi.

Vs DCIT,
Circle 1(1),
New Delhi.

PAN: ABRPJ1666P

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Smt. Naina Soin Kapil, Sr. DR & Shri J.K. Mishra, CIT, DR
Date of Hearing	:	02.09.2019
Date of Pronouncement	:	12.09.2019

ORDER

PER R.K. PANDA, AM:

The appeal filed by the assessee is directed against the order dated 11.01.2016 of the CIT(A)-1, New Delhi relating to assessment year 2011-12.

2. None appeared on behalf of the assessee. However, considering the fact that this an *ex parte* order passed by the CIT(A), this appeal was decided on the basis of the material available on record and after hearing the ld. DR.

3. Facts of the case, in brief, are that the assessee is an individual and is carrying on the business of manufacturing and trading of brass rods under the name and style of M/s Jainex Metal. He has also received director's remuneration from M/s AVJ Developers Pvt. Ltd. and AVJ Developers (India) Pvt. Ltd. He has filed his return of income on 11th February, 2012 declaring the total income of Rs.54,87,694/-. The Assessing Officer completed the assessment u/s 143(3) on 31st March, 2014 determining the total income of the assessee at Rs.12,22,77,740/- wherein he made addition of Rs.4,91,90,000/- on account of presumptive profit and Rs.6,76,00,050/- on account of initial investment on unaccounted business. In appeal, the Id.CIT(A), in the *ex parte* order passed by him, sustained both the additions made by the Assessing Officer and accordingly dismissed the appeal filed by the assessee.

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

“1. The Ld. CIT(A) has erred both in law and on facts in passing the impugned order of appeal dismissing the appeal in limine without providing sufficient opportunity to the appellant to present his submission in support of the grounds of appeal raised before him.

2. The Ld CIT (A) has acted arbitrarily and unjustly on the facts and in the circumstances of the case and also in law in estimating the income of the appellant @ 12% of the turnover against the rate of profit 10% declared by the appellant himself and consequently making the addition of Rs 4,91,90,000/- to the accepted addition of Rs.3,69,00,000/- returned income.

3. The Ld CIT (A) clearly erred on the facts and in the circumstances of the case in confirming the addition of Rs 6,76,00,050/-as initial investment in the unaccounted business.

4. The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority."

5. We have considered the arguments advanced by the Id. DR and perused the material available on record. We find the Assessing Officer in the instant case, on the basis of the survey conducted and on the basis of the statement recorded of the assessee, made addition of Rs.4,91,90,000/- on account of presumptive profit and addition of Rs.6,76,00,050/- on account of initial investment in unaccounted business. Since, despite opportunities granted by the CIT(A), there was non-compliance before him, the Id.CIT(A), in the *ex parte* order passed by him, sustained both the additions and dismissed the appeal filed by the assessee. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issues to the file of the CIT(A) with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) without seeking any adjournment under any pretext and substantiate his case, failing which the Id. CIT(A) is at liberty to pass appropriate orders as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

The decision was pronounced in the open court on 12.09.2019.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 12th September, 2019

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi