

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Smt. Diva Singh, JM AND Sh. N. K. Saini, AM**

**ITA No. 73/Del./2010 : Asstt. Year : 2006-07**

DCIT Central Circle – 11, Room NO. 364, ARA Centre, E-2, Jhandewalan Extension New Delhi	Vs	Style Syntex Pvt. Ltd. B1/A-20, Mohan Co-operative Indl. Estate, Mathura Road, New Delhi- 110 001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCS0645R</b>		

**Appellant by : Sh. B. R. R. Kumar, Sr. DR**

**Respondent by : Sh. Shankulp Sharma, Adv.**

**Date of Hearing : 16.06.2015**

**Date of Pronouncement : 16.06.2015**

**ORDER**

**PER N.K. SAINI, A.M.**

This is an appeal by the Department against the order dated 29/10/2009 of the Ld. CIT(A)- I, New Delhi.

2. Only effective ground raised in this appeal reads as under :-

*“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 25,00,000/- made by the AO on estimate basis by not appreciating the fact that the set-aside assessment for A.Y. 2002-03 was redone determining the taxable income at Rs. 37,80,284/- and therefore the estimate made by the AO was very much reasonable.”*

3. Facts of the case in brief are that the assessee for the year under consideration did not file the return of income, therefore, the AO issued notice u/s 142(1) of the IT Act, 1961(hereinafter referred to as the Act). Since the return was not filed by the assessee, the AO framed the assessment u/s 144 of the Act and assessed the income on estimate basis at Rs. 25,00,000/- by observing that the income for the preceding assessment year 2002-03 was assessed at Rs. 18,43,480/-.

4. Being aggrieved the assessee carried the matter to the Ld. CIT and submitted that the AO framed the assessment arbitrarily on the basis of assessment order for the assessment year 2002-03 which was set aside by the ITAT in ITA No. 326/Del./2007 vide order dated 25.7.2008. It was further, submitted that the AO totally ignored the assessment completed for assessment year 2003-04 to 2005-06 wherein the total income had been assessed at nil and carried forward of losses was disallowed. Reliance was placed on the following case laws :-

1. Sangrur Vanaspati Mills Ltd. vs. CIT (2007) 211 CTR (P&H) 439
2. Kachwala Gems vs. Jt. CIT 288 ITR 10 (SC)

5. The Id. CIT after considering the submissions of the assessee deleted the addition made by the AO by observing in para 9 of the impugned order as under :-

*“I have considered the submission of the appellant and the observation of the A.O. Since the assessee had not filed the return of income the AO had estimated the income on the basis of assessment made for A.Y. 2002-03. However the appellant stated that the order for A.Y. 2002-03 had been set-aside by the Hon’ble ITAT on 25.7.2008 and hence on the date of assessment made on 29.12.2008 the order for A.Y. 2002-03 was not existent. Therefore the basis of estimate was not correct. However, in subsequent assessment years in 2003-04 to 2005-06 the total income of the assessee had been assessed at NIL. Relying on the judgment of the Hon’ble Sangrur Vanaspati Mills Ltd. vs. CIT(2007) 211 CTR (P&H) 439 and “Hon’ble SC in Kachwala Gems vs. Jt. CIT 288 ITR 10 (SC) the appellant argued that the best judgment assessment must be on a reasonable basis and should be honest and fair estimate and not totally arbitrary. In the instant case, AO had not brought any material evidences to show that some business activities has been carried out by the assessee and no finding has been recorded. In view of the above discussion, in my considered opinion the estimate made by the AO is without any basis and hence directed to the deleted. The appeal of the appellant has been allowed.”*

Now the department is in appeal.

6. The Id. DR strongly supported the order of the AO and reiterated the observations made in the assessment order

dated 29.12.2008. In his rival submissions, the Id. Counsel for the assessee reiterated the submissions made before the Id. CIT(A) and strongly supported the impugned order passed by the Id. CIT(A).

7. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the AO framed the assessment ex parte u/s 144 of the Act by estimating the income of the assessee at Rs. 25,00,000/- on the basis of the income assessed for the assessment year 2002-03 which was assessed at Rs. 18,43,480 but ignored this vital, fact that the said assessment was set aside by the ITAT vide order dated 25.7.2008 i.e. much before the assessment order passed by the AO on 29.12.2008. In the present case, the AO himself admitted the income of the assessee at NIL for the preceding assessment years i.e. A.Y. 2003-04 to 2005-06 wherein the total income had been assessed at NIL. Therefore, the estimate of the AO in assessing the income for the year under consideration was without any basis particularly when he himself assessed the income of the assessee at nil for the preceding assessment years 2003-04 to 2005-06.

8. We, therefore, considering the totality of the facts do not see any valid ground to interfere with the findings of the Ld. CIT(A). Accordingly, we do not see merit in this appeal of the department.

10. In the result, appeal of the department is dismissed.

(Order Pronounced in the Court on 16/06/2015).

Sd/-  
**(Diva Singh)**  
**JUDICIAL MEMBER**

**Dated: 16/ 06/2015**

\*B.Rukhaiyar\*

Copy forwarded to:

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

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**

		Date	<u>Initial</u>	
1.	Draft dictated on	16.06.2015		
2.	Draft placed before author	16.06.2015		
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			