

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

(Through Video Conferencing)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.5137/DEL/2019
[Assessment Year: 2013-14]**

Smt. Bhavana Jain, Prop. M/s Akash Metal Industries, outside Barsi Gate, Hansi, Haryana-125033	ITO, Ward-1, Hisar, Haryana
PAN-AASPJ7764L	
Assessee	Revenue

Assessee by	Sh. K. Sampath, Advocate, Sh. V. Rajkumar, Advocate
Revenue by	Sh. Gaurav Pundir, Sr. DR

Date of Hearing	24.08.2021
Date of Pronouncement	21.09.2021

ORDER

This appeal filed by the assessee is directed against the order of the learned CIT(A)-5, Ludhiana, dated 18.04.2019 pertaining to Assessment Year 2013-14. The assessee has raised following grounds of appeal:-

- 1. On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) erred in initiating proceedings u/s 147/148 of the Income Tax Act, 1961 without there being valid reasons leading to belief of escapement of income and also passing order u/s 143(3) r.w.s. 147 of the Act without providing reasons recorded;*

2. *On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) erred in confirming the following additions made by the Assessing Officer:*
- i) *Rs. 19,17,500/- on account of sale of TMT scrap treating the same as unexplained income;*
 - ii) *Rs.57,387/- on account of expenses incurred on insurance and electricity wrongly invoking u/s 40A(3) of the Act;*
 - iii) *Rs.8,000/- on account of notional interest disallowed on transactions with M/s S.K. Traders;*
 - iv) *Rs.50,000/- on account of car expenses, telephone expenses and salary of staff on ad-hoc basis.*

2. Facts giving rise to the present appeal are that a survey operation u/s 133A of the Income Tax Act, 1961 (hereinafter 'the Act') was carried out at the business premises of the assessee on 02.09.2014. Thereafter, case of the assessee was reopened by issuing notice u/s 148 of the Act. Thereafter, the Assessing Officer proceeded to frame the assessment. The AO during the course of assessment proceedings, recorded that during the survey operation, certain documents i.e. A-3 blue diary was impounded and certain entries of Rs.19,17,500/- was found to be unrecorded in the books of accounts. The AO, therefore, issued show-cause notice to the assessee to explain the same. In response to the notice, it was stated by the

assessee that diary was for the purpose of keeping track of the entries for memory only. However, the explanation of the assessee was not found acceptable by the AO on the basis that one of the entries of Rs.75,000/- was duly recorded in the books of accounts. The Assessing Officer, therefore, made addition of Rs.19,17,500/-. Further, the AO noticed that the assessee had made expenditure in cash amounting to Rs.29,699/- on 20.12.2012 and Rs.27,688/- on 12.11.2012 respectively violating the section 40A(3) of the Act. This amount was added to the income of the assessee, the AO also noticed that the assessee had bank transaction with M/s S. K. Traders, Hansi but there was no business transaction, therefore, a sum of Rs.8,000/- was added in the income of the assessee as notional interest. The Assessing Officer also made addition of Rs.50,000/- on account of ad-hoc disallowance of the expenditure related to Car, Phone, service or staff. Thus, the AO assessed income at Rs.24,29,887/- against returned of income of Rs.3,96,980/-.

3. Ground no.1 of the assessee's appeal is against the reopening of the assessment. At the time of hearing, no

arguments was addressed on this ground, therefore, this ground of appeal is dismissed.

4. Ground No.2 (i) is against the sustaining the addition of Rs.19,17,500/-, the learned counsel for the assessee submitted that the authorities below were not justified in making addition, he submitted that the addition has been made purely on the basis of noting in the diary without any corroborative evidence. He submitted that the law is well settled that no addition can be made on the basis of entry in the diary without corroborative evidence. He further submitted that even otherwise also the AO should not have made the entire addition even if it is assumed that without prejudice to the submissions that no addition could be made, the only profit element could be taxed.

5. On the contrary, the learned DR opposed the submissions and supported the orders of authorities below. The learned DR submitted that submissions of the learned counsel for the assessee are misplaced. He submitted that the AO has specifically recorded, which has not been disputed by the assessee that out of entry made in the diary of Rs.75,000/- was found recorded in the books of accounts, therefore, it cannot be

construed that the figures mentioned in the diary were imaginary and nonexistence.

6. I have heard the rival submissions, perused the material available on record and gone through the order of the authorities below. The assessee's explanation with regard to interest in the loose sheet i.e. blue diary found during the course of search was that it was for the purpose of memory and the addition could not have been made solely on the basis of loose paper which is against the well settled law in this regard. Moreover, the entire alleged receipt could not partake character of profit. The profit element embedded into such receipt could be subjected to tax. There is no ambiguity under law that no addition can be made merely on the basis of loose paper without being substantiated by any corroborative evidence. In the present case, undisputedly, one of the entries of Rs.75,000/- was found to be duly recorded in the books of accounts, therefore, I am in the agreement with the contention of the learned DR that such figures found on loose sheet could not be imaginary. The moot question arises whether the entire receipt is correctly taxed or only the profit element should have been taxed. Admittedly, the AO has not invoked section

69/69A of the Act. Therefore, I am of the considered view that only profit element should have been taxed. I, therefore, direct the AO to restrict the addition of Rs.1,91,750/- @ 10% of the gross receipts. This ground of assessee's appeal is partly allowed.

7. Coming to Ground No.2(ii) relates to addition on account of disallowance of expenditure, where payment has been made in cash exceeding Rs.20,000/-.

8. The Ld. Counsel for the assessee submitted that the payments are genuine, hence the AO should have not invoked the provisions of Section 40A(3) of the Act.

9. On the contrary, the Ld. DR submitted that the assessee failed to demonstrate that the payments fall in any of the exception clause as mentioned in the section 40A(3) of the Act.

10. I have considered the rival submissions. I am in agreement with the contention of the Ld. DR that the assessee was required to demonstrate that the payments which has been made in excess of Rs.10,000/- fall under any of the exception as provided u/s 40(3) of the Act and Rules framed thereunder.

Hence, the findings of the authorities below are affirmed. The ground of the assessee's appeal is dismissed.

11. Ground no. 2(iii) relates to charging of the tax on earning of notional interest and the ground no. 2(iv) relates to ad-hoc disallowance of Rs.50,000/-.

12. The Ld. Counsel for the assessee submitted that both the addition have been made on the basis of conjectures and surmises which is not permissible under the law. He submitted that there is no specific finding by the AO and the disallowance has been made purely on guess work.

13. On the other hand, the Ld. DR opposed the submission of the Ld. Counsel for the assessee and relied on the order of the authorities below.

14. I have heard the rival submission. I find merit in the contention of the assessee that both the additions has been made on the basis of surmises only. The AO has made disallowance purely on the basis of guess work. Therefore, the AO is hereby directed to delete the addition of Rs.8,000/- on account of notional interest and Rs.50,000/- made on account of ad-hoc disallowance out of car, telephone and salary of staff

and other expenses. Thus, the ground no.2(iii) and ground no.2(iv) of the appeal are allowed.

15. In the result, the appeal of the assessee is partly allowed.

Above decision was pronounced in the open court on conclusion of Virtual Hearing on 21.09.2021.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Delhi; Dated: 21/09/2021.

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi