

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD  
(Through Virtual Hearing)

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

|   |                        |  |
|---|------------------------|--|
| ITA No.1817/Hyd/2019  |                        |  |
| A.Y. 2011-12  |                        |  |
|   |                        |  |
| M/s. Nirmala Logistics,<br>Flat No.403, Avanaa<br>Apartments Road No.3, 7 <sup>th</sup><br>Cross, Rock Town Colony,<br>L.B. Nagar, Hyderabad-74 | VS.                    | Asst. Commissioner of<br>Income Tax, Circle-9(1),<br>IT Towers, AC Guards,<br>Hyderabad – 500 004. |
| (Appellant)   |                        | (Respondent)   |
| Assessee by:  | None                   |  |
| Revenue by:   | Sri Rohit Mujumdar, DR |  |
| Date of hearing:  | 07/07/2021             |  |
| Date of pronouncement:  | 26/07/2021             |  |

ORDER

This appeal is filed by the assessee against the order of the Ld. CIT(A)-7, Hyderabad in appeal No. 0188/CIT(A)-7/2018-19, dated 27/09/2019 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the AY: 2011-12.

2. The assessee has raised six grounds in its appeal and they are extracted herein below for reference: -

- “1. *The order passed by the CIT (A)-7 is opposed to law and contrary to the facts on record.*
2. *The Ld. CIT (A) ought to have noted that in view of differences between the partners of the appellant firm, the managing partner was under the bona fide impression that as per their understanding, the other partner was to*

*attend to the tax matters and he was informed by the other partner that since the books of account and other bills etc., were misplaced, he did not attend to the tax matters before the Income Tax Department.*

3. *On merits, both the lower authorities ought to have noted that in this case, tax audit was conducted and before the tax Auditor the bills, account books relevant were produced and therefore, the AO ought not to resorted to make the addition and the CIT (A) ought not to have confirmed such disallowance by way of addition U/s 69C of the Act for the reason that bills and books of account were misplaced on account of shifting of premises.*
4. *That apart, both the authorities ought to have noticed that the impugned amount of Rs. 43,30,000/- was periodically transferred to the bank account of one of its employees (Ragi Naveen), for meeting day to day business expenses and by this disallowance, the net profit of the appellant firm came to more than 17 per cent which is unheard of in the transport line of business.*
5. *The Ld. CIT (A) should have afforded to the appellant some more opportunity to make its submissions on the impugned addition by way of disallowance of Rs. 43,30,000/-.*
6. *Any other ground that may be urged at the time of hearing.”*

3. At the time of hearing, none appeared before us on behalf of the assessee to represent its case. On examining the Ld. CIT (A)'s order, we find that the Ld. CIT (A) has passed ex-parte order providing several opportunities to the assessee of being heard. Even before us neither the assessee nor its Representative appeared on the date of hearing. Ld. DR submitted before us that in the present circumstances there was no other option left for the Ld.CIT(A) but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A) does not call for any interference.

4. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, We find merit

in the submissions of the Ld. DR. The Ld. CIT (A) had posted the case on three occasions. However, none appeared on behalf of the assessee before the CIT(A) on the dates of hearing. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeal ex-parte based on the written submissions filed by the assessee and the materials available on record. However, considering the issues involved in the appeal, in the interest of justice, We hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeal afresh on merits by providing one more opportunity to the assessee of being heard. At the same breath, We also hereby caution the assessee to promptly cooperate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

5. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on the 26<sup>th</sup> July, 2021.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 26<sup>th</sup> July, 2021

*OKK*

Copy to:-

- 1) M/s. Nirmala Logistics, Flat No. 403, Avanaa Apartments, Road No.3, 7<sup>th</sup> Cross, Rock Town Colony, LB Nagar, Hyderabad – 500 074.
- 2) Asst. Commissioner of income Tax, Circle-9(1), IT Towers, AC Guards, Hyderabad – 500 004.
- 3) The CIT (A)-7, Hyderabad.
- 4) The Pr. CIT—7, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File