

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD 'SMC' BENCH, ALLAHABAD**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.87/ALLD/2019  
Assessment Year: 2015-16**

Hotel Ajay International, A/2/D, Lal Bahadur Shashtri Marg, Allahabad, Uttar Pradesh <b>PAN-AADFH4349E</b>	v.	Asstt. Commissioner of Income Tax, Central Circle, Allahabad, U.P.
(Appellant)		(Respondent)

Appellant by:	Mr. Praveen Godbole, C.A.
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	14.03.2022
Date of pronouncement:	15.03.2022

**ORDER**

**VIJAY PAL RAO, JUDICIAL MEMBER:**

This appeal by the assessee is directed against the order dated 14.03.2019 of CIT(A) for the assessment year 2015-16. The assessee has raised the following grounds:-

*"1. That in any view of the matter the assessment made an income of Rs. 41,64,141/- vide order dated 16/11/2017 passed u/s 144 of the Income Tax Act is bad both on the facts and in law and the loss declared in the return should have been accepted.*

*2. That in any view of the matter after filing of return no notice u/s 143(2) of the IT act has been served on the assessee which is a mandatory requirement hence entire assessment liable to be declared annulled.*

*3. That in any view of the matter ex-parte assessment as framed by the Assessing Office is highly unjustified when the necessary details already on record hence the action of both the tow lower authorities are incorrect.*

*4. That in any view of the matter the addition maintained to Rs. 20,82,071/- after the decision of first appeal by applying rate of 5% as against 10% as imposed by Assessing Officer highly unjustified.*

5. That in any view of the matter the addition of Rs. 41,64,141/- made by the assessing Officer on total deposit in bank account @10% of total deposits which was reduced to 5% by Ld. CIT(A) is highly unjustified.

6. That in any view of the matter the finding and observation of the Assessing officer with regard to addition of Rs. 41,64,141/- which was partly reduced by CIT(A) are incorrect and contrary to the facts of the case.

7. That in any view of the matter the assessee firm is assessed to tax regularly and maintaining regular books of accounts year after year and in past no *ex-parte* assessment was ever made hence the action of both the two lower authorities are incorrect.

8. That in any view of the matter the appellant reserves his right to take any fresh grounds of appeal before hearing of appeal.”

2. In ground no. 2, the assessee has challenged the validity of assessment framed by the Assessing Officer for want to service of notice under section 143(2) of the Income Tax Act.

3. I have heard the learned AR as well as learned DR and considered the relevant material on record. Though the assessee has challenged the validity of assessment for want of service of notice under section 143(2) of the Income Tax Act however, during the course of argument nothing has been brought on record on behalf of the assessee to negate the fact that the notice under section 143(2) dated 14.09.2016 was served on the assessee as per the receipt dated 16.09.2016. On the contrary, the department has filed the relevant record including the order-sheet of the assessment proceedings as well as the copy of the notice issued under section 143(2) dated 14.09.2016 which was received by the assessee / AR on 16.09.2016. The assessee has not disputed the signature acknowledging the receipt of the said notice on behalf of the assessee. Accordingly, in view of the facts and circumstances of the case, the notice issued under section 143(2) dated 14.09.2016 was duly served on the assessee on 16.09.2016 which is within the period of limitation therefore, this ground of the assessee's appeal is de-void of merit and the same is dismissed.

4. Ground nos. 1 and 3 to 8 are regarding the addition made by the Assessing Officer while passing *ex parte* assessment order under section 144 on account of

estimation the income of the assessee by applying net profit rate at 10% on the receipts as found deposited in the bank account of the assessee. On appeal, the CIT(A) restricted the addition to 5% as against 10% net profit rate applied by the Assessing Officer.

5. The learned AR of the assessee has submitted that the Assessing Officer has arbitrarily taken the turnover of the assessee at Rs.4,16,41,418/- as per the total deposits in the bank account of the assessee without considering the other relevant details and facts that the turnover/gross receipts of the assessee is Rs.1,94,56,422/-.

6. The learned AR has referred to page no. 37 of the paper book and submitted that the profit and loss as part of the Audit report shows the gross receipts which has not been considered by the Assessing Officer as well as the CIT(A). He has further contended that even the Assessing Officer took the total deposits as gross receipts of the assessee without considering the contra entries of withdrawal from the bank prior to the deposits made in cash. Therefore, the action of the Assessing Officer is highly arbitrary and unjustified. The learned AR has further contended that the adoption of the net profit @ 10% by the Assessing Officer which is restricted to 5% is also arbitrary and exorbitant without any basis. He has referred to the comparative chart at page 6A of the paper book and submitted that the Assessing Officer has accepted the net profit rate declared by the assessee for the assessment year 2013-14 @ 2.78% and loss declared by the assessee for the assessment year 2014-15. Thus the learned AR has contended that without considering the past history of the assessee, the additions made by the Assessing Officer and confirmed by the CIT(A) is not justified and liable to be deleted. However, he has submitted that since the C.A. of the assessee who was representing before the Assessing Officer has expired therefore, the necessary details in support of the case of the assessee is required to be submitted and hence the matter may be remanded to the record of the Assessing Officer for re-adjudication after considering the necessary details to be filed by the assessee.

7. On the other hand, learned DR has submitted that the return of income filed by the assessee is almost blank and not given the necessary details as required. He has referred to the online return filed by the assessee and submitted that the assessee has not furnished the request details in the return of income as well as in response to the notices issued by the Assessing Officer. Therefore, the Assessing Officer was left with no option but to frame the best judgment assessment by taking the gross receipts as found deposited in the bank account of the assessee. The learned DR has further contended that after the CIT(A) restricted the net profit rate at 5%, no grievance of the assessee is left as it is a reasonable estimation of income of the assessee. The learned DR has further submitted that for the assessment year 2014-15, a similar addition was made by the Assessing Officer which was restricted by the CIT(A) to 5% and assessee has accepted the said addition under Vivad Se Vishwas Scheme, 2020. He has pointed out that the appeal filed by the assessee for the assessment year 2014-15 in ITA No. 42/Alld/2019 was dismissed as withdrawn in pursuance to the assessee opted for Vivad Se Vishwas Scheme, 2020. He has relied upon the orders of the authorities below.

8. I have considered the rival submissions as well as relevant material available on record. There is no dispute that the return of income filed by the assessee does not disclose and contain the necessary information and details as required. Except the total income declared nil, no other details are given in the return of income. The Assessing Officer issued notices under section 143(2) as well as various notices issued under sections 142(1) alongwith the questionnaire to the assessee however, the assessee has not responded to the notice issued by the Assessing Officer and consequently the assessment was framed under section 144 on the basis of the material available on record. It is pertinent to note that though the Assessing Officer has taken the gross receipts as per the total deposits in the bank account of the assessee however, the other details as reflected in the bank account itself was not taken into consideration while arriving to the figure of total receipts. The Assessing Officer has simply took the entire deposits as gross receipts / turnover of the assessee

and then applied the net profit @ 10%. The adoption of net profit at 10% is also not based on any reasonable or proper criteria being past history of the assessee and average net profit declared by the assessee which was accepted by the department or the prevailing rate of profit in this business. Though the CIT(A) has restricted the net profit applied by the Assessing Officer to 5% which shows that the adoption of net profit upon Assessing Officer was excessive and arbitrary however, the CIT(A) has also not given any basis for applying the net profit @ 5%. The assessee has not disputed the fact that for the assessment year 2014-15, the addition confirmed by the CIT(A) for applying profit rate at 5% is accepted and the dispute is settled under Vivad Se Vishwas Scheme, 2020. Since the computation of gross receipts / turnover of the assessee requires a proper verification of the details and facts to be produced by the assessee and consequently the estimation of the income is also required to be on the basis of some reasonable and proper criteria as a guidance for estimation of income therefore, in the facts and circumstances of the case and in the interest of justice, the matter is set aside to the record of the Assessing Officer for the adjudication of these two issues for computation of gross receipts / turnover of the assessee and estimation of income by giving one more opportunity to the assessee to furnish the relevant details. Hence the matter is set aside to the record of the Assessing Officer to re-adjudicate the issue in the above mentioned terms. The appeal is allowed for statistical purposes.

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

Order pronounced in the open Court on 15.03.2022 at Allahabad.

***Sd/-***  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

DATED: 15/03/2022  
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Copy forwarded to:

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

By order  
Assistant Registrar