

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 5108/DEL/2014 (A.Y 2010-11)

Renus Creations Pvt. Ltd. 202, Royal Retreat, Charmwood Villagfe, Near Surajkund Faridabad AACCR7908P (APPELLANT)	Vs	ITO Ward-15(3) New Delhi (RESPONDENT)
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Appellant by	Sh. Ashutosh Mohan Rastogi, Dhruv Seth & Aanchal Kesari, Advs
Respondent by	Ms. Ashima Neb, Sr. DR

Date of Hearing	10.01.2019
Date of Pronouncement	22 .01.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 17/07/2014 passed by CIT(A)-XVIII, New Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

“ 1. That the Commissioner of Income Tax (Appeals)-XVIII, New Delhi has grossly erred on facts and in the circumstances of the case and in law in confirming ex-parte assessment at an income of Rs. 2,28,94,516/- as against the net loss of Rs.1 7,98,792/- without reading through/examining voluminous self-explanatory paper book evidence(458--pages) filed by the appellant.

2. *That the Commissioner of Income Tax (Appeals)-XVIII, New Delhi has grossly erred on facts and in the circumstances of the case in law without any sufficient cause in holding the security deposit of Rs. 1,97,48,400/-from the franchisees and advances from customers of Rs.7,65,885/-as unexplained without even examining/reading through the various evidences filed by the appellant viz. copies of franchise agreements, confirmations, copies of ledger account, bank statements, PAN details etc.*

3. *That the Commissioner of Income Tax (Appeals)-XVIII, New Delhi in the first instance having not read through/ examined at all the self-explanatory paper book evidence filed by the appellant is not justified in holding that the appellant has not discharged the onus in explaining security deposit and customer advance balance.*

4. *That the Commissioner of Income Tax (Appeals)-XVIII, New Delhi has grossly erred on facts and in the circumstances of the case and in law in not adjudicating the lawful additional ground of the appellant for set off of unabsorbed depreciation and unabsorbed business losses of Rs.56,37,285/- and Rs. 28,71,177/- respectively as per return of income and tax audit report.*

5. *That the Commissioner of Income Tax (Appeals)-XVIII, New Delhi has grossly erred on facts and in the circumstances of the case and in law in repudiating the essential additional evidence filed by the appellant company vide application dated 11th October 2013 without giving sufficient cause.”*

3. The assessee Company was incorporated on August 19, 2004 and engaged in the business of running chain of exclusive design menswear Stores under the brand name “Wedding Wages”. The assessee filed a NIL return with an absurd loss of Rs. (-) 17,98,92/- on 30/09/2019. The return was processed

u/s 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny and notice u/s 142(1) was issued. The Assessing Officer called for information from time to time which was complied by the assessee through replies and representations. The Assessing Officer issued a show case notice dated 21/2/2013 requiring the assessee to furnish information. The assessee appeared on February 27, 2013 and sought adjourn which was denied by the Assessing Officer and the Assessing Officer rejected the books of account of assessee u/s 145(3) and passed an order u/s 144 of the Income Tax Act thereby making assessed income at Rs. 2,52,14,628/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before he CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that neither the show case notice nor in the assessment order, the Assessing Officer demonstrated satisfaction that the books of account of the assessee were incorrect or incomplete which is a pre-condition for application of Section 145(3) of the Act. The Ld. AR, therefore, submitted that the Assessing Officer proceed to invoke Section 145(3) in an arbitrary manner on base less conjectures/surmises to apply Section 144. The Ld. AR submitted that the assessee field additional evidence before the CIT(A) regarding the information sought by the Assessing Officer which was revised by the Assessing Officer to be accepted when the CIT(A) called for remand report. The Assessing Officer recommended rejection of the evidence as in view of the Assessing Officer opportunity of hearing had already been granted to the assessee. The Ld. AR further submitted that the Assessing Officer did not demonstrate any defects or deficiencies in the books of accounts. The addition to income of the security deposits and advances from customers as unexplained income u/s 68 as per the Assessing Officer is not justified as there are agreements for security deposits furnished before the Assessing Officer which was not properly taken cognizance by the Assessing Officer. The Ld. AR further submitted that the Assessing Officer did not carry any

enquiry and added the amount of security deposits and advances from customers thereby making additions total of Rs. 2,05,14,285/- as unexplained credit even when the assessee has furnished PAN and address of the franchisees and filed a copy of franchises agreement in individual cases. The Ld. AR as regards set up for brought forward losses/un-absorbed depreciation submitted that the Assessing Officer did not grant benefit of set up for brought forward an absurd business loss and un-absorbed depreciation in the assessment order on the ground that this claim was not made in the assessment proceedings. Therefore, this claim cannot be entertain at the appellate proceedings before the CIT(A). The Ld. AR submitted that the assessee was not given a proper opportunity before both the Revenue Authorities and was not allowed to present his additional evidence within appropriate time. The Ld. AR submitted that the CIT(A) should have accepted/admitted the additional evidence in relation to the show cause notice dated 21/2/2013. As in remand report, there was not comment on the subsidies of additional evidence by the Assessing Officer and the Assessing Officer simplicity stated that proper opportunity was giving to the assessee. But the Assessing Officer has not given a proper opportunity to the assessee merely granting 3 days for submitting voluminous evidence was not at all sanction and simply rejecting books of accounts without giving any satisfaction as provided u/s 145(3) is not just and proper.

6. The Ld. DR relied upon the order of the Assessing Officer and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. From the perusal of the assessment order and the order of the CIT(A) it can be seen that the Assessing Officer prior to rejection of books of account has not given ample opportunity to the assessee to demonstrate his case and has not complied with the provisions of the Section 145(3) of the Act. The CIT(A) also failed to give any reason for non-admission of the additional

evidence. From the perusal of the Assessment Order it can be seen that the opportunity given to the assessee by the Assessing Officer was not sufficient. Therefore, it will be appropriate to remand back this matter to the file of the Assessing Officer by giving proper opportunity of hearing and allowing the assessee to submit additional evidence in support of his case. After taking into account all the evidences and giving proper hearing to the assessee, the Assessing Officer shall pass appropriate order under due process of law. We are not commenting on merit of the evidence and it will be the sole discretion of the Assessing Officer to decide the case on merit. Therefore, the appeal of the assessee is partly allowed for statistical purpose.

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

Order pronounced in the Open Court on 22 JANUARY, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 22/01/2019
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	16.01.2019
Date on which the typed draft is placed before the dictating Member	16.01.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	.01.2019
Date on which the final order is uploaded on the website of ITAT	22.01.2019
Date on which the file goes to the Bench Clerk	.01.2019
Date on which the file goes to the Head Clerk	