

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 1419/DEL/2022 (A.Y 2013-14)

Madhura Biotech Private Ltd. 301, Akash tower, 2LSC, Savita Vihar, Delhi-110070 PAN No. AAFCM8070L (APPELLANT)	Vs.	ITO Ward 16(1), New Delhi (RESPONDENT)
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Assessee by :	None
Department by:	Ms. Smita Singh, Sr. DR

Date of Hearing	09.09.2024
Date of Pronouncement	11.09.2024

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for the Assessment Year 2013-14 against the order of the Ld. Commissioner of Income Tax (Appeals)-36 ('Ld. CIT(A)' for short), Delhi dated 22.07.2019.

2. The grounds of appeal are as under:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income-tax (Appeals) [‘CIT(A)’] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CTT(A) has erred, both on facts and in law, in passing the order ex-parte even though the assessee was prevented from appearing before the learned CIT(A) because of the reasons beyond the control of the assessen.

3. The order passed by the learned CIT(A) in rejecting the adjournment application filed by the assessee on 19 July 2019 on the ground that as many as three notices were issued to the assessee and no documents or details were submitted by the assessee is bad and unsustainable in law.

4. On the facts and circumstances of the case, the learned CTT(A) has erred, both on facts and in law, in confirming the various additions and disallowances made by the Assessing Officer (AO), without giving assessee a proper opportunity of being heard.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the assessment made by the AO at an income of Rs.3.92,84,422/-, as against the income of Rs.21,02,260/-declared by the assessee in its return of income.

6. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the addition of Rs.3,11,78,221/- on account of low Gross Profit rate of the assessee during the year under consideration.

(ii) That the learned CIT(A) has erred, both on facts and in law in ignoring the audited financial statements of the assessee and the evidences submitted in support thereof during the course of assessment proceedings, without pointing out any specific error or defect in such documents or evidences and merely by relying on the findings of the AO.

(iii) The learned CTT(A) has erred in confirming the impugned addition despite the fact that the purchases made by the assessee from the outstation branded vendors are genuine and this fact has also not been controverted by the AO.

7. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs.60,03,941/-made by the AO by invoking the provisions of Section 14A read with Rule 8D.*

(ii) The learned CIT(A) has erred in confirming the above disallowance despite the fact that no exempt income has been earned by the assessee during the year under consideration, in total disregard to the various judicial precedents.

(iii) The learned CIT(A) has erred in confirming the above disallowance by ignoring the fact that the own funds of the assessee being more than the borrowed funds, the investments were made out of own funds available and accordingly, no disallowance on account of interest could have been made.

8. *The appellant craves the leave to add, amend or alter any grounds of appeal.”*

3. When the Appeal called neither the assessee nor the Representative of the assessee were present and the Department of Revenue has been represented by Ld. Sr. Departmental Representative. Considering the facts and issues involved in the present Appeal, we deem it fit to decide the Appeal after hearing the Ld. Sr. Ld. Departmental Representative and on verifying the records.

4. Brief facts of the case are that, an assessment order came to be passed u/s 143(3) of the Income Tax Act, 1961 ('Act' for short) on 28/03/2016 by computing the income of the assessee at Rs. 3,92,84,420/- as against returned income of Rs. 21,02,260/-. Aggrieved by the assessment order, the assessee preferred the appeal before the CIT(A). The Ld. CIT(A) vide order dated 22/07/2019, dismissed the Appeal filed by the assessee. As against the order of the Ld. CIT(A), the assessee preferred the present Appeal on the grounds mentioned above.

5. Heard the Ld. Sr. Departmental Representative and perused the records. The Ld. CIT(A) while dismissing the Appeal ex-parte,

observed that, *“the appellant has chosen not to appear during the appellate proceedings, therefore, the addition made by the Assessing Officer are sustained”*. Thus, the Ld. CIT(A) has not decided the Appeal filed by the assessee on merits and dismissed the Appeal in limine which is contrary to the settled position of law.

4. Considering the fact that, the Appeal of the assessee has not decided on merits, we deem it fit to restore the Appeal to the file of the Ld. CIT(A) for de-novo adjudication after hearing the Ld. Departmental Representative. Ordered accordingly.

5. In the result, the Appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 11th September, 2024.

Sd/

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Dated : 11/09/2024

*R.N, Sr. PS**

Copy forwarded to :

1. Appellant
2. Respondent

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI