

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

I.T.A. No. 2941/Del/2019  
Assessment Year: 2015-16

Pathak Roadlines,  
NH-2, FF. HUDA Chowk  
Near Dharam Public School,  
Palwal, Haryana  
(PAN:AANFP9615P)  
**(ASSEESSEE)**

vs. INCOME TAX OFFICER,  
WARD-II(1), FARIDABAD

**(RESPONDENT)**

**Assessee by:** Shri Nippun Mittal, CA  
**Revenue by:** Sh. Manoj Kumar Chopra, Sr. DR.

**ORDER**

This appeal is filed by the assessee against the Order dated 08.01.2019 passed by the Ld. CIT(A), Faridabad, relating to Assessment Year 2015-16 on the following grounds:-

*(1) That the appellant was prevented by reasonable and sufficient cause for not appearing before the Assessing Officer as well as before the Ld. CIT(A) as the requisite information could not be placed before the Assessing Officer as well as before the CIT(A) by the previous counsel engaged by the appellant and accordingly both the authorities passed the order ex-parte*

*(2) That the appellant remained unrepresented before the Assessing Officer as well as before the Ld. CIT(A) in view of the fact that the assessee's previous counsel did not attend the proceedings and filed requisite informations, thus the notices remained uncomplied with and ex-parte orders were passed*

*(3) That the Assessing Officer as well as the Ld. CIT(A) has erred in dismissing the appeal of the appellate without showing as to how the Assessing Officer was justified in adopting net profit rate of 2% and made addition of Rs. 20,29,500/- on account of net profit margin was*

*lower in the instant assessment year under appeal as compared to preceding assessment year.*

*(4) That the Assessing Officer made the assessment ex-parte and the Ld. CIT(A) dismissed the appeal of the appellant by passing an ex-parte order. Even if the assessee does not appear before the Assessing Officer as well the CIT(A) despite then both the authorities are duty bound to adjudicate the issues before him on merits and cannot disregard the fact that tax audit report alongwith its annexures were available with the return of income on departmental e- filing portal and thus there is no case of estimation of net profit at 2 per cent of gross turnover.*

*(5) That the mere fact that there was a less rate of net profit declared by an assessee as compared to the previous year would not by itself be sufficient to justify the addition when no cogent material has been brought on record to prove that the assessee has manipulated its accounts to suppress profits.*

*(6) That it is well-settled law that merely on the ground of low net profit ratio, the addition to the assessee's returned income cannot be made. It has to be examined whether the Assessing Officer adopted the rational basis for making the addition. In the present case, the Assessing Officer merely referred to previous year's 1.70% net profit but did not demonstrate as to how that affected the net profit declared by the assessee.*

*(7) That the Assessing Officer as well as the Ld. CIT(A) had not brought on record any comparable case, wherein, the net profit declared by a tax payer in the similar business, was higher, than the one declared by the assessee. The Hon'ble Delhi High Court in the case of CIT v. Aero Club [2011] 336 ITR 400 has upheld the Tribunal's order under such circumstances.*

*(8) That the Assessing Officer has rejected the books of account solely for the reason that the assessee have shown the lower net profit rate. During the assessment year under consideration, no other defect was mentioned. It may also be mentioned that the lower profit shown by the assessee by itself cannot be a ground for rejection of the books of account results, as per the ratio laid down in the following cases:*

- I. S. N. NamasivayamChettiar v. CIT [1960] 38 ITR 579 (SC);*
- II. Pandit Bros. v. CIT [1954] 26 ITR 159 (P&H);*
- III. S. VeeriahReddiar v. CIT [1960] 38 ITR 152 (Ker);*
- IV. International Forest Co. v. CIT [1975] 101 ITR 721 (J&K).*

*(9) That merely because net profit margin is lower in the instant assessment year under appeal vis-a-vis preceding assessment year cannot be a ground of additions to the income of the assessee unless the Revenue points out particular defect or discrepancies in the books of accounts maintained by the assessee. Therefore, there are no reasons or justification in making the addition of Rs. 20,77,989/- mere fall in the net profit ratio and in the absence of any cogent reasons could not be a ground to hold that the proper income could not be deduced from the audited accounts maintained by the assessee no addition could have been made merely on account of lower profit declared by the assessee.*

*(10) That it is a settled law that the each assessment year is an independent to each other and the assessment proceedings are distinct and separate. The findings of one assessment year automatically cannot be justified in making the addition to the other assessment year.*

*(11) That in these circumstances, as narrated above, the assessee was prevented by reasonable and sufficient cause for not appearing for hearings before the Assessing Officer as well as before the Ld. CIT(A). In this factual matrix of the case and in the interest of substantial justice the order may be restored to the Assessing Officer for a proper appreciation and adjudication of facts. The appellant give his oral undertaking that in the eventuality the issues are restored the assessee would fully participate in the proceedings.”*

2. Shri Nippun Mittal, Authorized Representative of the assessee appeared and stated that the learned First Appellate Authority has passed ex parte order without hearing the assessee. He requested that the issues in dispute may be set aside to the learned First Appellate Authority to decide the same afresh, as per law, after giving reasonable opportunity of hearing to the assessee.

3. Learned DR has not raised any serious objection on the request of the learned AR.

4. I have heard both the parties and perused the orders passed by the Revenue authorities especially the impugned order dated 08.01.2019 and found that learned First Appellate Authority has passed the ex parte order against the assessee without providing sufficient opportunity of hearing to the assessee. In view the facts and circumstances of the present case and in the interest of justice, I am of the view that issues in dispute be set aside to the learned First Appellate Authority to decide afresh, as per law, after giving opportunity to the assessee. Accordingly, I set aside the issues in dispute to the file of Ld. CIT(A) to decide the same afresh, after giving adequate opportunity of being heard to the assessee.

5. Keeping in view the non cooperation of the assessee before the learned First Appellate Authority, I am directing the assessee through his Authorized Representative to appear before the learned First Appellate Authority on 24.03.2020 at 10:00 AM before the learned First Appellate Authority. It is made clear that no separate notice shall be issued to the assessee for 24.03.2020 because this order has already been pronounced in the Open Court.

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

Order pronounced on 07/01/2020.

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Date: 07/01/2020  
SH

**Copy forwarded to: -**

1. Appellant -
  2. Respondent -
  3. CIT
  4. CIT (A)
  5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches