

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 5333/Del/2017
(Assessment Year : 2013-14)

DCIT Rohtak	Vs.	Harish Chandra India Ltd. 834/2, Jhang Colony, Rohtak, Haryana
PAN No. AAACH 7115 A		
(APPELLANT)		(RESPONDENT)

Assessee by	--None--
Revenue by	Ms. Anima Baranwal, Sr. D.R.

Date of hearing:	09.08.2021
Date of Pronouncement:	12.08.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 09.06.2017 passed by the Commissioner of Income Tax (Appeals)-Rohtak relating to Assessment Year 2013-14.

2. The relevant facts as culled from the material on records are as under :
3. Assessee is a company which is stated to be engaged in the business of Civil Contractor. Assessee filed its return of income

for A.Y. 2013-14 on 29.09.2013 declaring total income of Rs.91,59,140/-. The case was selected for scrutiny and accordingly notices u/s 142(1) & 143(2) were issued from time to time. AO has noted in the assessment order that there was non-compliance to the notices issued by the assessee. AO thereafter proceeded to pass an order u/s 144 of the Act. AO noted that since the assessee has not produced the books of account nor has produced the details of expenditure, it was difficult to ascertain veracity of the books of accounts. He accordingly rejected the books of accounts by invoking the provisions u/s 145(3) of the Act and thereafter by following the decision of Hon'ble Delhi High Court in the case of CIT vs. Prabhat Kumar Contractor (ITA No. 293 of 2008) computed the profits @ 12% on the total receipts of Rs.5626.37 lacs and determined the net profit at Rs.675.1644 lacs. He accordingly assessed the income u/s 144 of the Act at Rs.6,75,16,440/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 09.06.2017 in Appeal No.318/2015-16 deleted the additions made by AO. Aggrieved by the order of CIT(A), Revenue is now before us and has raised the following grounds:

“The fact and the circumstances for invoking under section 145(3) of the Act in this case, of Assessee are quite different than the fact and the circumstances of the legal cases relied upon by the assessee.

It is matter of purely facts that Ld CIT(A) allowed the appeal of the assessee without appreciating the facts of the case that even after giving 11 opportunities for furnishing information as per order

sheet entries, assessee or his counsel never appeared personally before the AO during assessment proceedings.

However, the notional tax effect is Rs.1,98,46,090/- being loss case which is more than the monetary limit prescribed by the CBDT vide Instruction No.21 of 2015, hence, further appeal to the Hon'ble ITAT, New Delhi is recommended in this case."

4. The case file reveals that in the past there was no appearance on behalf of the assessee. Even on the date of hearing there was no appearance on behalf of the assessee nor any application for adjournment has been filed by it though the notice of hearing was issued to the assessee. The case file also reveals that the notice of hearing was returned back by the Postal Authorities with the remark "unserved". In view of these facts, we proceed to dispose of the appeal *ex parte* qua the assessee after considering the material on record and after hearing by the Learned DR.

5. Before us Learned DR pointed to the non compliance of the notice by the assessee as noted by the AO in Para 6 of the order, She therefore submitted that in the absence of any submission by the assessee, AO was left with no other alternative but to reject the books of accounts and thereafter estimate the income. She thereafter pointed to the order of CIT(A) and submitted that CIT(A) by a non-speaking order has deleted the additions made by AO. She therefore submitted that in such a situation the order of AO be upheld. In the alternate, she submitted that the matter be remanded back to the lower authorities with suitable directions.

6. We have heard the Learned DR and perused the material available on record. The perusal of the assessment order passed by the AO reveals that various notices were issued to the assessee calling for details but the same were not furnished by the assessee. AO therefore proceeded to pass the order u/s 144 of the Act and determined the total income by estimating the income based on the net profit rate of total revenue. The perusal of the CIT(A) order also reveals that CIT(A) has not passed a speaking order without deciding the issue on merits. Sub Section (6) of Section 250 of the I. T. Act mandates the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by deciding the appeal without considering the issue of merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no party should be condemned unheard. In view of these facts, we set aside the order of CIT(A) dated 09.06.2017 and restore the issue back to the file of CIT(A) for re-adjudication of the issues. Needless to state that CIT(A) shall grant adequate opportunity of hearing to both the parties. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the other grounds raised by Revenue. **Thus the appeal of Revenue is allowed for statistical purposes.**

7. In the result, appeal of the Revenue allowed for statistical purposes.

Order pronounced in the open court on 12.08.2021

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 12.08.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI