

**INCOME TAX APPELLATE TRIBUNAL**  
**[DELHI BENCH "SMC": NEW DELHI ]**  
**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**  
**AND**  
**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**  
**(Through Video Conferencing)**

ITA No. 3565/Del/2019  
(Assessment Year: 2011-12)

Shri Ramit Vohra, Prop. M/s. Impact Enterprises, 9210/5, Multani Dhanda, Pahar Ganj, New Delhi-110055. <b>PAN: AAGPJ0542C</b>	Vs.	ACIT, Circle : 63 (1) New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri G. S. Kohli, C. A.;
Revenue by:	Shri R. K. Gupta, Sr. D. R.;
Date of Hearing :	12/08/2021
Date of pronouncement :	21/09/2021

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is filed by the assessee against the order passed by the Id CIT(A)-20, New Delhi dated 15.03.2019, wherein, the appeal filed by the assessee against the order passed u/s 143(3) read with section 254 of the Act by the Id ACIT, Circle-63(1), New Delhi dated 27.12.2017 was dismissed. Therefore, the assessee is in appeal before us as per ground of appeal as under:-

- “1. That assessment framed as well as C.I.T.'s (Appeal) order are unlawful and are against the natural law of justice.
2. That learned C.I.T. (Appeal) has reiterated the facts given by learned A.O. in Asstt. order, while the A.O. has initiated the proceedings when it was verge to time-barred, thus, blindly followed the original Asstt. order.
3. The learned A.O. had failed to discharge his liability in spite of sufficient time available with him and put it on the shoulders of the appellant for not discharging his liability.
4. That the maximum requirements to justify the questionnaire of the A.O. were placed on the record in original Asstt., the other requirements, if any, of the learned A.O. could have sorted out at his own end keeping in view the circumstances of the appellant.
5. (a) That the application of Average rate of Net Profit of three allied concerns is not valid in the eyes of law.  
(b) That where no expenses is disturbed, purchase and sales has also been proved by having VAT Asstt., the applied rate of Net Profit in a discretionary manner is not justified. “

2. Brief facts of the case shows that the assessee filed its return of income on 30.09.2011 of Rs. 1,31,140/-. The assessment u/s 143(3) read with was passed on 19.03.2014 rejecting the books of account applying net profit rate of 1.34% taking average net profit rate of three different firms of the same industry and total income was assessed at Rs. 26,31,084/-. The appeal of the assessee before the Id CIT(A) was dismissed and therefore, the appeal before ITAT was filed which was set aside to the file of the Id AO by order dated 05.01.2017. Therefore, this appeal is the second round of proceedings. The SMC bench in ITA No. 5243/Del/2015 vide order dated 05.01.2017 vide para No. 5 of the order the order was set aside on the Principles of Natural justice. Consequent to that fresh assessment order was required to be passed.
3. The Id AO issued a show cause notice on 21.12.2017 stating that books of account of the assessee was rejected earlier in view of three unverified creditors and has not produced books of account for verification. The Id AO asked the assessee to produce the supporting evidence, original bills, bank statement to show that the payment to the respective creditors and the details of VAT return where the sales has been shown. The Id AO further asked that if the above information is not provided he would be constrain to adopt net profit ratio @1.34%.
4. The assessee on 27.12.2017 submitted the confirmation of the credits, DVAT return of the assessee. The assessee further stated that assessee himself has been assessed u/s 143(3) for Assessment Year 2013-14 i.e. subsequent to this assessment year accepting the book results.
5. The Id AO once again rejected the contentions of the assessee stating that the confirmation is merely a paper document whether there were no business activity was carried out by those creditors at the given address . Assessee once again failed to produce the right returns of the suppliers as well as it also failed to provide any bills and vouchers in relation with the purchase and sales. With respect to the adoption of the net profit he held that the Id AO would have taken average net profit rates of previous three years of the assessee itself and whose average net profit ratio @1.74% against that the addition has been made @1.34% therefore, the total income was once again determined at Rs. 26,31,080/-. The assessee preferred an appeal before the Id CIT(A) who vide para No. 6.2.4 upheld the order the order of the Id AO. The assessee is in appeal before us.
6. The Id AR submitted a paper book containing 49 pages. At page 49 of the PB he has also given the net profit ratio for Assessment Year 2009-10, 2013-14 stating that for Assessment Year 2009-10 it was @1.72%, for Assessment Year 2010-11 it was @1.81% and for subsequent year for Assessment Year 2012-13 it was 0.41% and Assessment Year 2013-14 it was 0.83%. He submitted that the assessment

year 2013-14 has also been passed u/s 143(3) of the Act on 17.03.2016 where the identical facts and circumstances of the case exists. With respect to Assessment Year 2012-13 he submitted that though no assessment u/s 143(3) is made but still the net profit ratio is 0.41%. He therefore, submitted that the adoption of the gross profit ratio 1.34% by the Id AO is unjustified. On the merits of the addition he submitted that the confirmation of the creditor was produced. The detail of the VAT return of the assessee for this assessment year was also shown to the Id AO. There is no mismatch was found and therefore, rejection of books of account is not correct.

7. The Id DR vehemently objected and stated in this year there is a specific finding of none genuine creditors, therefore, the results of other assessment here's cannot be considered for the purpose of the working out gross profit. He further stated that even if the chart submitted by the assessee at page 49 is considered, the net profit ratio for Assessment Year 2013-14, 2012-13, 2010-11 and 2009-10 also comes to 1.19%. In this year there is a specific discrepancy found in the sundry creditors of the assessee the additions has been made @1.34%. He therefore, submitted that the orders of the lower authorities deserves to be upheld.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. Categorically the Id AO has rejected the books of account of the assessee for the reason that assessee has failed to produce any credible evidence with respect to the three major creditors earlier. The case of the assessee reached before the SMC bench and it was set aside to the file of the Id AO on the principles of natural justice. During the course of the assessment proceedings the assessee was granted the opportunity for substantiating its creditors along with production of books of account. The assessee produced the same details which were produced in the original proceedings. A new argument was raised that for Assessment Year 2013-14 the assessment of the assessee is completed u/s 143(3) of the Act. It was also stated that the assessment for subsequent years completed by the Id AO deserves to be accepted. It is apparent that the assessee has been assessed for Assessment Year 2013-14 u/s 143(3) of the Act. The assessee has placed at Page number 49 the details of net profit ratio of assessment year 2009-10 till Assessment Year 2013-14. The above statement also shows net profit ratio contains a reduction of gross profit ratio on account of administrative expenses. There is no dispute on such expenditure. The addition has been made after rejecting the books of account of the assessee for the reason that the assessee has not been able to justify of the same of the creditors. Therefore, it would be appropriate to restrict the addition on the basis of the gross profit ratio. The gross profit ratio of undisputed four years other than impugned assessment year case

5.42%. Admittedly assessee also submitted the quantitative details of the purchase and sales which were also in conformity with the VAT return filed by the assessee. With respect to the nonavailability of the creditors it may be possible as contended by the assessee that either the creditors have shifted the business activity or close down the their activities. We do not approve the finding of the learned assessing officer that though the creditors have filed the confirmation of the account, but the learned assessing officer has rejected the same stating that so-called creditors on the address given by the assessee are not available. It could also not have been the reason that the nonproduction of the VAT return of the creditors can result into rejection of the books of accounts. It is merely because on report of the inspector it was found that the creditors were not available at the address given by the assessee, the learned assessing officer has rejected the books of accounts and estimated the profit comparing the results of three different entities. Merely because the VAT return of the suppliers were not produced assessee cannot be burdened with additional tax liabilities when the quantitative details of material purchased and sold which included the material purchased from the suppliers are also accounted for. It is also not the case of the learned assessing officer that assessee was directed to produce those creditors. Accordingly, the action of the learned assessing officer by estimating the net profit of the assessee cannot be upheld. On looking at page number 19 of the paper book the assessee has submitted the permanent account number of all the creditors were doubted by the learned assessing officer. In case of JK since Corporation it was submitted that it is nonavailability is only for the reason that it has sifted its business premises. Assessee also submitted the address of these party once again which is placed at page number 28 of the paper book. With respect to MInar saree Center that it has continued its activities from its head office and the assessee has also given a new address at J -23 /52A, Kamal Pura Bari Bazar , Varansi. With respect to Astha Imepex assessee submitted the address of its proprietor and his permanent account number. The learned assessing officer from the records it is apparent that did not try to locate this parties. The confirmations of these parties are placed at page number 22 – 25 of the paper book. Undisputedly the accounts of the assessee are audited Under the provisions of Section 44AB of the act. For the subsequent years the learned assessing officer has assessed the assessee Under the provisions of Section 143 (3) of the act and the books of accounts were accepted. In view of this we do not approve the order of the lower authorities rejecting the books of accounts of the assessee and estimating the profit by taking three different entities though in the similar line of business for estimating the income of the assessee. In view of this we allow ground number 5 of the appeal of the assessee. Ground

number 1 – 4 and 6 does not require any adjudication in view of our decision in ground number 5 of the appeal of the assessee.

9. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 21/09/2021.

**-Sd/-**  
**( AMIT SHUKLA )**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 21/09/2021.

\*AK KEOT\*

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi