

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.08/Alld/2024  
A.Y. 2015-16

<b>SPS Automobiles</b> Bikapur, Hanumanganj, Prayagraj, Uttar Pradesh - 211009 PAN ABMFS2033E	Vs.	<b>ITO, Ward-1(5)</b> 38, M. G. Marg, Civil Lines, Prayagraj, Uttar Pradesh- 211002
(Appellant)		(Respondent)

Appellant by	Shri N. C. Agrawal
Respondent by	Shri A.K. Singh. Senior D.R.
Date of hearing	04/07/2024
Date of pronouncement	30/08/2024

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal filed against order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter “the Ld. CIT(A)”]/NFAC u/s 250 of the Income Tax Act, 1961 (hereinafter “the Act”) dated 30/11/2023 against the order of the ITO-1(5), Allahabad dated 04/12/2017, dismissing the appeal of the assessee. The grounds of appeal are as under: -

*“1. Because the NFAC has erred in law and on facts in confirming the order passed u/s 144 of the Income Tax Act, 1961.*

*2. Because the NFAC has erred in law and on facts in confirming the addition of Rs.22,15,090/- being closing balances of ‘creditors’ holding it to be bogus liability.*

*3. Because the NFAC has erred in law and on facts in confirming the addition of Rs.12,86,100/- being closing 'loans/advances from others' holding it to be bogus liability.*

*4. Because the NFAC has erred in law and on facts in confirming the addition of Rs.3,89,587/- based on the Net profit rate of preceding previous year.*

*5. Because the NFAC has erred in law and on facts in confirming the order without considering the fact that the appellant was under medical treatment, hence unable to appear before AO.*

*6. Because the NFAC has erred in law and on facts in dismissing the appeal without considering the book and bills/vouchers of the appellant.*

*7. Because the order appealed against in contrary to facts, law and principles of natural justice.”*

2. The brief facts of the case are that the return of income was filed by the assessee on 31/10/2015 showing a total income of Rs.6,71,980/-. The Assessing Officer (“AO”) records that he issued a notice u/s 142(1) of the Act in compliance to which the assessee’s advocate attended, and filed submissions but did not produce the books of account and supporting bills & vouchers. He further records that vide order sheet entries at least 12 opportunities were provided to the assessee to produce the books of account and supporting bills & vouchers but the assessee only filed reply and copy of account of some expenses without supporting verifiable evidences. He, therefore, imposed a penalty u/s 271(1)(b) of the Act on 25/07/2017, but this also failed to

compel the assessee to produce the books of account. The AO reproduced the copies of the reply filed by the assessee in his assessment order. Thereafter, he went on to say that the books of account and its supporting bills & vouchers have never been produced by the assessee during the course of proceedings to substantiate its claim. He thereafter, reproduced a copy of the show cause notice issued to the assessee vide order sheet dated 21/11/2017 fixing compliance on 23/11/2017 but records that on the date fixed, nobody attended. In view of the same, he proceeded to complete the assessment u/s 144 of the Act. While doing so, the AO referred to the sundry creditors of Rs.22,15,090/- and stated that while the assessee was required to furnish the name and complete address of sundry creditors and produce books of account with verifiable evidences in respect of the same, he had only produced the names of the sundry creditors and did not produce the purchases and sale vouchers related to above parties for verification. Since the assessee failed to produce the purchase and sale vouchers the sundry creditors were held to be non-verifiable and therefore, an amount of Rs.22,15,090/- was added to the total income of the assessee.

The AO also drew reference to an amount of Rs.12,86,100/- shown an advance from others and asked the assessee to produce the identity, creditworthiness and genuineness of the said advances. In response to the same, the assessee submitted copies of account of concerned persons, which the AO reproduced in his assessment order. However, since, the assessee did not produce the books of account or the purchases and sale vouchers related to the above parties for verification or the full name and complete address of the debtors, he held that the bogus liability had been created in the garb of alleged creditors. He therefore added back a sum of Rs.12,86,100/- to the income of the assessee. Finally, citing the failure of the assessee to produce the books of account, he rejected the books of the assessee drawing reference to the fall in profits of the assessee as compared to the previous year and the failure of the assessee to satisfactory explain the decline in profit rate in this year. Therefore, he made an addition of Rs.3,89,587/- on this account. Thus, in total the AO added back a sum of Rs.45,62,760/- as above to the income of the assessee while finalizing the assessment u/s 144 of the Act.

3. Aggrieved by the said order, the assessee went in appeal before the Ld. CIT(A) u/s 250 of the Act. The Ld. CIT(A) records the facts that the multiple opportunities were given to the assessee to file written submission and he cited seven such instances in his appeal order, but he records the fact that the assessee did not make any compliance to his notices. Thereafter, relying upon the various judgments which were quoted in his order, he proceeded to decide the matter on the basis of facts and material available on records. The Ld. CIT(A) records that during the course of scrutiny, the AO had called for specific details along with books of account, bills & vouchers for various expenses claimed by the assessee. He held that the assessee had submitted some symbolic details but had not furnished what was called for despite many opportunities. He observed that the AO had called for specific details like names and complete addresses of sundry creditors amounting to Rs.22,15,090/- and details of liability shown as advances from others of Rs.12,86,100/-, but only the names were provided and addresses were not provided despite numerous opportunities. Confirmations were not filed. He therefore noted that on the one hand the assessee did not

establish the genuineness of sundry creditors and loans from others and on the other hand, in the absence of any meaningful details, the AO was prevented from making due verification of the sundry creditors on the loans from others. The Ld. CIT(A) observed that even the details of how the sundry creditors came into existence were also not furnished and details of how the advances were reconciled were not filed. Therefore, the Ld. CIT(A) confirmed the addition of Rs.22,15,090/- on account of sundry creditors and Rs.12,86,100/- on account of advances from others. He also upheld the decision of the AO to reject the books on the grounds that in the immediately preceding year the net profit was 0.79% and on that account he confirmed an addition of Rs.3,89,587/-. Aggrieved with this dismissal of his appeal, the assessee is before us in appeal.

4. Shri Naveen C. Agarwal (hereinafter referred to as the Ld. AR) appeared on behalf of the assessee and filed a paper book. He very fairly admitted that due to the failure of the Ld. Counsel to adequately represent the matter, proper compliance was not made before the AO or the Ld. CIT(A). He submitted however that the assessee had audited accounts and all the doubts expressed

regarding sundry creditors and advances from others could be adequately explained by the accounts of the assessee. He submitted that the documents at serial no. 2(b)(c), 3(b) and 4 of the paper book were additional evidences which have not been filed before either the AO or the Ld. CIT(A) but would go to demonstrate that the additions made were not tenable. He therefore argued that in the interest of justice, the case may be remanded back to the file of the AO so that all necessary documents could be produced before him to satisfy him that no addition was warranted on any of the accounts. He undertook to ensure compliance before the AO. On the other hand, Shri AK Singh Ld. Sr. DR appearing on behalf of the Department, pointed out that more than adequate opportunity had been provided by the AO and the Ld. CIT(A) to the assessee during the course of assessment proceedings and during the first appeal. While he did not controvert the fact that clear cut finding of fact had not been rendered by the lower authorities, he submitted that this was only on account of the failure of the assessee to make necessary compliance. He therefore, submitted that case was fit to be dismissed. However, if the Hon'ble Tribunal felt that the matter

should be sent back for finding of fact, then necessary directions should be issued to the assessee to make compliance, failing which the lack of compliance should be adversely viewed to mean that the assessee had nothing to furnish in this regard.

5. We have duly considered the matter. We observe that while the assessee did make submission before the AO pointing out how the advances from others arose and were subsequently adjusted in the following financial year, he did not produce the necessary documentation in support of the submission to satisfy the AO. Similarly, we observe that while he furnished the names of the creditors and debtors he did not furnish complete details before the AO as to how these creditors arose and how they were subsequent adjusted. On going through the paper book, we observe that out of the total sum of Rs.22,15,090/-, a sum of Rs.18,61,801/- appears to be an opening balance from the previous financial year. We also observe that evidences submitted pertain to the identity of the sundry creditors, along with statements showing transaction with such parties and the account showing settlement in next financial year towards advances received and that these documents are relevant for

understanding the issues pertaining to the additions contested before us. Therefore, in the interest of justice, we deem it fit to admit these additional evidences under Rule 18(4) of the Income Tax Appellate Tribunal Rules, 1963 and to restore the matter to the file of the AO. The assessee is directed to produce the said documents before the AO and explain his case and the AO may thereafter pass a fresh assessment order after considering the materials furnished by the assessee. As we have remanded the matter back to the file of the AO. The appeal is deemed to be allowed for statistical purposes.

6. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 30/08/2024)

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(NIKHIL CHOUDHARY)**  
**ACCOUNTANT MEMBER**

Dtd. 30/08/2024  
Vijay Pal Singh, (Sr. PS)

*Copy of order forwarded to:*

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|--------------------------|--|
| <i>(1) The appellant</i> | <i>(2) The respondent</i>              |
| <i>(3) Commissioner</i>  | <i>(4) Departmental Representative</i> |
| <i>(5) Guard File</i>    |  |

By order

// True Copy//

Assistant Registrar