

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 265/GTY/2024
Assessment Year: 2019-20**

M D Construction and Associates	Vs.	DCIT/ACIT, Circle-1
(Appellant)		(Respondent)
PAN: AANFM8382Q		

Appearances:

Assessee represented by : None.
Department represented by : Kausik Ray, JCIT
Date of concluding the hearing : March 25th, 2025
Date of pronouncing the order : March 26th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)- Central NER, Guwahati [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2019-20 dated



18.10.2024, which has been passed against the assessment order u/s 144 of the Act, dated 30.09.2021.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. That the assessment order passed without any valid jurisdiction and thus liable to be treated as void ab initio

2. That the assessing officer was very much in gross violation of Natural Justice while allowing less than 1 hour to submit its response against the notice issued under section 142(1) and Show Cause Notice

3. That the impugned order passed under section 144 without issuing any show cause notice as to why the assessment should not be completed to the best of his judgment is void ab initio

4. That any addition made on the basis of statement recorded under section 131 without having any incrementing material is liable to be deleted

5. That the assessing officer was not justified while making addition under section 69 of the Act.”

3. None appeared on behalf of the assessee and the appeal was heard with the assistance of Ld. DR. Brief facts of the case are that a survey u/s 133A of the Act was conducted on 13.09.2018 by ITO, Ward-3(2), Guwahati. During the course of survey, the partner of the assessee firm Sri Kanteswar Sarma made a disclosure of an amount of Rs. 43,22,310/- on account of cessation of liability being bills payable written off, vide his answers to the queries recorded on oath u/s 131 of the Act on the date of the survey, which was over and above its normal income. Thereafter, the assessee filed the return of income electronically declaring total income of Rs. 9,15,080/-. The case was selected for compulsory scrutiny under manual category and statutory notice u/s 143(2) of the Act was issued and duly served upon the assessee to submit evidences/information/documents/particulars. However, the assessee furnished part documents on 29.10.2020 which could not



justify the income of the assessee. Therefore, the Ld. AO treated the amount of Rs. 43,22,310/- as unexplained investment and added the same to the returned income of the assessee u/s 69 of the Act and assessed the total income of the assessee amounting to Rs. 52,37,386/- u/s 144 of the Act. Penalty proceedings were initiated separately. Aggrieved with the assessment order the assessee filed an appeal before the Ld. CIT(A) who dismissed the appeal of the assessee after giving his finding as under:

“The Appellant contended that the AO did not have valid jurisdiction. It is observed from records that the AO had proper jurisdiction over the case while finalizing the assessment. The proceedings were held in accordance with the relevant provisions of the IT Act. Hence, the assessment order is valid as per law. Ground No. 1 is dismissed accordingly.

6.2. Decision on Ground(s) of Appeal No(s). 2:

6.2.1. The Appellant contended that the addition u/s 69 was not justified. It is observed from records that the statement of one of the partners, Mr K. Sarma was recorded on oath u/s 131 of the Act on the day of survey action. While answering to Q. Nos. 12, 13 & 14 in the said statement, Mr K. Sarma made a disclosure of Rs. 43,22,310/- on account of cessation of liability, being bills payable written off. The said amount was declared as additional income, over & above the regular income for AY 2019-20. However, the Appellant had declared Total Income of Rs. 9,15,076/- only, under the head Business income in the ITR for the relevant year. The additional income declared during the survey was completely omitted for reasons not known. The AO had issued several notices including Show cause Notice but there was no compliance on the part of the Appellant. The AO had no option but to determine the assessed income by best judgment u/s 144 of the Act. Hence, the addition u/s 69 in respect of unexplained investment of Rs. 43,22,310/- was made in the assessment order.

6.2.2. During the appellate proceedings, it was submitted that the Appellant had not written off the liability in the accounts and hence, the cessation of liability does not arise. The Appellant had retracted from the disclosure made during the survey. The statement recorded on oath of the Appellant-firm's own partner was disowned by the Appellant during the proceedings.

6.2.3. The Appellant relied on the decision of the Hon'ble Gujarat High Court in the case of PCIT-5 Vs DJ Dubal but the same is not applicable. In the

aforesaid case, the AO had added back long-pending balances of Sundry Creditors to the income. However, in the instant case, the facts are different. During the survey, the partner Mr K. Sarma had acknowledged the unaccounted content in the material found at the premises and also identified the bills payable to be written off. The quantified discrepancies were offered as additional income for the year under consideration by the Appellant. Since the same was not offered to tax in the ITR for the relevant year, the addition made by the AO is justified.

The facts of the present case have greater similarities with the case of Keld Ellentoft India (P) Ltd Vs ACIT (2022) 441 ITR 506 (Mad). It was a block assessment after search action u/s 132 of the Act. In the said case, liabilities were shown in Books of account as outstanding credits but the same were not written back by the Assessee. The AO made addition u/s 41(1) of such amounts on account of cessation of liability and the same was upheld by the Hon'ble Madras High Court. The facts of this case are squarely applicable to the Appellant's case in the instant appeal.

6.2.4. In view of the above discussion, it can be concluded that the AO failed to furnish satisfactory explanation regarding the retraction from the disclosure made during survey action. Further, no cogent reason was furnished as to why there was no compliance to the Show cause Notice issued by the AO. The Appellant did not furnish any documents in this office, regarding the liabilities / bills payable. The ledger extracts from Books of account were also not produced to justify its stand. The Appellant failed to substantiate its claims in spite of several opportunities being provided at the time of assessment as well as appellate proceedings. Hence, it is clear that the impugned amount needs to be treated as 'Unexplained Investment' within the meaning of the provisions of Sec 69 of the IT Act & brought to tax as per the provisions of Sec 115BBE of the Act. Thus, the addition u/s 69 of Rs. 43,22,310/-made in the assessment order is hereby confirmed. Ground No. 2 is dismissed accordingly.

6.3. Decision on Ground(s) of Appeal No(s). 3:

Since the Appellant has not adduced any Additional Ground(s) of Appeal and since no Ground of Appeal has been altered/modified/changed/amended, this Ground of Appeal is dismissed as "not pressed".

In the result, the Appeal is dismissed. In the result, the Appeal is decided as above."

4. None appeared on behalf of the assessee, therefore, the case was heard with the assistance of the Ld. Sr. DR.



5. It is observed from the assessment order as well as the order of the Ld. CIT(A) that the assessment was made u/s 144 of the Act and the assessee has contended before us vide the submission enclosed that the assessee should have been provided *at least 7 clear days for filing its reply and unless and until sufficient time is granted to the assessee, the assessee will not be in position to file its effective reply if reasonable time is not given. It is a gross violation of principle of natural justice. For instance time given to the assessee is extremely narrow just less than 1 hour adverse action can be taken against the revenue by setting aside the assessment order as held in Uday Desai HUF vs. National Faceless Assessment Centre Delhi (2021) 132 taxmann.com 117 (Bom).* Therefore assessee prays your honour to kindly quash and set aside the order of the assessing officer with all consequential action and notices and for which act of your kindness the assessee shall remain ever grateful to you. It is also contended that the assessment order was passed without issuing any show cause notice to the assessee and the Ld. AO was not justified in making the addition u/s 69 of the Act. However, as regards the order u/s 144 of the Act the Ld. AO has noted that the notice u/s 143(2) of the Act was issued to the assessee but the assessee did not file anything justifying its income and retraction from the disclosure of income made. The Ld. CIT(A) has relied upon several judicial pronouncements and has held that the assessee failed to substantiate its claims in spite of several opportunities being provided at the time of assessment as well as appellate proceedings. Hence, it was clear that the impugned amount needed to be treated as 'Unexplained Investment' within the meaning of the provisions of Section 69 of the Act and brought to tax as per the provisions of Section 115BBE of the Act. Thus,



the addition u/s 69 of the Act of Rs. 43,22,310/- made in the assessment order was hereby confirmed.

6. Since the assessee could not make proper representation, therefore, it was observed by the Bench that the matter may be set aside to the Ld. AO and the assessee may be granted a final opportunity of being heard and make proper representation before the Ld. AO. Hence, both the orders of the Ld. CIT(A) as well as the order of the Ld. AO are set aside and the Ld. AO is directed to make the assessment afresh after granting an opportunity of being heard to the assessee. Needless to say, the assessee shall not seek unnecessary adjournment and shall also make due compliance before the Ld. AO.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 26th March, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 26.03.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **M D Construction and Associates, Near Rajdhani Maszid Hatigaon, Guwahati, Assam, 781006.**
2. **DCIT/ACIT, Circle-1.**
3. CIT(A)- Central NER, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata