

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH,  
(VIRTUAL HEARING AT KOLKATA)****[BEFORE SHRI SANJAY SARMA, JUDICIAL MEMBER &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER]****I.T.A. No. 280/GTY/2019**  
Assessment Year: 2016-17

Ellora Debi (PAN: ACCPD 3482 D)	Vs.	DCIT/ACIT, Circle – 3, Guwahati
Appellant		Respondent

Date of Hearing	05.05.2022
Date of Pronouncement	11.05.2022
For the Appellant	Shri Kishor Jain, FCA
For the Respondent	Shri P.S. Thuingaleng, ACIT

**ORDER****Per Sonjoy Sarma, JM:**

This is an appeal filed by the assessee pertaining to the assessment year 2016-17 against the order of Ld. CIT(A), Guwahati-2 dated 28.03.2019 arising out of assessment framed u/s 144 of the Income Tax Act, 1961 dated 08.12.2018, Guwahati.

2. The assessee has raised the following grounds of appeal:

- i. For that the assessment order is not based on correct facts and findings and is erroneous on points of law.*
- ii. For that on the facts and circumstances of the case as well as on the points of law, the Income Tax Officer is not justified in estimating income from business on estimate basis and therefore, erred in making addition of Rs. 14,57,967/- by estimating net profit of the assessee at a rate 1% higher than that shown by the assessee i.e. at 2.37% of the turnover and the Ld. CIT(A) also erred in confirming the same.*
- iii. For that any other ground/grounds may kindly be allowed to be urged at the time of hearing.*

3. The brief facts of the case is that the assessee filed return of income for A.Y. 2016-17 on 30.03.2017 showing return income at Rs. 36,09,920/-. The case of the assessee was selected for complete scrutiny through CASS. Accordingly, notice u/s 143(2) of the Act was issued on 18.09.2017. However, none appeared on behalf of the assessee. Thereafter, a penalty notice u/s 274 r.w.s. 271(1)(b) was issued upon the assessee by the AO on

16.10.2018 and no explanation was received from the assessee and penalty was imposed upon the assessee on 27.11.2018 u/s 271(1)(b) for non-compliance to notice u/s 142(1). Further notice u/s 142(1) was also issued upon the assessee asking as to why the assessment should not be best of judgement u/s 144 on 26.11.2018. However, the assessee again did not furnish any reply to notice issued u/s 144 of the Act issued by the Assessing Officer. Ultimately, the AO did not have any other option but to make the assessment order by rejecting the completeness and correctness of the books of account maintained by the assessee and pass the assessment order as under:

- i. The assessee has shown exempt income of Rs. 56,34,922/- in the return of income and the assessee did not furnish any evidence in support of the claim of exempt income made in the return of income and disallowed and an amount of Rs. 56,34,922/- is added to the taxable income of the assessee.
- ii. Besides that the assessee has retail business and has a service station and has shown a net profit to turnover ratio of 1.37% and in the absence of any explanation from the assessee nor any evidence in reply to questionnaire asked vide notice u/s 142(1) dated 07.09.2018, the AO asked net profit of the assessee & 1% higher than that shown by the assessee i.e. at 2.37% of the turnover and an amount of Rs. 14,57,967/- is added to the taxable income of the assessee.

4. Aggrieved by the aforesaid order, the assessee preferred an appeal before the Id. CIT(A) where the Id. CIT(A) interest of justice impugned addition of Rs. 56,34,822/- was allowed. However, CIT(A) on the issues of making addition of 1% of the turnover as business income of the appellant was not considered and the appeal of the assessee was partly allowed.

5. Aggrieved by the said order dated 28.03.2019, the assessee is in appeal before us, at the time of hearing before us, the Id. AR of the assessee requested that since the assessee did not get any opportunity to file relevant documents and submission before the Id. AO since the notice was sent through digital mode and the assessee had never received any communication of such notice and have no knowledge about issuance of such notice, the assessee would have knowledge about such notice that even assessee definitely would attend before the AO and submit the relevant documents as asked by the AO. Since the

assessee has not get any opportunity to submit the documents before the AO, one more opportunity should be given to the assessee and the issue raised in the instant appeal may be set aside to the file of AO. The ld. DR, on the other hand, he relied on the order of the ld. CIT(A) and AO.

6. We after hearing the above given facts and circumstances of the case are of the considered view that since the order of the AO is an ex-parte order and no discussion has been made on the merits of the case. We in the interest of justice set aside the addition of Rs. 14,57,967/- which was estimated by the AO on the net profit of the assessee @ 1% higher than that shown by the assessee and remit back to the file of the AO for deciding limited issue raised before us by way of a speaking order, we also direct the assessee to remain vigilant in receiving the notices of hearing and should not request for any adjournment unless otherwise required for reasonable cause and should file all necessary documents so as to facilitate the AO for passing speaking order. Needless to mention that the assessee should be given proper opportunity of being heard.

7. In the result, the appeal of assessee is allowed for statistical purpose.

Order is pronounced in the open court on 11<sup>th</sup> May, 2022.

Sd/-

(Girish Agrawal)  
Accountant Member

Sd/-

(Sonjoy Sarma)  
Judicial Member

Dated: 11.05.2022

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant– Ellora Debi, Raja Rajendra Narayan Deb Service Station, Beltola, Basistha Road, Wireless, Guwahati – 781006, Assam.
2. Respondent – DCIT/ACIT, Circle- 3, Guwahati.
3. CIT(A), Guwahati-2.
4. CIT ,
5. DR, ITAT, Guwahati.

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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata