

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.848/Del/2019
Assessment Year: 2010-11

AVS Poultry Farm & Agro Ltd., 801, 8 th Floor Vishwa Sadan Building, District Centre, Janakpuri, New Delhi.	Vs.	ITO, Ward 1(1), New Delhi.
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PAN: AAFCA5032L

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate & Mrs. Surbhi Goyal, CA
Revenue by	:	Shri Saras Kumar, Sr.DR
Date of Hearing	:	12.12.2019
Date of Pronouncement	:	18.12.2019

ORDER

This appeal by the assessee is directed against the *ex parte* order dated 30.11.2018 of the CIT(A)-1, New Delhi, relating to Assessment Year 2010-11.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of sale and purchase of shares. It filed its return of income on 7th September, 2010 declaring the total income at Rs.26,36,075/-. The return was processed u/s 143(1). Subsequently, on the basis of specific information received that the assessee has earned bogus profits by misusing the client code modification facility in F&O segment amounting to Rs.11,36,475/-, proceedings u/s 147 were initiated and notice

u/s 148 of the Act was issued. The AO completed the assessment u/s 147/143(3) of the Act determining the total income of the assessee at Rs.37,72,550/- where he made an addition of Rs.11,36,475/-. Since none appeared before the CIT(A) despite sufficient opportunities granted, the Id.CIT(A), in the *ex parte* order passed by him, upheld the addition made by the AO and dismissed the appeal of the assessee.

3. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

4. The Id. Counsel for the assessee, at the outset, submitted that the allegation of the AO is that the assessee has not disclosed the profit of Rs.11,36,475/- which it has earned by misusing the client code modification facility in F&O Segment. Referring to various pages of the paper book, he drew the attention of the Bench to the same and submitted that the assessee has duly disclosed the same in his audited Profit & Loss Account. He submitted that as the Id.CIT(A) has dismissed the appeal *ex parte* by sustaining the addition due to non-prosecution and has not decided the appeal on merit, the matter may be restored to the file of the AO since the assessee has duly disclosed the profit arisen out of the client code modification and, therefore, it is contrary to facts as alleged by the AO.

5. The Id. DR has no objection if the matter is restored to the file of the AO.

6. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I

find that the AO in the order passed u/s 147/143(3) has made addition of Rs.11,36,475/- being the bogus profit earned by the assessee by misusing the client code modification facility which has not been disclosed. I find the Id.CIT(A), in the *ex parte* order passed by him, has dismissed the appeal of the assessee for non-prosecution and has not decided the appeal on merit. It is the submission of the Id. Counsel for the assessee that various details filed during the course of assessment proceedings were not properly appreciated by the AO and, therefore, the matter should be restored to the file of the AO. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the AO with a direction to grant one more opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the AO and substantiate its case failing which the AO is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

It is the submission

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

The decision was pronounced in the open court on 18.12.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 18th December, 2019

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi