

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 2625/DEL/2018 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Kalyani Engineering Works 109-110, Anand Industrial Estate, Mohan Nagar, Ghaziabad, Uttar Pradesh ABFK7616K (APPELLANT)	Vs	DCIT Circle-1, CTO Complex, Hapur Chungi, Ghaziabad (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of Hearing	07.10.2021
Date of Pronouncement	13.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 02/01/2018 passed by CIT(A), Ghaziabad for assessment year 2013-14.

2. The grounds of appeal are as under:-

“1. That the Ld. CIT(A), erred in law, on facts and in surrounding circumstances in dismissing the strong legally based appeal in a casual, abrupt, arbitrary whimsical and summarily manner and that too in the absence of appellant and his Ld. Counsel resulting in “breach of principle of Audi alteram partem”.

2. That the Ld. CIT(A) also erred in law, on facts and in surrounding circumstances, in failing to appreciate that the so called “agreed addition” being based on misconception and misunderstanding of law and facts on the

part of panic stricken, mentally anguished old aged appellant, under pressure does not tantamount to be voluntary in the eyes of settled law of Hon'ble Supreme Court,.

3. That the Ld. CIT(A) further erred in law, on facts and in surrounding circumstances in failing to appreciate that rejection of book result merely on the inability of the assessee to produce confirmation of sundry creditors, does not attract the provisions of section 145(3) of I.T. Act.

4. That in doing so, the Ld. CIT(A) erred in law, on facts and in surrounding circumstances in failing to appreciate that provisions of section 145(3) I.T Act are attracted only when the A.O. is not satisfied about the correctness or completeness of the accounts of the Assessee. Whereas in the assessment order, there is no iota of adverse findings/comments of non satisfaction about the correctness or completeness of the accounts of the assessee, which in turn clearly implies that impugned addition had been made on misapplication of section 145(3) of I.T. Act, thereby rendering the same unsustainable as per law.

5. That the Ld. CIT(A) too erred on facts and in surroundings circumstances in holding wrong view "A.O. rejected the books of account" and consequently the appellate order solely based on wrong impression, misinterpretation and misunderstanding of the factual content of assessment order, is bad in law.

6. That so far as estimation of net profit @ 7.00% is concerned, the Ld. CIT(A) erred in law, on facts and in surrounding circumstances in failing to appreciate that in the absence of any supporting credible or estimation so made, is completely based on assumption, presumption, having no sanctity in law.

7. That without prejudice to above, the Ld. CIT(A) erred in law, on facts and in surrounding circumstances in failing to appreciate that despite written request of the assessee for getting confirmation of balances directly from the parties concerned, the Ld. A.O. had ignored the same in disregard of settled law of Hon'ble Supreme Court leading to miscarriage of justice.

3. The assessee is engaged in manufacturing and job work of mechanical spare parts on order basis, being a specific order oriented engineering industry, produces single and multiple product line, there is no specific product to specify. The income tax return filed electronically on 02/04/2014 declaring total taxable income Rs. 43167880/-. The Assessing Officer made addition of Rs. 85,67,317/- by increasing net profit rate 7% as against declared @ 5.84% in the original return filed u/s 139(4) of I.T. Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. None appeared on behalf of the assessee despite giving notice for hearing. The notice has returned back with the remark by the postal authorities that 'this firm is totally closed down'. No new address was given by the assessee in Form No. 36. Hence, we are proceeding on the basis of submissions made before the Assessing Officer as well as before the CIT(A). The assessee in Form No. 35 mentioned the facts that during course of scrutiny proceedings, the Assessing Officer raised several queries, but specially required assessee to verify the amount of Sundry Creditors. The assessee was able to file confirmations of some Sundry Creditors and it has been requested to the Assessing Officer to verify rest of the Sundry Creditors using his powers as vested u/s 131 of Income Tax Act. As per order, finding in Para 7 is totally wrong that the appellant was not able to file confirmation letters of Sundry Creditors. Due to non verification of all Sundry Creditors the book result of profit as declared by the assessee has been treated as incomplete and not reliable. As the power vested under Section 145(3) of Income Tax Act the declared book result has been treated as not reliable without treating the books of account of the assessee, as defective. No defect has been found by the Assessing Officer in the books of account during course of scrutiny proceedings. At last, the Assessing Officer made addition of Rs. 8567317/- by increasing net profit rate 7% as against declared @ 5.84% in the original return

filed u/s 139(4) of I.T. Act.

6. The Ld. DR relied upon the order of the CIT(A) and assessment order.

7. We have heard Ld. DR and perused all the relevant materials available on record. The assessee challenged the additions of Rs. 85,67,317/- wherein the assessee's books of accounts were rejected and also challenged the assumption of the net profit at 7%. The CIT(A) has given a categorical finding that the Assessing Officer asked the assessee to produced confirmation of Sundry Creditors for which the assessee failed to submit and expressed inability to produce the same at the time of assessment proceedings. Thus, the Assessing Officer has rightly rejected the books of accounts. There is observation that the assessee has habitually not maintaining books of account as in the previous Assessment Year i.e. 2012-13, the profit of the assessee was assessed at 7% of gross turnover. In-fact, after confronting the assessee and on basis of agreement of the assessee, the profit of assessee company was estimated at 7% of the total turnover of Rs. 73,62,82,543/- leading to addition of Rs. 85,67,317/-. Therefore, there is no need to interfere with the findings of the CIT(A). As regards the submissions of the assessee, the assessee has simply stated that no opportunity was given to the assessee before the Assessing Officer. But from the perusal of records, it can be seen that the assessee was called upon on 23/3/2016 and the assessee has not responded properly to the Assessing Officer. Therefore, the appeal of the assessee is dismissed.

8. In result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on this 13th Day of October, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 13/10/2021

*R. Naheed **

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI