

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "F" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.3910/Del/2019
[Assessment Year : 2014-15]**

Pawan Kumar Garg, Prop.P.K. Enterprises, Opp. Water Tank Area, Delhi Road, Hisar, Haryana-125001. PAN-AJAPG1328Q	vs	ITO, Wazrd-05, Hisar, Haryana.
APPELLANT		RESPONDENT
Appellant by		Ms. Monika, Adv.
Respondent by		Shri Anuj Garg, Sr.DR
Date of Hearing		12.10.2022
Date of Pronouncement		18.10.2022

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2014-15 is directed against the order of Ld. CIT(A)-5, Ludhiana dated 13.02.2019.

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

1. *"That the learned Commissioner of Income Tax (Appeals)-5, Ludhiana has erred both in law and on facts in upholding the order of assessment dated 27.12.2016 framed u/s 144 of the Act.*
 - 1.1. *That the learned Commissioner of Income Tax (Appeals) while upholding the validity of the assessment has failed to appreciate that non compliance in the assessment proceeding even otherwise was no account of reasonable cause and therefore arbitrary addition made were illegal, invalid and untenable.*
2. *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding trading addition of Rs. 13,78,344/- by applying an arbitrary rate of .5% to the turnover declared in the instant year.*

- 2.1. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that mere fall in gross profit ratio when net profit rate was comparable no trading addition was warranted on the facts of the instant year.*
- 2.2. *That even otherwise the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the returned income stood accepted as it is trading addition made was legally impermissible.*
3. *That the learned Commissioner of Income Tax (Appeals) has otherwise too whole upholding the addition of Rs. 13,78,344/- is not allowing set off of income declared of Rs. 8,47,920/- in the instant year.*
4. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding an addition of Rs. 69,41,218/- u/s 68 of the Act.*
 - 4.1. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once even as per the tax audit report the loan raised stood repaid during the year through banking channel then in absence of any adverse material addition made is altogether invalid, illegal and untenable.*
 - 4.2. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that even in a case of an assessment proceedings u/s 144 of the Act no arbitrary addition is validly permissible, particularly when trading addition has been separately made and sustained.*
5. *That both the authorities below have framed the impugned order without granting sufficient proper opportunity to the appellant and therefore the same are contrary to principles of natural justice and hence vitiated.*
6. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest u/s 234A of the Act, and u/s 234B of the Act which are not leviable on the facts and circumstances of the case of the appellant company.”*

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that the assessee e-filed its return of income declaring total income of Rs.8,47,920/- on 18.11.2014. The case of the assessee was selected for scrutiny assessment through CASS. Statutory notices u/s 143(2) of the Income Tax Act, 1961 ("the Act") dated 29.08.2015 and 17.09.2015 were issued and served upon the assessee through Speed Post/Regd. Post. In response thereto, the Ld. Authorized Representative of the assessee attended the proceedings. Thereafter, notices u/s 143(2) and 142(1) of the Act, were issued to the assessee but neither any one attended the proceedings nor any reply was filed. Subsequently, notices u/s 142(1)/143(2) of the Act, were issued from time to time but neither any one attended the assessment proceedings nor filed any written reply despite various opportunities were provided to the assessee. Thereafter, the Assessing Officer ("AO") framed the assessment u/s 144 of the Act vide order dated 27.12.2016. The AO while framing the assessment, made additions of Rs.13,78,344/- on account of low gross profit/net profit and Rs.69,41,218/- on account of unsecured loan and assessed income at Rs.91,67,482/- of the Assessee.

4. Aggrieved against the assessment order, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions and material placed before him, dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that the assessee may be given a fair chance of hearing to sub-serve the interest of principle of natural justice.

7. Ld. Sr. DR opposed these submissions and supported the order of Assessing authorities. Ld. Sr. DR submitted that the sufficient opportunity was granted to the assessee to represent its case.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. It is seen from the records that the assessment order was passed u/s 144 of the Act i.e. *ex-parte* to the assessee. Further, Ld. CIT(A) stated that the assessee remained non-cooperative however, considering the material available on record, we are of the considered view that it would sub-serve the interest of principle of natural justice, if the assessment is restored to AO for fresh adjudication of issues. We therefore, set aside the impugned order and restored the assessment to the file of AO to frame the assessment afresh after giving adequate opportunity of hearing to the assessee. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

Order is pronounced in the open Court on 18th October, 2022.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

* Amit Kumar *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI