



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.477/LKW/2025
Assessment Year: 2018-19

Virat Construction Tarin Bahadurganj Shahjahanpur (U.P)	v.	The ITO-I(4) Shahjahanpur-1
TAN/PAN:AAPFV3897H		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri R.R.N. Shukla, D.R.

ORDER

This appeal has been preferred by the assessee against separate order dated 18.11.2024, passed by the National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2018-19.

2.0 The brief facts of the case are that the assessee was engaged in the business of extraction and sale of soil under permit from the State Government. The assessee filed its return of income for the year under consideration on 03.10.2018, declaring income at Nil. The case of the assessee was selected for complete scrutiny under CASS for the reason that “*the assessee has disclosed low income from receipts (Mining and quarrying) on which TCS has been deducted*”. The assessee had declared a total sales of Rs.38,40,153/- and claimed a loss carried forward of

Rs.16,90,313/- for the year under consideration. During the course of assessment proceedings, it was noticed that the assessee had declared gross profit of Rs.2,70,187/- for the year under consideration. However, the Assessing Officer (AO) calculated the gross profit of the assessee for the year under consideration at Rs.26,23,064/- and after subtracting the amount of Rs.2,70,187/- from Rs.26,23,064/-, which came to Rs.23,52,877/-, the same was treated as business income of the assessee for the year under consideration and was added to the total income of the assessee. The AO completed the assessment under section 143(3) read with sections 143(3A) and 143(3B) of the Act, assessing the total income of the assessee at Rs.23,52,877/- as against the Nil income returned by the assessee.

2.1 The AO also initiated penalty proceedings under section 270A of the Act, separately.

2.2 Aggrieved, the Assessee preferred an appeal before the Ld. First Appellate Authority, who dismissed the appeal of the assessee and confirmed the order of the AO.

2.3 Now, the assessee has approached this Tribunal challenging the order of the NFAC, by raising the following grounds of appeal:

1. *Because on the facts and in the circumstances of the case the order of Ld. CIT(A) as also Assessment is bad in law and deserves to be quashed being illegal.*

2. *Because on the facts and in the circumstances of the case the order of Ld. CIT(A) is bad in law in confirming addition of Rs.23,52,877 without considering the submission of the assessee also denying the agreement produced before the Ld. AO, hence liable to be set aside.*

3. *Because on the facts and in the circumstances of the case Ld. CIT (A) erred on facts and in law in confirming addition of Rs.23,52,877/- made by the learned Assessing Officer in violation of the established rule of evidence and the principle of natural justice and therefore said addition is liable to be deleted.*

4. *Because on the facts and in the circumstances of the case the order of Ld. CIT(A) has further erred in sustaining addition, by arbitrarily rejecting an exhaustive, valid and legitimate explanation tendered by the assessee, Thus, the addition has been sustained on material and whimsically.*

5. *Because, on the facts and in the circumstances of the case, Ld. AO completed the assessment by addition to gross profit on estimation basis without rejecting books of account u/s 145(3) of the Income Tax Act, 1961 renders the addition bad in law and the order so passed deserves to be quashed.*

6. *Because on the facts and in the circumstance of the case, the order of Assessment has been passed in absolute violation of the principles of Natural Justice, without providing adequate opportunity of being heard and therefore deserves to be declared a nullity.*

7. The appellant craves for leave to add, modify, amend or delete any other and further grounds of appeal with permission.

3.0 None was present for the assessee when the appeal was called out for hearing nor was any adjournment application moved in this regard. However, looking into the facts of the case, I proceed to adjudicate the appeal ex-parte qua the assessee.

4.0 During the course of hearing, it was brought to my notice that there is a delay of 162 days in filing the appeal before the Tribunal. It was brought to my notice that the assessee has not filed any application for condonation of delay. However, since the Ld. Sr. D.R. had no objection to the delay being condoned, I condone the delay in filing of the appeal and admit the appeal for hearing.

5.0 The Ld. Sr. D.R. had no objection to the restoration of appeal to the file of the Assessing Officer.

6.0 I have heard the ld. Senior Departmental Representative and have also perused the material on record. Looking into the facts of this case, I am of the considered view that the assessee deserves one more opportunity to present its case and, therefore, I set aside the order of the NFAC and restore this file to the Office of the Assessing Officer with the direction to provide one more opportunity to the assessee to present its case. I also caution the

assessee to fully comply with the directions of the Assessing Officer in the set-aside proceedings when called upon to do so, failing which, the Assessing Officer would be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

7.0 In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 27/10/2025.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:27/10/2025

JJ:

Copy forwarded to:

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

By order
Assistant Registrar/DDO