

tax (Appeals) has erred in not deciding this legal ground of appeal while deciding the appeal ex-parte.

3. *The ld. Commissioner of Income-tax (Appeals), has erred in confirming the addition of Rs. 55,05,043/- made u/s 69C of the Income-tax Act, 1961 on the basis of inferences and incorrect findings on facts and without fulfilling conditions stipulated in said section*
4. *The ld. Commissioner of Income-tax (Appeals) has erred in confirming the entire addition of Rs. 55,05,043/- while in similarly situated case of Shri Imran Charania, Bhilai, vide order dated 30/09/2019 in Appeal Nos.177/16-17 to 179/16-17, he directed the Assessing officer to apply only gross profit rate on the sale of relevant year instead of total amount of purchases added in assessment order.*
5. *The impugned order is bad in law and in facts.*
6. *The appellant reserves the right to add, alter, amend, omit or withdraw all or any of the grounds of appeal in the interest of justice.*

2. Brief facts of the case are that the assessee is proprietary firm of Shri Sudhir Kumar Bansal. The assessee is engaged in manufacturing and trading of coal tar pitch etc. For the A.Y. 2010-11, the assessee filed its return of income declaring income of Rs. 21,87,130/-. The case of the assessee was selected for scrutiny and assessment was completed on 30/03/2013 determining total income of Rs. 24,36,030/-. Subsequently, the case was reopened under section 147. Notice under section 148 was issued on 31/03/2017 which was served upon the assessee. The assessee filed its reply on 06/06/2017 informing that return filed on 14/10/2010 may be treated return in response to the notice under section 148. The assessee requested for supply of reasons recorded. The AO recorded that reasons recorded were provided to the assessee along with his letter dated 09/06/2017. The AO after serving statutory notices completed the

reassessment under section 143(3) r.w.s 147 on 08/12/2017. The AO in the re-assessment order made addition of Rs. 55,05,043/- on account of unexplained expenditure, thereby determining total income at Rs. 76,92,170/-. On appeal, Id.CIT(A) confirmed the action of AO in *ex-parte*. Further aggrieved, the assessee filed the present appeal before us.

3. We have heard the submissions of Id. Authorized Representative (AR) for the assessee and the Id. Departmental Representative (DR) for the revenue. Ground Nos. 1 & 2 relates to not providing sufficient and proper opportunity and passing *ex-parte* order by the Id. CIT(A). The Id.AR of the assessee submits that Id. CIT(A) passed *ex-parte* order without giving fair and reasonable opportunity to the assessee. The Id.AR for the assessee submits that the assessee has raised specific ground against the validity of reopening under section 147. The Id. CIT(A) has not given any finding nor considered the same while deciding the appeal. The Id. CIT(A) confirmed the order of AO on merit without giving opportunity to the assessee.
4. On the other hand, Id. DR for the revenue submits that Id. CIT(A) granted three opportunities to the assessee as recorded at page No.1 of the impugned order. The Id. CIT(A) recorded that in response to various notices neither the assessee attended nor furnished any written submissions and therefore the Id. CIT(A) has no option except to decide

the case on the basis of material available on record. The ld.DR for the revenue supports the order of ld. CIT(A).

5. We have considered the rival submissions of both the parties and perused the order of ld. CIT(A). We find that before the ld. CIT(A), assessee filed appeal on 11/01/2018. As per order of ld. CIT(A) notices dated 22/04/2019, 07/06/2019 and 20/11/2019 were issued. We find that ld. CIT(A) has not recorded the respective date of hearing under the different notices. Further, the ld. CIT(A) has not recorded his satisfaction whether notices issued by him were duly served upon the assessee or not. The ld.CIT(A) recorded that no response was received from the assessee hence, proceeded to decide the appeal by presuming that the assessee has nothing to say other than the material already on record. The ld. CIT(A) in para 2.2 of his order concurred with the additions made by the AO. The ld CIT(A) has not considered the fact pleaded by the assessee in Form-35(appeal form before ld. CIT(A). We find that the assessee raised a specific ground of appeal before the ld.CIT(A) that initiation of reassessment under section 147 is bad in law and on facts. The ld. CIT(A) has not given any finding nor discussed that fact is leading to reopening under section 147 and validity of notice under section 148. We find that non-consideration of jurisdictional issue is fatal. The principle of *audi alteram partem* and natural justice has not been adhered by ld. CIT(A).

6. Considering the fact that Id. CIT(A) passed *ex-parte* order without considering and deciding the legal issue, we deem it appropriate to remit the appeal back to the Id. CIT(A) to decide *denovo* on the issue of validity of reopening as well as on merit and to decide all the issues in accordance with law. Needless to order before passing Id. CIT(A) shall grant reasonable opportunity of hearing to the assessee. The assessee is also directed to be vigilant in future and to provide all necessary submissions and evidence to substantiate the grounds of appeal raised before the Id. CIT(A) without any further delay. In the result the grounds No.1 &2 are allowed.

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

Order pronounced on 12-08-2021 by placing result on notice board.

Sd/-
(PRADIP KUMAR KEDIA)
Accountant Member

sd/-
(PAWAN SINGH)
Judicial Member

Vr SPS

Dated: 12th August, 2021

Copy to:

1. *The Assessee -M/s. Bhilai Cement, Prop. Shri Sudhir Kumar Bansal, 8 Civic Centre, Bhilai (CG).*
2. *The Revenue – ACIT-1(1), Bhilai.*
3. *Ld. CIT(A-II), Raipur.*
4. *Pr.CIT-II, Raipur.*
5. *The D.R., Raipur.*
6. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Raipur (on tour).