

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A ": NEW DELHI
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No. 3553/Del/2017
(Assessment Year: 2013-14)**

M/s. Ashirvad Steels & Alloys Pvt. Ltd, 8 th K. M. Stone, Meerut Road, Muzaffar Nagar, UP	Vs.	Income Tax Officer, Ward-1(1), Muzaffarnagar, UP
(Appellant)		(Respondent)
PAN: AADCA4543J		

Assessee by :	Shri Ankit Gupta, Adv
Revenue by:	Shri Ajay Kumar Arora, Sr. DR
Date of Hearing	23/06/2025
Date of pronouncement	23/06/2025

O R D E R

PER AMITABH SHUKLA, AM

1. This appeal by Assessee is directed against the order of Commissioner of Income Tax (Appeals), Muzaffarnagar [for short hereinafter referred to as the "(Ld. CIT(A))" dated 28.03.2017 for Assessment Year 2013-14. The word Act hereinafter in this order shall mean the Income Tax Act, 1961.

2. At the outset the Ld. Counsel for the assessee informed that the Ld. First Appellate Authority has passed an ex-parte order thereby confirming the assessment order u/s 144 dated 22.03.2016. The Id AO has also passed an ex-parte order making addition of Rs. 2 crores on account of

unexplained share capital u/s 68 of the Act. The Id counsel submitted that the Assessee could not appear before the lower authorities on account of pressing personal reasons. The Id counsel accordingly pleaded for being given one last opportunity to present its case before the lower authorities. The Id AR personally assured of full compliance to statutory notices now to be issued.

3. Per contra, the Ld. DR relied upon the order of lower authorities.

4. We have heard the rival submissions in the light of material available on records. It is trite law that no litigant benefits by non-prosecution of its case. We find sufficient force in the pleadings of the assessee as to why it could not make compliance before the Id AO and Ld. CIT(A). We have noted that the Id CIT(A) had requisitioned a remand report from the Id AO in which he recommended non admission of additional evidences on the premise that the parties were not verifiable. In para 11.6 of his order the Id CIT(A) observed that onus was on the appellant to satisfy the Id AO with the genuineness of the parties and that it has not furnished any document to discharge the said onus. Accordingly, applying the test of human probability it was concluded that the appellant has failed to explain the sources of Rs. 2 crores. It is the case of the Assessee that it has submitted all the details to the Revenue authorities. We have noted from the order of the Id AO that he has not given any finding on the merits of the issue in his assessment order. Even during the remand proceedings no such exercise was undertaken. Be that as it may be, we are of the view that the matter of sources of share capital has not been objectively and comprehensively

analyzed by the lower authorities. We are of the view that ends of justice would be met if the assessee is given one last opportunity to present its case and filed supporting evidences before the Ld.AO. The decision to remit it back to the Ld. AO is taken in view of the fact that an Assessing Officer is the fulcrum of assessment proceedings. He possesses the first right and responsibilities to examine facts of a case before arriving at his decision qua determination of taxable income in a particular case. Without prejudice it has also been noted that in this case the Ld. AO did not have adequate opportunities to examine the varied facts seminal therein. We have noted with respectful deference the decision of Hon'ble Apex Court in the case of TIN box 249 ITR 216 on the subject matter. Accordingly, the issue of addition qua unexplained share capital which have been contested by the assessee through its grounds of appeal supra stands remitted back to the Ld. AO for fresh adjudication de novo by passing a speaking order and in accordance with law. To the extent the order of lower authorities on this issue stands set aside. The Ld. AO shall give opportunities of being heard to the assessee and it shall be bounden upon the assessee to comply with the notices issued by the Ld. AO. Any non-compliance on the part of the assessee can be adversely viewed. The assessee is at liberty to produce all the evidences filed through its paper book before us including any other evidences deemed relevant in support of its claims before the Ld. AO during the readjudication proceedings. Accordingly, all the grounds of appeal raised by the assessee are therefore allowed for statistical purposes.

5. In the result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 23/06/2025.

-Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

-Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER

Dated: 23/06/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi