

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.312/Ind/2023**  
**(Assessment Year: 2014-15)**

Shree Ganesh Tractors, NR Moti Baba Mandir Ward 14, Sehore	Vs.	ITO Ward -1 Sehore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AAYFS3945E</b>		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	01.04.2024	
Date of Pronouncement	02.04.2024	

**O R D E R**

**Per Vijay Pal Rao, JM :**

This appeal by the Assessee is directed against the order dated 19.06.2023 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2014-15. The assessee has raised following grounds of appeal:

*“1. That on the facts and in the circumstances of the case, the decision of the learned lower authorities is contrary to law, materially incorrect, and unsustainable in law as well as facts.*

*And that all the adverse findings recorded therein are opposed to facts, equity, and law.*

*2. That on the facts and in the circumstances of the case and in law, the initiation of proceedings u / s \* 0.147 of the IT Act is without jurisdiction and the issue of notice do not satisfy the judicial requirements of the law and, therefore, the assessment is bad in law and without jurisdiction hence the same be kindly cancelled.*

*3. That on the facts and in the circumstances of the case and in law, the learned lower authorities erred in their findings and not justified in rejecting the books of accounts of the appellant without providing reasonable opportunity and, therefore, the said unlawful and unjustified order be quashed and relief to be provided to appellant.*

*4. That on the facts and in the circumstances of the case and in law, the learned lower authorities erred in their findings and the estimating the sales at Rs. 13,00,00,000/- and Gross Profit @ 3.60 % and therefore, the said unlawful and unjustified order be quashed and relief to be provided to appellant for addition to gross profit to the tune of Rs. 17,49,945/-.*

*5. That on the facts and in the circumstances of the case and in law, F the learned lower authorities erred in their findings, and the lump sum disallowance of 20% of the expenses claimed is*

*bad in law and therefore the said unjustified and unlawful addition of Rs. 13,58,320/- be deleted.*

*6. That on the facts and in the circumstances of the case and in law, the learned lower authorities erred in their findings in making the addition on account of capital balance without providing reasonable opportunity and, therefore, the said unlawful and unjustified order be quashed and relief to be provided to appellant for Rs. 11,54,021/-.*

*7. The Assessee may kindly be allow to raise additional grounds either before or at the time of hearing of this appeal.”*

2. Ld. AR of the assessee has submitted that the assessee is a partnership firm deriving income from the business of trading in tractors and spare parts. The assessee is maintaining regular books of account which are duly audited. The assessee filed return of income along with tax audit report u/s 44AB of the Act declaring total income of Rs.4,91,082/-. Ld. AR has submitted that the AO has passed ex-parte order u/s 144 and thereby made the addition on account of adoption of GP rate and thereafter on adhoc disallowance expenses @ 20%. He has pointed out that the assessee did not receive alleged notice issued by the AO therefore, assessee could not participate in the assessment proceedings resulting ex-parte order. The AO has made addition by adopting GP rate as well as adhoc disallowance of expenses which is highly arbitrary and unjustified. He has contended that when the assessee is

maintaining proper books of account which are duly audited then the income declared by the assessee cannot be disturb until and unless some defect is found by the AO. Since notices were not received by the assessee therefore, there was no appearance before the AO but the assessee has declared true and correct results as per books of account maintained by him. Thus the Ld. AR submitted that the addition made by the AO and sustained by the CIT(A) are not sustainable. He has prayed that the matter may be set aside to the record of the AO for fresh adjudication.

3. On the other hand, Ld. DR has not seriously objected if the matter is remanded to the AO for fresh adjudication.

4. We have considered rival submission as well as relevant material on record. The AO has passed ex-parte assessment order when there was no response on behalf of the assessee to the alleged notices issued by the AO. The AO has adopted GP at 3.60% and thereby made an addition of Rs.17,49,945/-. The AO then also disallowed 20% of the expenses on adhoc basis and then made the addition of Rs.13,58,320/-. Further the AO has also made addition of Rs.11,54,021/- on account of remuneration and interest paid to the partners. The assessee has explained that due to lack of service of the notices the assessee could not appear before the AO and filed the submission before the CIT(A) in support of the return income however, the CIT(A) has sustained the additions made by the AO on the ground that the assessee has failed to produce books of account as well as other relevant record for verification of the AO.

Accordingly we are of the view that when the books of account of the assessee are audited and income declared by the assessee is claimed as based on the true and correct result of books of account then the matter requires a proper verification and examination at the level of the AO. Hence, in the facts and circumstances of the case and in the interest of justice the impugned order of the CIT(A) is set aside and matter is remanded to the record of the AO for proper verification and examination of the relevant record as well as books of account of the assessee and then passed a fresh order after giving appropriate opportunity of hearing to the assessee.

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

Order pronounced in the open court on 02.04.2024.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 02.04.2024**

**Patel/Sr. PS**

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*