

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD “SMC” BENCH, ALLAHABAD**

(THROUGH VIRTUAL COURT),

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No. 11/ALLD/2021
Assessment Year: 2012-13**

Ram Manohar Kesarwani, Pawari, Jasra, Karchana, Allahabad PAN-BKYPK2931D	v.	Income Tax Officer Range- 1(4), Allahabad
(Appellant)		(Respondent)

Appellant by:	Mr. Praveen Godbole, CA
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	24.01.2022
Date of pronouncement:	25.01.2022

ORDER

PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 7th August, 2019 of CIT(A) assessment year 2012-13. The assessee has raised the following grounds:-

- 1. That in view of the matter assessment framed under Section 143(3) by order dated 25/03/2015 on income of Rs. 12,24,760/- is bad both on facts and law.*
- 2. That in view of the matter the Ld. CIT(A) as wrong in passing the order ex-parte without providing reasonable opportunity to the assessee and the order itself is not a speaking order in the eyes of law.*
- 3. That in view of the mater the AO was wrong in framing the order and making addition without providing reasonable opportunity to the assessee and addition was made on his own whims and wishes which is highly unjustified.*

4. *That in view of the matter addition of Rs.4,19,910/- on account of difference in opening capital as made by the Assessing Officer and confirmed by the CIT(A) is highly unjustified.*
5. *That in view of the matter addition of Rs. 5,03,340/- on account of sundry creditors in respect of two parties as made by the Assessing Officer and confirmed by the CIT(A) is highly unjustified.*
6. *That in view of the matter the finding and the observation of the Assessing Officer with regard to trade creditors and statement recorded in respect of two parties are totally incorrect and contrary to the actual facts of the case.*
7. *That in view of the matter addition of Rs. 68,731/- as made under Section 43B in respect of "Mandi Shulk" as made by the Assessing Officer and confirmed by the CIT(A) is highly unjustified.*
8. *That in view of the matter disallowance of Rs. 15,473/- out of difference in receipt and Rs. 2,827/- out of interest on VAT as made by the Assessing Officer and confirmed by the CIT(A) is highly unjustified.*
9. *That in view of the matter the appellant reserves his right to make any fresh grounds of appeal before hearing of appeal.*

2. At the outset, the Ld. AR of the assessee has submitted that in Ground no.2 the assessee has challenged the *ex-parte* order passed by the CIT(A) without providing reasonable opportunity of hearing to the assessee and therefore, the impugned order is liable to be set aside. He has further submitted that the assessee resides in remote rural area and has not received the notices issued by the CIT(A) therefore, there is a violation of principles of natural justice. The Ld. AR has pointed out that even the impugned order passed by the CIT(A) was not received by the assessee but subsequently the assessee applied for certified copy and received the same. Thus, the Ld. AR has pleaded that the matter may be remanded to the record of the CIT(A) for fresh adjudication after giving one more opportunity of hearing to the assessee. On the other hand, the Ld. AR has submitted that the CIT(A) has granted sufficient opportunity of hearing to the assessee by issuing three notices through

speed-post as well as e-mail address furnished by the assessee. Despite the several opportunity given by the CIT(A) nobody attended the proceedings before the CIT(A) and consequently the impugned order was passed by the *ex-parte*. He has relied upon the order of the CIT(A).

3. I have considered the rival submissions as well as relevant material on record. It is not in dispute that the CIT(A) has passed impugned order *ex-parte* when nobody has attended the hearing, despite three notices of hearing were issued. However, CIT(A) has not passed any speaking order but the appeal of the assessee is dismissed, on the ground that in the absence of any submissions or attendance by the assessee, he did not find any reason to interfere with the order of the Assessing Officer.

4. Accordingly, in the facts and circumstances of the case and in the interest of justice the impugned order of CIT(A) is set aside and the matter is remanded to the record of the CIT(A) for deciding the same a fresh on merits after giving one more opportunity of hearing to the assessee. Since, the matter is set aside to the record of the CIT(A) for fresh adjudication therefore, the other ground raised by the assessee become infructuous.

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

Order pronounced in the open Court on 25.01.2022 through video conferencing.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 25 /01/2022

Kd.

Copy forwarded to:

1. Appellant –
2. Respondent –

3. CIT(A) , Allahabad
4. CIT
5. DR -

By order
Assistant Registrar