

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 5412/Del/2018
Assessment Year: 2015-16**

Aruna Devi,
C/o O.P. Sapra & Associates,
Friends Colony, New Delhi.

vs.

DCIT, Circle 1,
Muzaffarnagar.

PAN : ABWPD9524H
(Appellant)

(Respondent)

Appellant by : Sh. Sanjeev Sapra, Adv.

Respondent by: Sh. Padampani Bora, Sr. DR

Date of hearing: 10.11.2021

Date of order : 30.11.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 20.06.2018 passed by the learned Commissioner of Income Tax (Appeals), Muzaffarnagar ("Ld. CIT(A)") for the assessment year 2015-16, Aruna Devi ("the assessee"), preferred this appeal.

2. Brief facts of the case are that the assessee runs a brick kiln at village Malira, District Muzaffarnagar. She runs the business by maintaining regular books of account and getting them audited. A survey u/s. 133A of the Income-tax Act, 1961 ("the Act" for short) was conducted at the premises of M/s. Kuchhal Bricks Supply, owned by the assessee, on 19.12.2014. For the

assessment year 2015-16, she filed her return of income on 29.09.2015, declaring an income of Rs.74,29,130/- plus Rs.40,000/- towards agricultural income. By way of order dated 27.11.2017 u/s. 143(3), Id. Assessing Officer made several additions which include for the purpose of this appeal the addition of Rs.5973/- by applying G.P. rate of 6.17% on account of difference in stock of Rs.96,800/-, Rs.35,385/- u/s. 43B and Rs.5,72,340/- on account of unverifiable sundry creditors. When the assessee preferred appeal, Id. CIT(A) deleted all the additions except above three. After filing this appeal, it is submitted on behalf of the assessee that the Id. CIT(A) granted relief to the assessee by rectification order dated 01.08.2018 u/s. 154 of the Act and therefore, the assessee has no grievance on that score. Further, the Id. CIT(A) granted relief to the tune of Rs.19,785/- out of the provident fund amount payable to the tune of Rs.35,385/- and therefore, grievance of the assessee is now limited to Rs.15,600/- on that score.

3. It is, therefore, clear that the grievance of the assessee is now confined only to the addition of Rs.5,973/- by applying GP rate of 6.17% on account of difference in stock of Rs.96,800/- and Rs.15,600/- u/s. 43B of the Act.

4. In so far as the addition of Rs.5,973/- is concerned, it is the submission of the Id. AR that the assessee has been maintaining books of account which are regularly audited and therefore, it is open for the Id. Assessing Officer to resort to estimated addition by applying GP rate of 6.17% without rejecting books of account. It is further submitted in alternative that the Id. CIT(A) dealt with the additions of Rs.5,72,340/- on account of unverifiable sundry creditors, additions/disallowances of Rs.2,17,300/- on account of impounded material, and Rs.68,900/- on account of some other impounded material so

as to reach a conclusion that such additions to the tune of Rs.8,58,540/- were to be deleted since they were covered by the surrendered amount of Rs.17,85,000/- resulting in double additions. Ld. AR, therefore, submits that when the surrendered amount far exceeds the amount representing the above additions, at the same time, this amount of Rs.5,973/- also stands covered by such an amount.

5. On a perusal of record we find that it remains an undisputed fact that the assessee was maintaining books of account regularly and such books were regularly audited; and that copy of audited balance sheet, manufacturing account, profit & loss account and capital account for the year ended by March 31, 2015 were produced before the authorities. It also remains an undisputed fact that the Id. Assessing Officer accepted the books but without rejecting them resorted to estimated GP rate of 6.17% on account of alleged difference/shortage in stock of Rs.96,800/- found during the survey u/s. 133A of the Act conducted on 19.12.2014. Such a course is impermissible.

6. Even otherwise, the impugned order speaks that the Id. CIT(A) admitted the addition made on account of unverifiable sundry creditors and impounded material to the tune of Rs.8,58,540/- holding that they were covered in the amount as surrendered and disclosed as income by the assessee to the tune of Rs.17,85,000/- resulting in double addition. On this score also, the balance left after excluding these additions is more than enough to cover the addition of Rs.5,973/-. We, therefore, do not find any reason to sustain this addition. As a matter of fact it stood covered by the order of the Id. CIT(A) when he dealt with the deletion of other additions. We accordingly, allow ground No. 1 of assessee's appeal.

7. In so far as other disputed addition to the tune of Rs.15,600/- u/s. 43B of the Act is concerned, it is not in dispute that the employees contribution to Provident Fund was deposited by the assessee on 12.05.2015 and 13.05.2015 which is well before the due date of filing of return on 29.09.2015. This aspect is squarely covered by the decision of Hon'ble Allahabad High Court in the case of Sagun Foundry (P) Ltd. vs. CIT (2017) 78 taxmann.com 47 and of Delhi High Court in the case of CIT vs. AIMIL, 321 ITR 508, wherein it was held that when employer deposits contribution of employer and employees towards provident fund beyond due date prescribed under the relevant Acts, but before due date of filing of return of income u/s. 139(1) of the Act, such an assessee is entitled to deduction u/s. 43B and 36(1)(vi) of the Act. Since this issue is no longer res integra, by respectfully following the aforesaid decisions of Hon'ble High courts, we direct the deletion of this addition also.

8. As already stated above, the assessee not pressed ground No. 3 which relates to the addition of Rs.5,72,340/- on account of unverifiable sundry creditors since she got relief u/s. 154 of the Act.

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

Order pronounced in the open court on this the 30th day of November, 2021.

Sd/-

(G.S. PANNU)
PRESIDENT

Dated: /11/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER