

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2227/Del/2016
(Assessment Year : 2010-11)

M/s. R.K. Weaving Industries, C/o.Mehra & Company, C.As.; 7 - Rajeshwari Palace, Nr. Commissioner Residence, Civil Lines, Meerut-250 001. PAN : AACFR8404P	Vs.	Income Tax Officer, Ward - 2, New Delhi.
(Appellant)		(Respondent)

Revenue by :	Ms. Rakhi Vimal, [CIT]-DR;
Assessee by:	Shri Chander Mehra, C.A.;
Date of Hearing	17/02/2020
Date of pronouncement	19/02/2020

ORDER

PER PRASHANT MAHARISHI, A. M. :

This appeal is filed by the assessee for assessment year 2010-11 against the order of the Commissioner of Income Tax (Appeals), Meerut, dated 17.02.2016 wherein substantial additions made by the learned Assessing Officer are upheld.

2. The brief facts of the case show that the assessee filed its return of income as a partnership firm on 29.09.2010 at Rs. NIL. The case of

the assessee was selected for scrutiny and relevant notices were issued. The assessee furnished only the audit report and no other information. Assessing Officer noted that assessee has shown sales of Rs.3,94,66,390/- and no profit is assessed at 8% of the sales of Rs.31,57,311/- whereas the assessee has shown NIL profit in its return of income and, therefore, Assessing Officer made an addition of Rs.31,57,311/-. The Assessing Officer made further addition of Rs.1,16,62,942/- on account of un-secured loan of Rs.38,61,290/- and sundry creditors of Rs.78,01,652/-. Consequently the assessment order under Section 144 of the Income Tax Act, 1961 (the Act) was passed on 13.03.2013 determining total income of Rs.1,48,20,250/-.

3. Assessee preferred an appeal before the learned CIT (Appeals). Assessee also submitted the additional evidences under Rule 46A. The assessee submitted that it is the partnership firm where one of the partner passed away on 07.07.2009 and the wife of the partner was taken as partner. It was further stated that after the death of the male partner assessee shifted its premises at difference places, but Assessing Officer kept on issuing notice to the old address and, therefore, there was a non-compliance. It was further stated that the new address was given to the Assessing Officer by way of letter along with the annual accounts. It was, therefore, stated that as assessee did not have an opportunity of submitting the information, the additional evidences deserve to be admitted. Assessee supported the above view by many judicial precedents. In the additional evidence the assessee submitted the details of the entire loans and creditors along with the copies of the bills of the creditors. The learned CIT (Appeals) obtained the remand report where the Assessing Officer

objected for the admission of the additional evidence. The learned CIT (Appeals) rejected the additional evidences for the reason that there was no compliance of the notices sent during the assessment proceedings. Consequently he refused to admit the additional evidences.

4. On the merits of the case he proceeded to assess the net profit of 2% of the turnover and confirmed the addition of Rs.7,89,328/-. He further confirmed the addition under Section 68 of the Act of Rs.8,03,572/- on account of loan and Rs.78,01,652/- on account of sundry creditors. Therefore, assessee is in appeal before us.

5. The learned Authorized Representative adverting to the first ground submitted that the learned CIT (Appeals) did not admit the additional evidences furnished by the assessee. However, he referred to the additional evidences partly and considered the same. The CIT (Appeals) did not consider the evidences which were in favour of the assessee. He, therefore, submitted that the order of the learned CIT (Appeals) suffers from infirmity. He further referred to the paper book submitted. He submitted that the annual accounts showed the complete picture that after debiting of interest and remuneration to the partners there cannot be any profit left. He further stated that the learned CIT (Appeals) has deleted the addition on account of confirmation available of Rs.30,57,718/- and identical confirmation are also available for Rs.8,03,572/- for which the addition has been confirmed. Therefore, he submitted that the learned CIT (Appeals) ought to have admitted the additional evidences and should have considered them in the proper perspective. He submitted that the failure on account of the assessee on not producing the details before

the Assessing Officer is only of change in the address after closer of the business of the assessee. He submitted that had the notices been received by the assessee the identical details would have been furnished before the Assessing Officer. He, therefore, submitted that in the interest of justice the CIT (Appeals) should be directed to admit the additional evidences and decide the issue afresh.

6. The learned Departmental Representative vehemently opposed ground No. 1 and submitted that the CIT (Appeals) has correctly not admitte the additional evidences.

7. We have carefully considered the rival contentions and found that assessee remained un-represented before the Assessing Officer and before the CIT (Appeals) when the additional evidences are filed with proper application, those additional evidences were not considered for deleting some of the additions. However, CIT (Appeals) deleted the addition on the basis of annual accounts which was available before Assessing Officer. The reason given by the CIT (Appeals) is that notices at all the addresses were issued by the Assessing Officer and assessee has failed to appear before him. The learned CIT (Appeals) has merely looked at the conduct of the Authorized Representative of filing the reply in 'DAK'. However, he did not represent himself by submitting the details before the Assessing Officer. Even otherwise in the present case it is stated that there is a death of a partner, who was the only male partner, the assessee could not submit the relevant details. Even otherwise if the assessee has come out with the relevant details, the learned CIT (Appeals) looking at the facts of the case should have considered the additional evidences furnished by the assessee. This is more so when Shri R. K. Multani,

who was the only male partner passed away on 07.07.2009 and rest of the partners were only the ladies, this would be the reasonable cause, sufficient cause, why the assessee could not remain present before the Assessing Officer. In view of this, we set aside the whole issue back to the file of the learned CIT (Appeals) and to decide afresh the issue of estimation of profit and un-secured loans and creditors. Accordingly ground No. 1 of the appeal is allowed, for statistical purposes.

8. In view of our above finding, other grounds of appeal are not adjudicated.

9. In the result, the appeal is partly allowed, for statistical purposes.

Order pronounced in the open court on : 19/02/2020.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 19/02/2020.

MEHTA

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi