

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1510/Del/2020 : Asstt. Year: 2015-16

Salman Steels Pvt. Ltd., 8, IQRA Market, Meerut Road, Muzaffarnagar, Uttar Pradesh-251001	Vs	DCIT, Circle-2, Muzaffarnagar, Uttar Pradesh-251001
(APPELLANT)		(RESPONDENT)
PAN No. AANCS4093F		

Assessee by : Sh. Sujit Kumar, AR

Revenue by : Sh. Anuj Garg, Sr. DR

Date of Hearing: 04.07.2023

Date of Pronouncement: 10.07.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id. CIT(A), Muzaffarnagar dated 28.03.2018.

2. Following grounds have been raised by the assessee:

"01. That on the facts and in the circumstances of the case and in law, the Id. CIT-A erred in passing Ex-Parte order in most mechanical manner without granting any opportunity of being heard to the assessee and without adjudicating the grounds of appeal taken before him, more particularly ground No. 1 that no proper opportunity of being heard was given by the Id. AO to the assessee and thus the impugned order of Id. CIT-A is arbitrary, unlawful, unjustified, against the specific provisions of law and also against the principle of natural justice and the same therefore is liable to be quashed.

02. That on the facts and in the circumstances of the case and in law, the Id. CIT-A exceeded his jurisdiction in rejecting the books of account by invoking provisions of section 145(3), which is de-hors his powers because CIT-A has no such power under the said section to reject books of account and at any rate without prejudice, the same was done without any iota of any communication or opportunity of being heard to the assessee and the same therefore is liable to be quashed.

03. That on the facts and in the circumstances of the case and in law, the Id. CIT erred in confirming the impugned disallowances/additions aggregating to Rs. 331,10,200/-; made by the Id. AO in most arbitrary and mechanical manner with a prejudiced view and on ad-hoc basis @ 40% across the board, without any iota of any adverse findings by the Id. AO or by the Id. CIT-A and the said disallowances/additions therefore are absolutely unwarranted, unlawful, untenable, unjustified and against the specific provisions of law and contrary to the contemporary jurisprudence and are liable to be deleted.

04. That on the facts and in the circumstances of the case and in law, the impugned assessment order dated 19.06.2017 is illegal, unlawful, untenable and null and void ab-initio; because the same was passed by the Id. AO without issuing any notice under section 143(2) of the Income Tax Act, 1961 and therefore the impugned order being passed without jurisdiction, has no legal force to sustain and is liable to be quashed.

05. That on the facts and in the circumstances of the case and in law, the impugned disallowances/additions made on ad-hoc basis @40% are absolutely unwarranted and arbitrary, because the Id. AO failed to appreciate the fact that the Books of Account of the Assessee were Audited twice, once under the Companies Act, 2013 and also under the provisions of section 44AB of the Income Tax Act, 1961 and Id. AO did not point out any iota of any discrepancies in books of account nor rejected the same and therefore the impugned disallowances additions have no iota of any basis and at any rate without prejudice, the same

are exorbitantly excessive and are liable to be deleted.

06. That all the expenses claimed by the assessee in profit and loss account are genuine, bona-fide, expended wholly and exclusively for the purpose of business and duly supported with all cogent documentary evidences, bills and vouchers and stood duly recorded in books of account, which are audited twice under the provisions of relevant laws and the Assessee was deprived to furnish such documents on records to rebut the purported premise of the Id. AO and therefore in the interest of justice, such adhoc disallowances have no legal force to sustain in law and the same are liable to deleted.

07. That the impugned major disallowance of Rs.321,83,310/-, made on adhoc basis @ 40% of power expenses is absolutely arbitrary, unwarranted and is based on mere prejudice view, surmises and conjectures and without any iota of any adverse findings by the Id. AO and the same is against the pertinent fact that power expenses is prerequisite expenses for manufacturing activities and the same are genuine, bona-fide, supported with documentary evidences, bills and vouchers and duly paid through banking channel to the power corporation and thus the same is fully verifiable independently also and has absolutely no basis for any such disallowance and the same therefore deserves to be allowed in full and such impugned disallowance made by Id. AO is liable to be deleted.

08. That the impugned other disallowance aggregating to Rs.926,890/-, made on adhoc basis @ 40% of freight expenses, repair to Machinery, Salaries, workmen and staff expenses, telephone etc are also absolutely arbitrary, unwarranted and is based on mere prejudice view, surmises and conjectures and without any iota of any adverse findings by the Id. AO and the same being fully verifiable deserves to be allowed in full and such disallowance is liable to be deleted.

09. That without prejudice to all above grounds and without conceding anything with regard to impugned disallowances, the Id. AO erred in computing assessed income by wrongly taking the returned loss for the year at Rs. 28,55,576/- instead of correct amount of loss at Rs. 1,31,09,652/-, apart from not considering the brought forward losses of earlier years and MAT credit as per return of income and therefore the assessed income and impugned demand, at any rate without prejudice, is incorrect and very excessive on this count too and the same therefore is liable to be deleted.

10. That all the above grounds are independent grounds, which are without prejudice to one another.

11. The interest as levied by the Id. AO under section 234A, 234B and 234C is unwarranted as the same is levied without any direction, discussion or pointing out the facts and circumstances of the case giving cause to levy such interest as per the law and the same therefore is liable to be omitted."

3. The assessee filed return of income declaring total loss of Rs.28,55,576/-. The assessment has been completed making an addition of Rs.3,31,10,200/- on account of various expenses unproved.

4. The proceedings before the Id. CIT(A) were as under:

S. No	Date of Notice/show cause/ adjournment	Date of Hearing	Remarks
1	26.12.2017	09.01.218	None attended, nor any request for adjourned was filed nor any submissions were furnished.
2	15.01.2018	23.01.2018	None attended, nor any request for adjourned was filed nor any submissions were furnished.
3	24.01.2018	06.02.2018	None attended, nor any request for adjourned was filed nor any submissions were furnished.

4	26.02.2018	06.03.2018	None attended, nor any request for adjourned was filed nor any submissions were furnished.
5	20.03.2018	28.03.2018	None attended, nor any request for adjourned was filed nor any submissions were furnished.

5. Aggrieved with the order of the Id. CIT(A) confirming the order of the Assessing Officer, the assessee filed appeal before the Tribunal on 31.08.2020. The assessee has failed to appear on 5 occasions before the Id. CIT(A) and has taken up the grounds before the Tribunal pertaining to legal principles of "*audi alteram partem*" and sustenance of order of the AO by the Id. CIT(A) on "*ex-parte*" basis. We strongly believe that every assessee has a right to appeal before the authorities against any addition or disallowance made to the returned income, at the same time, it is least expected that the assessee would comply to the notices issued by the authorities in an appropriate way. The assessee having miserably failed to attend before the Id. CIT(A) has taken the grounds of "*audi alteram partem*" before us. While the grievance of the assessee is not being preempted by us, at the same time, we feel that the conduct of the assessee is clogging the already burdened justice delivery system. Hence, we hereby direct the assessee to pay an amount of Rs.5,000/- to the "Prime Minister's National Relief Fund" and approach the Id. CIT(A) for a fresh hearing *denovo* which shall be considered. The Id. CIT(A) is hereby directed to afford an opportunity of being heard to the assessee before conclusion of the proceedings.

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

Order Pronounced in the Open Court on 10/07/2023.

Sd/-

(C. M. Garg)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 10/07/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR