

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH: DEHRADUN**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No. 2078/Del/2017, A.Y.2012-13

Dy. Commissioner of Income Tax, Circle-1(4)(1), Ayakar Karyalaya, CISF Building, IDPL Gate No. 2, Veerbhadra, Rishikesh,	Vs.	Uttaranchal Iron & Ispat Ltd. 3-4, UPSIDC Indl. Area, Jasodharpur, Kotdwar PAN: AAACU5543M
(Appellant)		(Respondent)

ITA No. 4201/Del/2018, A.Y.2013-14

M/s. Uttaranchal Iron & Ispat Ltd. 3-4, UPSIDC Indl. Area, Jasodharpur, Kotdwar PAN: AAACU5543M	Vs.	Dy. Commissioner of Income Tax, Circle-1(4)(1), Ayakar Karyalaya, CISF Building, IDPL Gate No. 2, Veerbhadra, Rishikesh,
(Appellant)		(Respondent)

Assessee by	None
Revenue by	Sh. Amar Pal Singh, Sr. DR

Date of Hearing	10/02/2025
Date of Pronouncement	09/05/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

Common grounds and facts arise in the above captioned appeals of the Revenue and the assessee; therefore, these appeals were heard together and are being disposed off by this common order.

2. These appeals for the Assessment Years (hereinafter, the 'AY') 2012-13 and 2013-14 filed by the Revenue and Assessee are directed against orders dated 24.01.2017, 15.03.2018 of the Commissioner of Income Tax (Appeals), Dehradun/Haldwani [hereinafter, the 'CIT(A)'].

3. The Revenue has raised following grounds in the AY 2012-13: -

- “1. The Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 49,08,033/- out of Rs. 83,28,810/- made on account of net profit estimated by the AO by invoking the provisions of section 145 of the Income Tax Act, 1961 as discrepancies found in the books and the book results shown by the assessee was not amenable to verification.*
- 2. The Ld. CIT (A) has erred in law and on facts in deleting addition of Rs. 11,54,74,533/ out of Rs. 13,76,29,909/ made on account of bogus liabilities, holding that AO has not really conducted any investigation into genuineness of the purchases, without appreciating the facts that the assessee has failed to prove identity of the persons and genuineness of the transactions of liabilities shown in its books as on 31.03.2012 on account of Sr. Creditors.*
- 3. The Ld. CIT(A) has erred on facts and in the circumstances of the case and in law, by failing to consider all material facts and evidence brought on record that during the assessment proceedings as well as appellate proceedings, the assessee could not establish the genuineness of its claim regarding sundry creditors despite the assessee was given adequate opportunities during assessment proceedings as well as appellate proceedings and further failed to record the finding on all the objections raised in remand report submitted to the Ld. CIT(A).*
- 4. The order of Ld. CIT (Appeals) be set aside and that of the AO be restored.”*

3.1 The assessee has raised following grounds in the AY 2013-14: -

- “1. That, the assessment order passed U/s 143(3) and the addition made are illegal, bad in law and without jurisdiction. The CIT(A) erred in upholding the same.*

2. *That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.*
3. *The addition/ disallowances made by the assessing officer are illegal, unjust, and highly excessive and are not based on any material on record by the assessing officer. The total income of the appellant has been wrongly and illegally computed by the assessing officer at Rs.7,41,87,950.00 as against declaring Income at Rs.28,25,510.00. The CIT (A) has erred in upholding the same.*
4. *That, in view of the facts and circumstances, the assessing officer has erred in law and on facts in making the addition of Rs.19,80,298.00 on account of claim of deduction U/s 80-IC, which is highly arbitrary, unjust and against the facts and circumstances of the case. The Ld. CIT (A) has also confirmed the same.*
5. *That, the assessing officer has failed to appreciate the fact that the interest income earned is linked to the Profit and Gains derived by undertaking from the eligible business and is therefore allowable for claim of deduction 80-IC, which is highly arbitrary, unjust and against the facts and circumstances of the case. The Ld. CIT (A) has also confirmed the same.*
6. *That, in view of the facts and circumstances, the assessing officer has erred in law and on facts in making the addition of Rs.5,67,13,967.00 on account of Creditors and Unsecured Loans, which is highly arbitrary, unjust and against the facts and circumstances of the case. The Ld. CIT (A) has also confirmed the same.*
7. *That, the CIT (A) has erred in rejecting the books of account U/s 145(3) of the Income Tax Act, 1961 without pointing the defects in the books maintained by the assessee company and never asked to produce the same before him, therefore, the rejection of books U/s 145(3) of the Act is highly presumptive, arbitrary and unjust.*
8. *That, in view of the facts and circumstances, the assessing officer has erred in law and on facts in making the addition on account of Low Net Profit at Rs.1,26,68,177.00 by estimating the net profit @1.82%, which is highly arbitrary, unjust and against the facts and circumstances of the case. The Ld. CIT (A) has also confirmed the same.*
9. *That the Assessing Officer/CIT(A), in view of the facts and circumstances of the case erred on facts and in law in making the ad-hoc addition/disallowance on estimated basis, which is unjust,*

arbitrary, unlawful, highly excessive, based on surmises and conjectures and cannot be justified by any material on record.

10. *The additions confirmed and the observations made by CIT (A) are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.*
11. *That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.*
12. *That the interest U/s 234A & 234B has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.*
13. *The appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.
All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.”*

3.2 The ITA No. 2078/Del/2017 for A.Y.2012-13 is taken as a lead case.

ITA No. 2078/Del/2017, A.Y.2012-13

4. The relevant facts giving rise to this appeal are that the assessee, engaged in the Manufacturing of M.S. Bar, M.S. Ingot & Re-rolling of Steel etc. filed its Income Tax Return (hereinafter, THE 'ITR') of the relevant year on 30.09.2012 declaring income of Rs.45,95,730/- after claiming deduction of Rs.45,90,630/- under section 80IC of the Income Tax Act, 1961 (hereinafter 'the Act'). The case was picked up for scrutiny. Consequential assessment was completed at income of Rs.15,29,05,345/- making following additions and disallowances;

S. N.	Particulars	Amount (Rs.)
1.	Restricting the claim of deduction u/s 80IC to 30% as against the claim of 50%	21,03,842/-
2.	Application of average net profit rate after rejecting books of accounts u/s 145(3) of the Act	83,28,810/-
3.	Disallowance of non-genuine sundry creditors	13,76,29,909/-
4.	Disallowance of loss on sale of vehicle	2,47,054/-

4.1 Aggrieved, the assessee filed appeal before the Ld. CIT(A) who allowed the relief of Rs.12,03,82,566/- out of total addition/disallowance of Rs.14,83,09,615/- made by the Assessing Officer (hereinafter, the 'AO').

5. The Ld. CIT(A) has held that the book results cannot be disturbed based on the finding with respect to trading result of preceding year unless similar defects are not found in books of account of the impugned year. Hence, he reversed the finding of the AO on rejection of books of accounts. However, he sustained specific disallowances aggregating to Rs.34,20,777/- under section 14A and 40A(3) of the Act. With respect to non-genuine sundry creditors, the Ld. CIT(A) deleted the addition of Rs.11,54,74,533/- by assigning the reason that the AO has not specified the section under which the non-genuine sundry creditors were taxed particularly when the AO has not doubted purchases and sales. The genuineness of the sundry creditors has been doubted by the AO on the reasoning that the notices sent to them were returned back unserved or some of them have not

responded to. During the appellate proceedings before the Ld. CIT(A), the assessee filed various materials to explain the genuineness of sundry creditors. These materials were sent to the AO by the Ld. CIT(A). The AO submitted the remand report, wherein the AO has specifically mentioned that the assessee was neither provided complete addresses of sundry creditors for verification nor explained the genuineness of such liability nor produced sundry creditors for verification. The AO showed his inability to carry out any further investigation in absence of complete details and addresses of sundry creditors filed by the assessee. Since the sundry creditors are liabilities of the assessee, hence the obligation is on the part of the assessee to explain it by furnishing their full credential, ledger accounts, payment details, etc. in the remand proceeding. Neither the AO was able to carry out any investigation in absence of complete data nor the Ld. CIT(A), on his own have carried out any investigation. But the Ld. CIT(A) allowed the relief to the extent of Rs.11,54,74,533/- out of the sum of Rs.13,76,29,909/- taxed by the AO.

6. Before us, two issues; net profit after rejection of books of account vis-à-vis specific disallowances under section 14A and 40A(3) of the Act and taxability of non-genuine sundry creditors are in dispute.

7. We have heard the Sr. DR and have perused the material available on the record. The section 145 of the Act reads as under:

“Method of accounting.

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assesseees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.

7.1 As per section 145(3) of the Act, following circumstances under which the AO 'may' make best judgement assessment as provided under section 144 of the Act are as under:

- (i) when the AO is not 'satisfied' about correctness or completeness of 'accounts' of the assessee; or
- (ii) where the method of accounting provided in section 145(1) of the Act has not been regularly followed; or
- (iii) where income has not been computed in accordance with the standards notified under sec 145(2) of the Act.

7.2 In section 145(1) of the Act, while making it mandatory to compute the income under head 'business & profession' or 'Income from other

sources' based on cash or mercantile system of accounting being regularly followed by the assessee, the word 'shall' have been specifically used to make it mandatory leaving no discretion to use any another method of accounting which is not being regularly followed. Whereas in section 145(3) of the Act, the word 'may' have been deliberately used in a discretionary/directory context because the word '*may*' as used in 145(3) of the Act is intricately linked to the AOs satisfaction also about the correctness of accounts in the very same section. A critical examination of language of this section along with principles of harmonious construction would make it clear that powers of the AO to invoke 145(3) of the Act is merely declaratory/discretionary and not mandatory, where the legislature had no intention to prescribe the mandatory rejection of books of accounts in each & every case where some specific entry in accounts have been found to be bogus/inflated or unverifiable but largely the accounts maintained as per mandate of section 145(1) r/w 145(2) of the Act. That is why the word '*may*' have been used at one place and '*shall*' at another place in the same section of the Act. Thus, it is obvious that the word; '*shall*' and '*may*' have been chosen in the Act distinctively with their natural meaning. The provision using the word '*shall*' would be mandatory whereas the one using the word '*may*' would only be directory/ discretionary. If it were not to be read so, it may lead to other consequences.

7.3 The business income is computed in accordance with the provisions of section 28 to 44DB of the Act as these are enabling provisions to allow certain type of allowances/claims/expenditures etc. In case any disallowance of any/few specific claim(s) of expenditure, would mandatorily lead to invocation of 145(3) of the Act, then these sections would be rendered otiose because, then by estimation of income under best judgment after rejection of accounts being mandatory would not entail specific disallowance/addition for violations of any of sections from 28 to 44DB of the Act. In such situation, these sections would lose their relevance. In view of the above, we do not find any infirmity in the finding of the Ld. CIT(A) that the AO has not make a good case for rejection of books of accounts and application of net profit rate. We therefore, decline to interfere in this regard. The 1st ground of the Revenue, therefore fails.

8. The 2nd issue is the taxability of non-genuine sundry creditors. The AO has held the sundry creditors of Rs.13,76,29,909/- as non-genuine. Out of which, sundry creditors of Rs.11,54,74,533/- was deleted by the Ld. CIT(A) assigning the reason that the AO has not specified the section under which the non-genuine sundry creditors were taxed particularly when the AO has not doubted purchases and sales. On the other hand, he has upheld the non-genuine sundry creditors of more than Rs.2.00 Crores in the relevant year. In subsequent year ITA No.4201/Del/2018, he upheld the taxability of non-genuine sundry creditors. Such findings are

contradictory. During the appellate proceedings before the Ld. CIT(A), the AO's remand report specifically mentioned that the assessee was neither provided complete addresses of sundry creditors for verification nor explained the genuineness of such liability nor produced sundry creditors for verification. The AO showed his inability to carry out any further investigation in absence of complete details and addresses of sundry creditors filed by the assessee. Since the sundry creditors are liabilities of the assessee; hence, the obligation is on the part of the assessee to explain it, which it has not discharged. The AO has doubted the genuineness of sundry creditors mainly on the reasoning that how these suppliers have sold goods in Crores to the assessee with minimal payments. Their addresses are incomplete. It is held that by applying the net profit rate after rejection of books of account, the AO has questioned the purchases and sales. Hence, the finding of the Ld. CIT(A) for allowing relief on this score by holding that the AO has not questioned the purchases and sales is not justified.

9. In view of the above and in the interest of justice, we are of the considered opinion that the assessee has not discharged its primary onus of explaining the genuineness of the disputed sundry creditors. However, it deserves reasonable opportunity of being heard to make shortcomings or non-compliances. In view thereof, without offering any comment on merit of

the case, we deem it fit to set aside the finding of the Ld. CIT(A) on the issue of sundry creditors of Rs.11,54,74,533/- and remit this issue back to the file of the Ld. CIT(A) to be decided afresh after providing reasonable opportunities of being heard to the assessee. The assessee should ensure compliances during this remitted proceeding.

10. In the result, this appeal of Revenue (ITA No. 2078/Del/2017) is allowed for statistical purposes as above.

ITA No.4201/Del/2018

11. Vide 13 grounds, the assessee has raised following issues:

- i. Restricting the claim of deduction under section 80IC to 30% as against the claim of 50%,
- ii. Application of average net profit rate of 1.82% after rejecting books of accounts u/s 145(3) of the Act net profit after rejection of books of account vis-à-vis specific disallowances,
- iii. the taxability of non-genuine sundry creditors and
- iv. Chargeability of interest under the Act,

12. The assessee was not represented by any one. So we heard the Sr. DR at length. The Ld. CIT(A) also restricted the deduction under section 80IC to 30% as against the assessee's claim of 50% in the AY 2012-13 (ITA No. 2078/Del/2017), which was not challenged by the assessee before

us. We have considered the material on the record and the argument of the Ld. Sr. DR. We are unable to understand the reason for not raising this issue in the preceding year; AY 2012-13. Further, we do not find any infirmity in the finding of the Ld. CIT(A). Hence, we decline to interfere with the finding of the Ld. CIT(A). Thus, this grounds fails.

13. Next issues are in respect of rejection of books of accounts u/s 145(3) of the Act & applicability of average net profit rate of 1.82% and the taxability of non-genuine sundry creditors. Since the assessee has not ensured any compliance before the Ld. CIT(A); therefore, the Ld. CIT(A) has decided these issues after considering the material available on the record. There is non-compliance on part of the assessee during appellate proceedings before the Ld. CIT(A) and this bench of the Tribunal. However, in view of the interest of justice, we are of the considered opinion that the assessee deserves reasonable opportunity of being heard to make shortcomings or non-compliances. In view thereof, without offering any comment on merit of the case, we deem it fit to set aside the finding of the Ld. CIT(A) on these two issues; rejection of books of accounts u/s 145(3) of the Act & applicability of average net profit rate of 1.82% and the taxability of non-genuine sundry creditors and remit these issues back to the file of the Ld. CIT(A) to be decided afresh after providing reasonable opportunities of being heard to the assessee. The assessee should ensure compliances during this remitted proceeding.

14. The issue of the chargeability of interest under the Act, being consequential, stands dismissed.

15. In the result, this appeal of the assessee (ITA No. 4201/Del/2018) is allowed for statistical purposes as above.

16. In the result, both appeals are allowed for statistical purposes as above.

Order pronounced in open Court on 09 May, 2025

Sd/-

**(VIKAS AWASTHY)
JUDICIAL MEMBER**

Sd/-

**(AVDRESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated:09/05/2025

Binita, Sr. PS

Copy forwarded to:

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

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