

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 4657/Del/2017
Asstt. Year: 2010-11

Shri Zahir Ahmad C/o Vinod Kumjar Goel, 282, Boundry Road, Civil Lines, Meerut Uttar Pradesh (Appellant)	Vs.	ITO, Ward-2(4) Meerut (Respondent)
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Assessee by:	Shri Vinod Goel, Advocate
Department by :	Shri Umesh Takyar, Sr. DR
Date of Hearing	07/02/2022
Date of pronouncement	17/02/2022

ORDER

PER ASTHA CHANDRA, JM

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals), Meerut ("**CIT(A)**") dated 23.5.2017 pertaining to assessment year ("**AY**") 2010-11.

2. The assessee has raised the following grounds:-

"1. That the A.O. has completed the assessment U/s 144 is bad in law because Ld. A.O. himself stated that the assessee's

counsel Mohd. Nsir Advocate has provided power of attorney and filed various evidences before A.O. therefore, assessment made by A.O. is bad in law and Ld. CIT(A) also is in error in confirming the same .

2. That the addition of Rs. 7,03,898/- on account of difference in capital is arbitrary, unjust and not according to law because the assessee has shown income of Rs. 3,78,720/- and Ld. CIT(A) is in error in confirming the same.

3. That the A.O. is in error in making addition of Rs. 56,40,341/- on the basis of notice U/s 133(6)/confirmation and Ld. CIT(A) is in error in confirming the same

4. That Ld. A.O. is in error in assessing undisclosed profit for Rs. 3,45,777/- which was reduced by the CIT(A) of Rs. 1,55,417/. Therefore, Ld. CIT(A) has not provide full relief.”

3. Briefly stated, the assessee filed his original return of income on 19.7.2010 declaring income of Rs. 3,78,720/- after claiming TDS amounting to Rs. 84,215. Based on Form 26AS, the Ld. AO recorded the finding that the total sales of the assessee during the assessment year 2010-11 amounted to Rs. 1,51,93,818/- towards which TDS of Rs. 1,61,481/- was claimed by the assessee. Accordingly the Ld. AO treated this differential amount as the income of the assessee which

had escaped assessment and initiated proceedings under section 147/148 of the Income Tax Act, 1961 (the “**Act**”). In response to letter dated 12.5.2016, the assessee stated that the original return filed by the assessee on 27.3.2011 declaring total income of Rs. 5,99,112/- be treated as return filed in response to notice under section 148.

4. During the assessment proceedings, the Ld. AO called for information/documents which are alleged to be not produced by the assessee before him inspite of various letters and statutory notices being issued to the assessee including a notice under section 133(6) of the Act. Hence, the Ld. AO proceeded to make assessment under section 144 of the Act on the basis of material on record making the following additions:-

Excess proprietary capital	Rs. 7,03,898/-
Bogus sundry creditors	Rs. 56,40,341/-
Undisclosed profit on suppressed turnover	Rs. 3,45,777/-

5. The Ld. CIT(A) partly allowed the appeal of the assessee by recording the following findings:

5.1 Regarding the grievance of the assessee about completion of assessment under section 144, the Ld. CIT(A) noted that the mention of section 144 in the initial part of the assessment order can be construed as an inadvertent typographical error for the reason that in the body of the assessment order, the Ld. AO has nowhere mentioned about framing of assessment under section 144 and that he neither invoked section 145 nor rejected the books of account of the assessee which were never produced before him. Hence, the Ld. CIT(A) concluded that the assessment was completed under section 143(3) of the Act in spirit and in substance wherein the Ld. AO has made the impugned additions.

5.2 The Ld. CIT(A) confirmed the addition of Rs. 7,03,898/- on account of increase in the capital of the assessee. The Ld. CIT(A) noted that the Ld. AO made this addition for the reason that the assessee in his original return of income which was also treated as return of income in response to notice under section 148 of the Act showed the proprietary capital at Rs. 13,60,104/- whereas in the balance sheet filed during the assessment proceedings, the capital was shown at Rs. 21,64,002/-. Hence, the difference of Rs. 7,03,898/- was added to the income of the assessee. The Ld. CIT(A) stated that before him, the assessee merely produced a calculation justifying the total capital at

Rs. 21,64,002/- and failed to produce any evidence thereof. Also, the assessee could not furnish any clear explanation regarding the opening capital shown at Rs. 15,18,389/-.

5.3 On the addition of Rs. 56,40,341/-relating to sundry creditors, the Ld. CIT(A) noted that the assessee did not provide any details/confirmations of sundry creditors during the assessment proceedings before the Ld. AO or any confirmations / evidence before him. Hence, the Ld. CIT(A) confirmed the impugned addition.

5.4 The last addition made by the Ld. AO pertains to undisclosed profit attributable to suppression of turnover which was evident from the difference in the amount of sale shown by the assessee and the amount reflected in Form 26AS. The Ld. CIT(A) noted that the Ld. AO worked out suppressed turnover at Rs. 79,44,811/- and calculated net profit declared at the rate of 4.77%. Accordingly, the Ld. AO made addition on account of undisclosed profit amounting to Rs. 3,45,777/- (79,44,811 @ 4.77%). According to the Ld. CIT(A) suppressed turnover and net profit rate should have been worked out based on the audited balance sheet and profit and loss account of the assessee. He therefore recomputed the suppressed turnover being the difference between the turnover shown in Form 26AS and the turnover shown in

the audited balance sheet of the assessee which comes to Rs. 44,27,836/-. The declared net profit rate was worked out at 3.51% based on the audited balance sheet. The Ld. CIT(A) thus confirmed the addition on account of undisclosed profit at Rs. 1,55,417/- (44,27,836 @ 3.51%) instead of Rs. 3,45,777/- thereby granting a relief of Rs. 1,90,360/- to the assessee.

6. Aggrieved, the assessee filed an appeal before us. The Ld. AR at the very outset submitted that assessee may be granted an opportunity to produce the details / documents before the Ld. AO which are alleged to be not produced leading to the confirmation of the impugned additions by the Ld. CIT(A). The Ld. DR had no objection.

7. We have carefully considered the submissions of the Ld. Representatives of the parties, perused the facts / material on record and the findings of the Ld. CIT(A).

8.1 In respect of Ground 1 relating to the grievance of the assessee about completion of assessment under section 144, we find that the Ld. CIT(A) has concluded that assessment order has actually been passed under section 143(3) and not under section 144 which appears

to be an inadvertent typographical error. Hence, this ground need not be adjudicated upon.

8.2 In respect of Ground 2 pertaining to addition on account of alleged excess proprietary capital and Ground 3 pertaining to addition on account of alleged bogus sundry creditors, the assessee submitted that an opportunity may be granted to him to produce details, evidence etc. which the Ld. AO and the Ld. CIT(A) have alleged that the assessee has not produced before them. In the interest of justice, we are of the opinion that the assessee deserves to be given one last opportunity to present his case before the Ld. AO. We, therefore, remit the above two issues involved in this appeal to the file of the Ld. AO for framing the assessment afresh in the light of the details/ information/ documents already on record and which he may require the assessee to furnish during the course of fresh assessment proceedings before him.

8.3 So far as the addition on account of undisclosed profit on suppressed turnover in ground 4 is concerned, the Ld. CIT(A) has recomputed the amount of suppressed turnover and net profit rate to be applied thereon based on the audited balance sheet and accordingly granted part relief of Rs. 1,90,360/- to the assessee . We

do not find any reason to interfere with the finding of the Ld. CIT(A) and therefore confirm the Ld. CIT(A)'s order on this issue.

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

Order pronounced in the Open Court on 17th February, 2022.

sd/-

**(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMEBR**

Dated: 17/02/2022

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi