

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

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकरअपील सं. / ITA No.23/Agr/2021
(निर्धारणवर्ष / Assessment Year: 2016-17)**

M/s. Perfect Footwear 76, Kailash Vihar Bye Pass Road, Agra -282005.	बनाम/ Vs.	Pr. CIT (Central), Kanpur.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AARFP-0237-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Sushil Maheshwari, CA – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Dr. Arun Kumar Yadav – Ld. CIT-DR

सुनवाईकीतारीख/ Date of Hearing	:	18-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	22.04.2025

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax (Central), Kanpur (Pr.CIT) for Assessment Year (AY) 2016-17 vide impugned order dated 15-03-2021 in the matter of an assessment framed by Ld. AO u/s 143(3) of the Act on 14-12-2018. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.
2. Upon perusal of assessment order, it could be seen that the assessee’s return of income was selected for scrutiny. During the course of assessment proceedings, notices were issued to the assessee u/s 142(1) on various issues which were duly responded to by the assessee in e-proceedings. The assessment order take note

of the fact that the assessee produced books of accounts with bills and vouchers which were test checked. After due consideration thereof, Ld. AO accepted the returned income of the assessee. Subsequently, based on audit scrutiny, Ld. AO sought rectification of the order vide notice dated 17-07-2020 to verify certain aspects of partners' capital. The same was duly been responded to by the assessee in its reply dated 31-07-2020 and apparently, no further action has been taken by Ld. AO on the same.

3. Subsequent, Ld. Pr. CIT, upon perusal of case records, observed that Ld. AO did not carry out requisite verifications on addition to partners' capital. The assessee paid commission on sales which was also not verified by Ld. AO. The assessee reflected income from trading of DEPB license and DDB receivable for which no independent verification was made by Ld. AO. The assessee claimed travelling expense which was not enquired into by Ld. AO. The assessee paid certain payment to specified entities u/s 40A(2)(b) which was not enquired into by Ld. AO. The Ld. AO also did not enquire into the valuation of assets and liability of one proprietorship concern as taken by the assessee during the year. The assessee defaulted in payment of ESI / PF which was not enquired into by Ld. AO. Due to discrepancies in quantitative details, there was undervaluation of stock which was not duly enquired into by Ld. AO. All these observations were primarily on the basis of observations made by Tax Auditor in the Tax Audit Report. In the light of all these facts, the assessment was set aside with a direction to Ld. AO to

pass fresh order after conducting proper inquiries including third party enquiries and investigation etc. to ascertain the claim of the assessee. Aggrieved, the assessee is in further appeal before us.

4. Upon perusal of assessment order, it could be seen that as many as 4 notices were issued by Ld. AO during the course of assessment proceedings calling for various details from the assessee. The assessee duly responded to the same and furnished all the documents / information as called for by Ld. AO. The assessment order take note of the fact that the assessee produced books of accounts with bills and vouchers which were test checked. The copies of financial statements as well as Tax Audit Report were also made available with Ld. AO during assessment proceedings. After due consideration thereof, Ld. AO accepted the returned income of the assessee. Not only this, based on audit scrutiny, Ld. AO sought rectification of the order to verify certain aspects of partners' capital. The same was also responded to by the assessee in its reply dated 31-07-2020 and apparently, no further action has been taken by Ld. AO on the same. On all these facts, it could be seen that whatever enquiries were required to frame the assessment, the same were made by Ld. AO. Having satisfied with the replies of the assessee, Ld. AO chose to accept the returned income with due application of mind.

5. Upon perusal of impugned revisionary order, it could be ascertained that the same patently aim to make fishing and roving enquiries only. It has been alleged that due enquiries were not made

by Ld. AO. However, there is no finding as to how the assessment order was erroneous and prejudicial to the interest of the revenue. In the absence of such specific finding, the impugned revision of the order could not be upheld in law. It is trite law that the revision of the order cannot be undertaken just to make fishing and roving inquiries. Pertinently, the assessee has no control over the manner as to how Ld. AO would draft his order. It is for Ld. AO to discuss each aspect in the assessment order. However, if it is not done then it is not the fault of the assessee and it is to be ascertained whether Ld. AO had raised queries and the assessee had replied them. If due replies were made and the same were answered by the assessee then it would be construed that due enquiries were made. It could also be noted that Ld. Pr. CIT has not recorded any finding as to how the order is erroneous and prejudicial to the interest of the revenue which run contrary to the decision of Hon'ble Delhi High Court in the case of **ITO vs. D.G. Housing Projects Ltd. (343 ITR 329)**. Under these circumstances, the impugned revisionary order is liable to be quashed. We order so. The assessment as framed by Ld. AO stand restored back.

6. The appeal stand allowed in terms of our above order.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 22.04.2025

आदेश की प्रतिलिपि ढ ग्रेषित / Copy of the Order forwarded to :

1. अढीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA