

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

(THROUGH VIDEO CONFERENCE)

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.5131/Del./2018
ASSESSMENT YEAR : 2007-08**

Vibrant Foods P. Ltd. Vs. ITO,
A-25, Mayapuri, Phase-II, Ward-17(2)
New Delhi-110064

New Delhi

(PAN :AACCV1355J)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Sh. G.S.Kohli, CA
REVENUE BY : Ms. Kirti Sunkratyan, Sr. DR**

**Date of Hearing : 08.09.2021
Date of Order : 22. 09.2021**

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Vibrant Foods P. Ltd., New Delhi (hereinafter referred to as 'the assessee'), by filing the present appeal sought to set aside the impugned order dated 13.04.2018 passed by the Commissioner of Income-tax (Appeals)-33, New Delhi, qua the assessment year 2007-08 on the grounds inter alia that :-

- “1. The assessment as well as appellate orders are unlawful, illegal and are against the natural law of justice.*
- 2. The learned CIT(Appeals) had erred in determining the estimated income on imaginary and arbitrary figures.*

3. The learned CIT (Appeals) has erred in estimating the income @ 50% of declared turnover of Rs. 6596,450/- without placing any material or instance in this respect.

That without prejudice to the facts that such rate of Net profit is not available in any business, the accounts of the appellant are audited accounts where the expenses claimed like rent, depreciation, interest evidently proves there is a loss and further such loss have been accepted in the earlier as well as in the subsequent years, an estimation was at very higher side.

4. That learned CIT(Appeals) has failed to give any comments on carried forward of Rs. 32,30,495/- which was not allowed/worked out in Asstt. Order.

5. That the appellant craves their right to amend, delete or add any grounds of appeal at or before the time of hearing.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessing officer framed the assessment at the income of Rs. 50,00,000/- on estimation basis u/s 144 of the Act on failure of the assessee put in appearance to explain the return of income during scrutiny proceedings.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has partly allowed the appeal. Feeling aggrieved assessee has come up before the Tribunal by way of filing the present appeal.

4. Assessee has challenged assessment order at the income of Rs. 50,00,000/- from the business on the basis of estimation u/s 144 of the Act. It is a matter of record that during the first appellate proceedings, assessee had moved an application under Rule 46 of the Income Tax Rules (for short rules) for bringing on record

certain additional evidences, which has been rejected by the Ld. CIT(A) after calling report from the assessing officer on the ground that he [CIT(A)] is “not in agreement with the reasons of admission of additional evidences sought to bring on record”.

5. First of all, we are of the considered view that when assessment has been framed u/s 144 of the Act rejecting application for leading additional evidences on unsustainable ground that “Ld. CIT(A) is not agreed with the reasons for leading additional evidence by the assessee” is not sustainable in the eyes of law. When the documents relied upon by the assessee during first appellate proceedings have not been taken on record/ considered by the Ld. CIT(A) deciding the appeal even on merit does not serve the cause of justice.

6. Since the issue involved in this case has been dealt both by AO as well as Ld. CIT(A) on the basis of estimation without providing adequate opportunity of being heard to the assessee, the impugned order passed by Ld. CIT(A) is not sustainable, hence, set aside by remitting back to Ld. CIT(A) to decide afresh after entertaining all the additional evidence sought to be led by the assessee vide application dated 19.04.11 under Rule 46A by providing opportunity of being heard to the assessee.

Consequently, present appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 22nd day of September, 2021.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 22nd day of September, 2021
Binita

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- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.