

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.909/Bang/2025
Assessment year : 2021-22

Ostrich Mobility Instruments Private Ltd., No.145/B3, 3 rd Cross, 1 st Main Road, KIADB Industrial Area, Hosur Road, Bommasandra, Bangalore – 560 099. PAN: AAACO 9607J	Vs.	The Income Tax Officer, Ward 5(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ankur Pai, Advocate
Respondent by	:	Shri Subramanian, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	30.06.2025
Date of Pronouncement	:	28.07.2025

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Ostrich Mobility Instruments Pvt. Ltd. (the assessee/appellant) for the assessment year 2021-22 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] dated 18.2.2025 wherein the appeal filed by the assessee against the assessment order passed u/s. 143(3) of the Income

Tax Act, 1961 [the Act] by the National Faceless Assessment Centre, Delhi [Id. AO] , was dismissed.

2. The reason for dismissal of the appeal is that the Id. CIT(A) granted 7 opportunities to the assessee, which were not availed and therefore appeal of the assessee was dismissed for non-cooperation and non-prosecution. The assessee is aggrieved with the same and is in appeal before us.
3. Briefly stated the facts of the case show that assessee is a company engaged into the business of manufacturing of electrical wheel chairs, hospital bags, filed its return of income at Rs.1,98,99,900 on 10.3.2022. The return was picked up for scrutiny. The Id. AO issued several notices and also a show cause notice against which some reply was submitted. The AO asked the assessee to furnish the details of expenses, but no bills or vouchers or supporting documents were furnished. The AO issued notices u/s. 133(6) to several parties. The AO examined the claim of commission expenditure of Rs.79,46,738 and asked the assessee to furnish copy of agreement, confirmation, bank statement etc. The assessee submitted details of bank statement and tax deduction at source [TDS] on commission payments. The Id. AO found that in the absence of any copy of agreement, confirmation of the parties, 10% of the commission expenditure was disallowed amounting to Rs.7,94,674. With respect to the trade creditors of Rs.3,65,68,050 the assessee was asked to produce the details of the parties along with agreement, etc. The Id. AO found that the assessee

has failed to submit copies of agreement and income tax return of the parties and therefore Rs.17,81,788 was added back u/s 69C of the Act. Further the Id. AO asked the details of expenditure of Rs.35,18,518 and issued a show cause notice as to why 10% thereof should not be disallowed. Accordingly assessment order was passed u/s. 143(3) r.w.s. 144B of the Act on 29.12.2022 determining total income of assessee at Rs.2,28,28,214. The total addition/ disallowance of Rs.29,28,314 was made.

4. Aggrieved by the assessment order, the assessee preferred appeal before the Id. CIT(A) wherein for receipt of notices the assessee gave one email-id of harsha@ostrichmobility.com. The Id. CIT(A) issued 7 notices which remained uncomplished with and hence passed appellate order on 18.2.2025 holding that assessee is not interested in pursuing the appeal and further decided on the merits. Against this dismissal of the appeal, the assessee is in appeal before us.
5. The Id. AR filed a paperbook containing 303 pages. It was submitted that before the AO vide letter dated 14.12.2022 assessee has filed complete details of commission, sundry creditors, office expenses and other miscellaneous expenses. Further in response to show cause notice dated 12.12.2022, assessee submitted details of sundry creditors and copy of bank statement evidencing payment of commission. But these details were not considered in proper perspective resulting into adhoc disallowance of expenditure and commission expenses. With respect to the submission before the Id. CIT(A), he submitted that along

with Form 35 assessee submitted proof of payment of commission, balance confirmation letters from sundry creditors and proof of expenditure incurred by the assessee on 29.1.2023. With respect to non-appearance before the CIT(A), an affidavit was submitted of the Director of the company stating that except notice dated 1.3.2023 which is enablement of communication window, assessee did not receive any other notices and therefore the company was not aware of the notices issued to it and therefore assessee could not comply with the notices. Even otherwise, it was submitted that assessee has also submitted complete details before the CIT(A) which was not there before the Id. AO and therefore if these details are considered, the addition would be deleted. The Id. further referred to Paperbook showing that the complete details are furnished before the Id. CIT(A) also which are not considered at all. Therefore the order passed by the CIT(A) dismissing the appeal without considering on merits is not proper.

6. The Id. DR vehemently supported the orders of Id. lower authorities and submitted that before the CIT(A) assessee did not submit any information and also did not respond to any of the notices and therefore the appeal of the assessee was properly dismissed.
7. We have carefully considered the rival contentions and perused the orders of the Id. lower authorities. We find that the Id. CIT(A) has issued 7 notices to the assessee at the same email-id which was mentioned in Form 35. However, the Director of the assessee company

has submitted an affidavit that it is not received in the emails, except the email communicating the enablement of window and therefore assessee could not furnish the details for respond to the various notices issued by the CIT(A). Before us, paperbook filed by the assessee shows that along with Form 35 assessee has submitted proof of payment of commission, confirmation letters from sundry creditors and proof of expenses incurred by the assessee. These details are furnished at pages 173 to 303 of the PB. Admittedly these details were not available before the AO which resulted into adhoc disallowance of 10% of the commission expenditure as well as 10% of the total expenditure. The addition on account of sundry creditors was made for the reason that assessee did not file confirmation of some of the parties. These confirmations are filed before the CIT(A) which are available at page 193 – 205 of PB. Even otherwise, the Id. AO has made adhoc disallowance of 10% of commission expenditure and other expenditure. Therefore if these details submitted by the assessee before the Id. CIT(A) which was not verified by the Id. CIT(A), are examined, then the genuineness of the other expenditure as well as commission expenditure can be ascertained. Further the parties whose confirmation was not available before the AO, was made available before the Id. CIT(A), if those are verified, the correct income of the assessee can be determined.

8. In view of the above facts, we restore the whole issue back to the file of the Id. Assessing Officer with a direction to the assessee to substantiate all the details required by the AO within 90 days from the date of

receipt of this order. The Id. AO may examine the same and if found in accordance with law, the respective additions may be deleted. If there are certain infirmities according to the AO, then reasonable opportunity of hearing may be granted.

9. Thus, ground No.1 of the appeal is allowed with the above directions and other grounds on merits of the case are restored back to the file of the Id. AO.
10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 28th day of July, 2025.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 28th July, 2025.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.