

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

**BEFORE SHRI N.K. CHOUDHRY, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 4769/Del/2019  
Assessment Year: 2015-16**

Haryana Plywood Industries 159-D, Kamla Nagar, New Delhi <b>PAN: AAAPH9422P</b> (Appellant)	Versus	ACIT, Circle 63(1) New Delhi.  (Respondent)
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Assessee by : None  
Revenue by : Sh. Ravi Kant Choudhary, Ld. Sr. DR

Date of hearing : 01.09.2022  
Date of order : 01.09.2022

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Assessee against the order dated 27.03.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-38, New Delhi (in short "Ld. Commissioner"), u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

2. Though the notice for hearing to the Assessee was sent through Speed Post, however, the Assessee neither appeared nor filed any adjournment application. Therefore, in the constrained circumstances, considering the issue involved, we are deciding this appeal as ex-parte.

3. Brief facts relevant for adjudication of the instant appeal are that the Assessee declared its total loss of Rs.1,59,84,088/- by filing its return of income on 30.10.2015 which was selected for limited scrutiny under CASS and therefore, statutory notices have been issued to the Assessee and questionnaire was issued vide letter dated 19.01.2017 by fixing the date for 09.10.2017, however, the Assessee neither appeared nor filed any information/reply to the questionnaire. Thereafter, though the case was fixed many times by issuing various notices by the Assessing Officer, however, the Assessee failed to appear. Therefore, the Assessing Officer while considering the comparative profit and loss account for A.Y. 2012-13, 2013-14 and 2014-15 and for the year under consideration, rejected the books of account u/s. 145(3) of the Act and determined the gross profit ratio of the Assessee to the tune of Rs.3,17,90,617/- @ 8.82% on the gross turnover of the Assessee and by subtracting the loss of Rs.1,59,84,088/- from the addition on account of GP ratio of Rs.3,17,90,617/-, computed the income of the Assessee at Rs.1,58,06,529/- by passing the assessment order u/s. 144 of the Act.

4. The Assessee being aggrieved though challenged the assessment order before the Id. Commissioner, however neither appeared nor filed any adjournment application. Therefore, the Id. Commissioner in the constrained circumstances, dismissed the appeal of the Assessee by affirming the addition of Rs.3,17,90,617/- which was made on account of GP ratio by the Assessing Officer.

5. The Assessee being aggrieved preferred the instant appeal by raising seven grounds of appeal. By ground No. 6, the Assessee claimed that the order passed by the First Appellate Authority is

against the principle of natural justice and without giving a reasonable and sufficient opportunity to the Appellant to present its case.

6. We have given thoughtful consideration to the peculiar facts and circumstances of the case. From the order impugned, it appears that during the appeal proceedings, the AR of the Assessee submitted that a fire had broken out into the factory in 2014, due to which the business had suffered a loss and evidence for the same was submitted. However, the Id. Commissioner rejected the said contention by mentioning that the fire had happened in 2014 while the assessment proceedings had started only on 26.07.2016 till 20.11.2017 and there was a gap of two years between the two events. It is difficult to believe as to how the fire which took place two years back could affect appearing for scrutiny in 2017. No one appeared for the hearing nor was any adjournment filed. Therefore, the reason furnished by the Appellant for non-appearance is not accepted.

The Id. Commissioner in the order also recorded the dates of events happened before the Assessing Officer where the Assessee neither appeared nor filed any adjournment, therefore, the Id. Commissioner observed that no one attended nor any adjournment was filed in response to the same during the appellate proceedings. Consequently, the Id. Commissioner without giving further opportunity of being heard, affirmed the addition made by the Assessing Officer and by dismissing the ground of appeal raised by the Assessee.

We have given thoughtful consideration to the peculiar facts and circumstances of the case referred to above in totality and observe that the Assessee did not get proper, reasonable and

sufficient opportunity to present its case and therefore, in our considered view, justice would be met by setting aside the order impugned and to remand back the case to the file of the Id. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee. Accordingly, the case is remanded to the file of the Id. Commissioner on the above terms.

7. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 01/09/2022.

Sd/-

**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-