

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No.3406/DEL/2018  
[Assessment Year: 2014-15]**

|   |    |  |
|---|----|--|
| Rakesh Tanwar,<br>D-755, Adarsh Nagar,<br>Malerna Road,<br>Ballabgarh | Vs | Income Tax Officer,<br>Ward-2(2),<br>Faridabad,<br>Haryana |
| <b>PAN-ADHPT3835C</b>   |    |  |
| Assessee  |    | Revenue  |

|             |                              |
|-------------|------------------------------|
| Assessee by | None                         |
| Revenue by  | Sh. Ajay Kumar Arora, Sr. DR |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>04.01.2023</b> |
| <b>Date of Pronouncement</b> | <b>10.01.2023</b> |

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of Id. CIT (Appeals), Faridabad, dated 19.02.2018 for the Assessment Year 2014-15.

2. The grounds of appeal read as under:-

***1. Reasonable opportunity of being heard:-***

*(i) That The CIT(A)-Faridabad has grossly violated the principles of Natural Justice, while ignoring the egoistic approach of The Ld AO in the present case, which has caused irreparable damage to the Assessee's livelihood.*

*(ii) That the Ld CIT (A) - Faridabad has erred in law & on facts while mechanically passing the order, upholding the entire additions of the Ld AO in the order passed u/s 143(3) of I.T. Act. The whole order is based on arbitrariness, surmises and conjectures. There is no application of judicious mind or even appreciation of existing material lying on record at the time of Assessment.*

***2. Adhoc disallowance of Low GP rate - Rs. 30,58,861/-***

(i) *The Ld CIT(A) erred in law and facts in upholding the disallowance of Rs. 30,58,861/- for low GP Rate. The reasons given by him for doing so are wrong, contrary to the facts of the case and against the provisions of law.*

(ii) *The Ld CIT(A) failed to appreciate the specific facts of the case that different business have different business requirement and cannot be compared to other business.*

(iii) *The Ld. CIT(A) erred in law and facts in upholding the disallowance of Rs. 30,58,861/- on mechanical basis without give the Appellant a reasonable opportunity of being heard.*

### **3. Unexplained Credit of Rs. 52,42,000/-**

(i) *The Ld. CIT(A) erred in facts and law in upholding the disallowance of Rs.52,42,000/- u/s 68 of the Act for unexplained credit into capital account basis without giving the Appellant a reasonable opportunity of being heard. The reasons given by him for doing so are wrong, contrary to the facts of the case and against the provision of law.*

### **4. Unexplained Sundry Creditors of Rs. 12,52,391/-**

(i) *The Ld. CIT(A) erred in facts and law in upholding the disallowance of Rs.12,52,391/- u/s 68 of the Act for unexplained sundry creditors without giving the Appellant a reasonable opportunity of being heard. The reasons given by him for doing so are wrong, contrary to the facts of the case and against the provision of law.*

3. Brief facts of the case are that in assessment order, the AO made several additions. As against the return of income of Rs.10,19,320/-, the AO assessed the income of the assessee at Rs.1,05,72,570/-.

4. Against the above order, the assessee appealed before the Ld. CIT(A).

5. The Ld. CIT(A) noted that several opportunities were given but the assessee did not respond. After noting so, he mentioned that he has examined the case on merits. He held that addition have been directly made by the AO on account of unexplained amount credited in capital

account and unexplained sundry creditors as discussed by the AO on page-4 to 7 of the assessment order. Hence, he dismissed the appeal.

6. Against this order, the assessee is in appeal before us.

7. We have heard the Ld. DR. None appeared on behalf of the assessee despite service of notice. Hence, we proceed to adjudicate the issue after hearing the ld. DR and perusing the records. We find that the Ld. CIT(A) has passed a laconic and non-speaking order. It has been held by Hon'ble Apex Court that even administrative orders have to be consistent rule with natural justice. In this case, we find that because of non-prosecution and non-response of the notice by the assessee, the Ld. CIT(A) simply confirmed the AO's order without discussing the merits of the case in proper manner. This virtually amounts to dismissal of appeal for non-prosecution. Section 251 of the Act does not empower, the Ld. CIT(A) to dismissed the appeal for non-prosecution. Accordingly, in the interest of justice, we remit the issue to the file of the Ld CIT(A). The Ld. CIT(A) is directed to consider the issue afresh and pass speaking order after giving the assessee an opportunity of being heard.

8. In the result, this appeal by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 09<sup>th</sup> January, 2023.

**Sd/-**

**[N.K.CHOUDHRY]**

**JUDICIAL MEMBER**

**Delhi;** Dated: 09.01.2023.

*Shekhar,*

**Sd/-**

**[SHAMIM YAHYA]**

**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi