



**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.360/ALLD/2018
Assessment Year: 2012-13

Shri Purushottam Patel 197, Bans Mandi Tilak Road Allahabad	v.	Income Tax Officer Ward 2(2) Allahabad
TAN/PAN:AAAYPP7522J		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Godbole, C.A.		
Respondent by:	Shri S. K. Madhuk, CIT (DR)		
Date of hearing:	21	11	2019
Date of pronouncement:	22	11	2019

ORDER

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the ld. CIT(A), Allahabad, dated 19/9/2018 for assessment year 2012-13, taking the following grounds:

1. That in any view of the matter the order dated 27.03.2015 passed u/s 144 of the Income Tax Act by the Assessing officer and his actions as partly confirmed by the Commissioner of Income Tax (Appeal) is highly unjustified and incorrect because no proper opportunity was allowed by the assessing officer in assessment proceeding as well as past assessment records of the assessee was ignored by the two lower authorities hence the addition made and maintained are incorrect, illegal and unjustified.
2. That in any view of the matter the addition of Rs. 1,41,01,761/- made by the assessing officer **by saying unexplained cash credit is totally incorrect because the parties in question are trade parties from whom goods were purchased and entries were recorded in**

books sales were accepted and payments made to the parties in cash/cheque has been accepted therefore the addition of Rs. 89,34,653/- as maintained by the learned Commissioner of Income Tax (Appeal) is highly unjustified incorrect in the facts and circumstances of the case.

3. That in any view of the matter the addition of amount Rs.89,34,653/- to only trade parties in question and they are genuine parties their identity has been accepted, opening balance were accepted but payment made through cheque or cash was disbelieved which is incorrect action in the facts and circumstances of the case hence the addition of Rs. 89,34,653/- is wrong and uncalled for.
4. That in any view of the matter before the learned Commissioner of Income Tax (Appeal) three different charts were filed showing therein nature of trade transaction , nature of payment and genuineness of the parties hence the addition so made and maintained is totally unwarranted and illegal.
5. That in any view of the matter disallowance of expenditure under seven head amounting to Rs. 57,908/- made by the assessing officer @ 20% and confirmed is totally uncalled for because in the Income Tax Act there is no provision for making disallowance of the expenditures on percentage basis specially when in past as well as subsequent assessment year identical expenses has been accepted by the department.
6. That in any view of the matter the expenditure claimed under seven head were incurred only in respect of business connection hence disallowances as made and maintained is unwarranted and illegal.
7. That in any view of the matter disallowance of Rs. 15,534/- as made and maintained by the two lower authorities is illegal and unwarranted in the facts and circumstances of the case, hence the same is liable to be deleted.
8. That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal.

9. That in any view of the matter interest charged u/s 234B and 234A are incorrect.

2. The brief facts of the case are that the assessee filed his return of income electronically on 29/9/2012 at a total income of Rs.2,69,490/-. The case was selected for scrutiny assessment under section 143(3) of the Act through CASS and notices under section 143(2) and 142(1) of the Act were issued to the assessee. On the last date fixed for hearing, i.e., 19/3/2015 none attended on behalf of the assessee before the Assessing Officer, therefore, he completed the assessment by passing an ex-parte order under section 144 of the Act, assessing the income of the assessee at Rs.1,47,87,864/-, by making various additions/disallowances.

3. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who partly allowed the appeal of the assessee.

4. Before us, the Id. Counsel for the assessee submitted that the assessee, in respect of his timber business activity, is maintaining regular books of account, which are duly audited and the audit reports are always filed with the returns of income; that the assessee is a regular income tax assessee and no ex-parte order has ever been passed in the case of the assessee in the past, therefore, order passed by the Assessing Officer under section 144 of the Act, without providing due opportunity of hearing to the assessee, is unjustified; and that the Id. CIT(A) has sustained the additions without giving any reasoning. The Id. Counsel for the assessee, accordingly, prayed that in the interest of justice, the matter may be restored to the file of the Assessing Officer to decide the matter afresh on considering the past record

of the assessee as well as the audit report and other material evidence.

5. The ld. D.R., on the other hand, has submitted that the ld. CIT(A) has given substantial relief to the assessee, therefore, there should not have been any grievance to the assessee.

6. Heard. We find that the assessee filed his return of income electronically on 29/9/2012 at a total income of Rs.2,69,490/- and the Assessing Officer completed the assessment under section 144 of the Act, assessing the total income at Rs.1,47,87,864/-, by making various additions/disallowances. The ld. CIT(A) gave partial relief to the assessee, but for sustaining the additions, no concrete reasoning has been given by the ld. CIT(A). We find force in the contention of the assessee that the ld. CIT(A) has passed an order without giving any reasoning for sustaining the addition. Therefore, his order is not sustainable in the eyes of law. The Assessing Officer, in his order, has observed that the assessee has claimed sundry creditors and advance received for sale of Rs.1,41,01,761.04, for which no detail, except list was submitted, hence in the absence of verification, total outstanding sundry creditors is added as unexplained cash credit, resulting into addition of Rs.1,41,01,761/-. Likewise, for unexplained loan of Rs.11,73,258/- also, no explanation was furnished for introduction of the same before the Assessing Officer, as noted by him in his order. It is also on record that during the assessment proceedings, assessee did not appear, therefore, he could not prosecute his case effectively and the Assessing Officer has passed an order under section 144 of the Act. Under these facts and circumstances, we are of the view that the entire issue be examined again by the Assessing Officer after making a detailed

enquiry. Accordingly, we set aside the order of the ld. CIT(A) and restore the matter to the Assessing Officer to frame the assessment de-novo.

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

Order pronounced in the open Court on 22/11/2019.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:22/11/2019

JJ:2111

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar