



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

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.29/ALLD/2025
(Assessment Year: 2018-19)

Kesarwani Brothers 21, University Road, Allahabad, Uttar Pradesh-211002.	v.	DCIT, Central Circle Allahabad Uttar Pradesh-211001.
PAN:AAPFK3311F		
(Appellant)		(Respondent)

Appellant by:	Shri S. K. Jaiswal
Respondent by:	Shri A. K. Singh, Sr. CIT(DR)

ORDER

PER ANADEE NATH MISSHRA, A.M.:

1. The present appeal has been filed by the assessee against the impugned order dated 16.12.2024 passed by the learned Commissioner of Income Tax (Appeals), Lucknow-3 under section 250 of the Income Tax Act, 1961 (hereinafter referred as to “the Act”), for the assessment year 2018-19 wherein the assessee’s appeal has been dismissed in limine for the reason of non compliance. The grounds of appeal of the assessee are as under:-

“1. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing appeal in limine without affording adequate and effective opportunity of being heard.

2. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in holding that sufficient opportunity were provided and appellant failed to comply the notices issued by the assessing officer.

3. BECAUSE the learned Commissioner of Income Tax (Appeals) has failed to appreciate the facts that after the issue of first detailed notice under section 142(1) on 23.01.2021 the appellant’s counsel and their family members were severely infected from Covid-19 and hospitalized, therefore could not file the reply on the date fixed for compliance.

4. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining addition of Rs. 47,08,497/- made by invoking the provision of section 145(3) and estimating gross profit of Rs. 1,12,37,743/by applying G.P. rate of 11.62% on declared

sales against disclosed G.P. rate of 6.75% on the basis of audited books of account.

5. BECAUSE no excess stock was found on physical verification inventory of stock prepared by the department during the course of survey on 08.02.2018.

6. BECAUSE in any case the estimate of G. P. rate of 11.62% is very much excessive against the declared G. P. rate 6.75%. The learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that in the scrutiny assessment for the assessment year 2016-17 and 2017-18 the gross profit rate of 7% is estimated by the department.

7. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining addition of Rs. 23,32,259/made on account of extra gross profit on alleged unaccounted sales of Rs. 2,00,71,078/being difference between value of physical inventory as on date of survey and value of closing stock derived by recasting trading account by taking purchase, sales, opening stock as recorded in the tally data and balancing figure as value of stock after applying gross profit @ 11.62% on sales.

8. BECAUSE the learned Commissioner of Income Tax (Appeals) has failed to appreciate the facts that appellant is maintaining regular books of account and during the course of survey no unaccounted purchase and or sales were found. So far as difference in the value of stock as found in the tally data and actual inventory of stock taken at the end of the year was properly explained in the statement on oath recorded during the course of survey.

9, BECAUSE the appellant denies for levy of interest under section 234A and 2348 of the Income Tax Act, 1961.

10. BECAUSE the order appealed against is contrary to the facts, law and principle of natural justice.”

(2) In this case, assessment order dated 23/04/2021 was passed by the Assessing Officer (“AO”), under section 144 of the Act whereby the assessee’s total income was assessed at Rs.81,45,876/- as against the returned income of Rs.11,05,120/- declared by the assessee. In the aforesaid assessment order, addition of Rs.47,08,497/- was made by invoking the provisions of section 145(3) of the Act and a further addition of Rs.23,32,259/- was made on account of extra gross profit on alleged unaccounted sales. The assessee’s appeal against the aforesaid additions were dismissed by the Ld. CIT(A) vide impugned appellate order dated 16.12.2024. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 16.12.2024 of the Ld. CIT(A).

(2.1) At the time of hearing, learned Counsel for the assessee submitted that the Assessing Officer as well as the learned CIT(A), both passed their respective orders without providing reasonable opportunities to the assessee. The Ld. Counsel for the assessee contended that the Ld. CIT(A) as well as the Assessing Officer failed to appreciate facts of the case in right perspective. The Ld. Counsel for the assessee prayed that the issue in dispute may be restored back to the Assessing Officer for giving adequate opportunity to the assessee in the interest of justice and fair play. The Ld. Departmental Representative (“DR”, for short) expressed no objection to restoration of the matter to the file of the Ld. CIT(A).

(3) In view of the foregoing, and as Representatives of both sides are in agreement with this, in the specific facts and circumstances of the present case; the impugned order of the Ld. CIT(A) dated 16.12.2024 is set aside and the Ld. CIT(A) is directed to pass *de novo* order in accordance with law, after providing reasonable opportunity to the assessee. All grounds of appeal are treated as disposed of in accordance with the aforesaid direction.

In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 21/07/2025.

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 21/07/2025

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

//True Copy//

By order
Sr. Private Secretary