

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, “DB” AGRA**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**
(Through Video Conferencing)

ITA No.135/Agr/2023
Assessment Year: 2015-16

Sh. Ram Kumar Shivhare, Wonder Bike Auto Sales Shivpuri, AB Road, Shivpuri, Madhya Pradesh	Vs.	DCIT/ACIT-3(1), Gwalior
PAN :ADKPS8008H		
(Appellant)		(Respondent)

Assessee by	Sh. Rajendra Sharma, Adv.
Department by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	03.02.2025
Date of pronouncement	03.02.2025

ORDER

PER SATBEER SINGH GODARA, JM

This assessee’s appeal for assessment year 2015-16, arises against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the “CIT(A)/NFAC”], Delhi’s DIN and order no. ITBA/NFAC/S/250/2023-24/1055148029(1) dated 16.08.2023, involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. Heard both the parties. Case file perused.

This assessee's appeal raises the following substantive grounds:

“1. That Under the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs. 7,13,000/- under the head of sundry creditor which is not pertaining to year under consideration but related to prior 2013-14 which is illegal, against Principle of natural justice and unjustified. Please be deleted.

2. That under the facts and circumstances of the case in law, that the order passed by the Commissioner of Income Tax (Appeals) has erred in disallowing the addition of Rs. 7,13,000/- without any basis, arbitrary, Capricious and without considering the ruling quoted by the appellant is unjustified, illegal and which against the principles of natural justice Please be deleted

3. That under the facts and circumstances of the case and in law, the learned CIT(Appeals) as well as Assessing Officer has erred disallowing under the various head @ 20% out of the total expenses of Rs. 16,20,305/- amounting to Rs. 3,24,061/- which is highly excessive, arbitrary, capricious and without any basis and also against principle of natural justice.

3. We advert to the assessee's former substantive grounds challenging section 68 addition of Rs.7,13,000/- representing sundry creditors amounting to Rs.16,07,527/-, including a sum of Rs.7,13,000/- in case of Ku. Vaishali disallowed under section 43B by the Assessing Officer in his assessment order dated 27.12.2017 and restricted to the extent of the foregoing latter figure only in the lower appellate discussion. Learned departmental representative could hardly dispute the clinching fact that the impugned sum has remained unpaid since AY: 2013-14, and therefore, neither the

same could be disallowed under section 43B, since not representing any statutory liability on actual payment, nor under section 68/69 of the Act once not credited or invested in the relevant previous year. We thus see no merit in the impugned former additions of Rs.7,13,000/- which stands deleted in very terms. The assessee's succeeds in his instant former twin substantive grounds.

4. Next comes the estimated disallowance of assessee's various heads of expenditure, totaling to Rs.16,20,305/- @ 20% coming to Rs.3,24,061/-, on estimation basis. Both the learned representatives could hardly dispute that neither the assessee has been able to specifically discharge his onus of proving the impugned expenditure, nor the department authorities could pinpoint any specific shortcoming(s) in the corresponding detailed files.

5. Be that as it may, we are of the considered view that the impugned disallowance made by the learned lower authorities @ 20% deserves to be upheld only to that @ 5% in the larger interest of justice with a rider that the same shall be treated as a precedent. Necessary computation shall follow as per law.

No other ground or argument has been pressed before us.

6. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 3rd February, 2025

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 3rd February, 2025.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra