

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA Nos.2406/Del/2017  
Assessment Year: 2010-11

ITA No.4437/Del/2016  
Assessment Year : 2011-12

Rightway Motors Pvt. Ltd.,  
C/o Ravi Ramesh and Associates,  
26/36, Basement, East Patel Nagar,  
New Delhi.

Vs ITO,  
Ward 15(3),  
New Delhi.

PAN: AABCR6226M

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, CA & Shri Akshit Goel, CA
Revenue by	:	Smt. Sushma Singh, CIT-DR
Date of Hearing	:	29.01.2020
Date of Pronouncement	:	10.02.2020

ORDER

PER R.K. PANDA, AM:

ITA No.2406/Del/2017 filed by the assessee is directed against the *ex parte* order dated 25<sup>th</sup> January, 2017 of the CIT(A)-10, New Delhi, relating to assessment year 2010-11. ITA No.4437/Del/2016 filed by the assessee is directed against the

*ex parte* order dated 25<sup>th</sup> May, 2016 of the CIT(A)-7, New Delhi, relating to assessment year 2011-12.

2. For the sake of convenience, both the appeals were heard together and are being disposed of by this common order.

3. There is a delay of five days in filing the appeal in ITA No.2406/Del/2017 for which the assessee has filed a condonation petition explaining the reasons for such delay. After hearing both the sides, the delay in filing of the appeal is condoned and the appeal is admitted for hearing.

4. First we take up ITA No.4437/Del/2016 for A.Y. 2011-12. Facts of the case, in brief, are that the assessee filed its return of income on 25<sup>th</sup> September, 2011 declaring the total income at Rs.83,27,500/-. Since there was no compliance from the side of the assessee, the AO, in the *ex parte* order passed by him u/s 144 of the IT Act, estimated the gross receipt of the company at Rs.100 crore and, applying the profit rate of 4% made addition of Rs.4 crores to the total income of the assessee. He, accordingly, determined the total income at Rs.4,83,27,500/-.

5. Since no one appeared before the CIT(A) despite number of opportunities granted, the ld.CIT(A), in the *ex parte* order passed by him, upheld the action of the AO. While doing so, he also did not condone the delay in filing of the appeal before him and did not admit the appeal since nothing was stated before him. The unsigned letter from the director requesting for the condonation of the delay on the

ground stated therein that the director's family was facing dowry harassment case and was not in town due to arrest warrant, etc., was rejected by him.

6. Similarly, for A.Y 2010-11, the assessee filed the return of income on 30<sup>th</sup> September, 2010 declaring the total income at Rs.31,74,080/-. The AO completed the assessment u/s 143(3) on 25<sup>th</sup> March, 2013 determining the total income at Rs.12,24,97,235/- by making various additions, the details of which are as under:-

	(Rs.)	(Rs.)
Net Profit as per Profit & Loss Account		32,10,588
<u>Add:</u>		
(a) Depreciation debited as per Company Act	2,91,045	
(b) Intelligible interest on secured bank loan	49,422	
(c) Intelligible interest on unsecured bank loan	65,918	
(d) Electricity expenses of Director's residence	63,566	
(e) 15% of unvouched expenses being added back	2,09,035	
(f) Bogus purchases hit by provisions of sec.68	9,74,38,940	
(g) Bogus Sundry creditors hit by provisions of sec.68	2,06,114	
(h) Undisclosed income from out of books sales	18,00,000	
(i) Additional bogus purchases hit by provisions of sec.68	76,00,000	
(j) Amounts surrendered by the assessee company	1,65,116	
(k) Additional sales tax debited to P&L a/c	2,07,786	
(l) Deemed dividend as per provisions of sec.2(22)(e)	1,15,17,257	
<u>Less:</u>		
(a) Depreciation as per IT Act	3,27,552	
Income under Business & Profession		12,24,97,235

7. Since, here also none appeared before the CIT(A) despite number of opportunities granted, the Id.CIT(A) dismissed the appeal filed by him.

8. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal for both the assessment years challenging the *ex parte* orders of the CIT(A) in confirming the various additions made by the AO.

9. The ld. counsel for the assessee, submitted that due to dowry cases going on against the assessee and other family members and since the arrest warrants, were issued, the assessee was not in a position to appear before the CIT (A) during the relevant period and also there was no proper compliance before the AO for the A.Y. 2011-12 for which the AO has passed the ex parte order. He submitted that in the interest of justice the assessee should be given an opportunity to substantiate its case and preferably both the matters should be restored to the file of the AO.

10. The ld. DR, on the other hand, strongly opposed the arguments advanced by the ld. Counsel for the assessee and submitted that despite number of opportunities granted by the CIT(A), there was no compliance at all. Further, for A.Y. 2011-12, there was no compliance before the AO for which she has passed *ex parte* order. Therefore, the plea of the ld. Counsel for the assessee for setting aside the orders of the CIT(A) should be rejected and the appeal should be decided here itself. In his alternate contention, he submitted that the matter may be restored to the file of the CIT(A) for fresh adjudication.

11. We have heard 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. We find, for A.Y. 2010-11, the AO, in the order passed u/s 143(3), determined the total income of the assessee at rs.12,24,97,235/- as against the returned income of Rs.31,74,080/- wherein he made various additions/disallowances. Similarly, for A.Y. 2011-12, as against the returned

income of Rs.83,27,500/-, the AO completed the assessment u/s 144 determining the total income at rs.4,83,27,500/- wherein he made addition of Rs.4 crores being profit @ 4% of estimated receipt of Rs.100 crores. We find, none appeared before the CIT(A) for both the assessment years. Further, for the A.Y. 2011-12, there was some delay in filing of the appeal before the CIT(A) for which he did not condone the delay and, thereby, did not admit the appeal filed before him. For the A.Y. 2010-11, despite number of opportunities granted by him, none appeared before the CIT(A) for which the Id.CIT(A), in the *ex parte* order passed by him, sustained the various additions/disallowances made by the AO. He, however, has decided the appeal on merit for the A.Y. 2010-11. It is the submission of the Id. Counsel for the assessee that due to dowry cases going on against the assessee and his family members, the assessee was not in town due to arrest warrant, etc. Further, the wife of the director was also seriously ill which was brought to the notice of the CIT(A) in Form No.35 which was filed belatedly explaining the delay in filing of the appeal. It is the submission of the Id. Counsel for the assessee that in the interest of justice, the assessee should be given one last opportunity to substantiate its case before the lower authorities. 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 final 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 without seeking any adjournment under any pretext, failing which the AO is at liberty to pass appropriate order as per law.

The grounds raised by the assessee for both the assessment years are accordingly allowed for statistical purposes.

12. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 10.02.2020.

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 10<sup>th</sup> February, 2020.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi