

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

ITA No. 635/DEL/2020 (AY 2014-15)

SUNIL GUPTA,
4/1733, BHOLA NATH NAGAR,
MAHAVIR BLOCK, SHAHDARA,
DELHI – 110 032
(PAN: AAOPG6063B)
(APPELLANT)

VS. ACIT, CIRCLE 55(1),
NEW DELHI

(RESPONDENT)

Appellant by : CA THAKUR REPUDAMAN AND CA ANURAG GUPTA
Respondent by : SHRI MAHESH KUMAR, CIT(DR)

Date of Hearing	10.11.2025
Date of Pronouncement	12.11.2025

ORDER

PER MAHAVIR SINGH, VP:

This appeal by the Assessee is arising out of the order of the Ld. CIT(A)-37, Delhi in Appeal No. CIT(A), Delhi-37/10122/2016-17 dated 09.12.2019. Assessment was framed by the ACIT, Circle 55(1), New Delhi for the assessment year 2014-15 u/s. 153 read with section 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'Act') vide order dated 31.12.2016.

2. The first issue in this appeal argued by the Id. Counsel for the assessee is as regards to order of CIT(A) erred in confirming the action of the AO in framing assessment without issuing / serving the mandatory notice u/s. 143(2) of the Act.

3. We have heard the rival contentions and gone through the facts and circumstances of the case. The brief facts of the case are that the return of income for the assessment year 2014-15 was e-filed by the assessee on 12.12.2014. A search u/s. 132 of the Act was conducted in the Orbit group of the cases on 13.5.2014 and consequent search operation on Trimula Plastic (Prop. Sunil Gupta) was also conducted on 1.7.2014. The notice u/s. 153A read with section 143(2) of the Act dated 29.6.2016 was issued and served upon the assessee. Accordingly, assessment proceedings was commenced and completed. The assessee before us, now raised the issue that the assessee in response to notice u/s. 153A of the Act filed its return of income on 17.10.2016 and no notice u/s. 143(2) of the Act was issued and hence the entire assessment is vitiated. In reply, Ld. CIT(DR) stated that this issue now stands covered by the decision of the Hon'ble Delhi High Court in the case of Ashok Chaddha vs. ITO [2011] 337 ITR 399 (Delhi) wherein, Hon'ble Delhi High Court has considered this issue that in the case of search assessment, there is no requirement of any notice to be issued u/s. 143(2) of the Act, vide para no. 14, as under:-

“14. No specific notice was required under s. 143(2) of the Act when the notice in the present case as required under s. 153(A)(1)(a) of the Act was already given. In addition, the two questionnaires issued to the assessee were sufficient so as to give notice to the assessee, asking him to attend the office of the AO in person or through a representative duly authorized in writing or produce or cause to be produced at the given time any documents, accounts, and any other evidence on which he may rely in support of the return filed by him.”

4. After hearing the rival contentions and going through the facts of the case and the decision of the Hon'ble Delhi High Court in the case of Ashok Chaddha vs. ITO (supra), we dismiss this ground of appeal of assessee as there is no requirement of issuance of notice u/s. 143(2) of the Act in search assessment framed u/s. 153A of the Act. Hence, this issue of assessee's appeal is dismissed.

5. The next issue raised in this appeal is as regards to order of the CIT(A) in confirming the action of the AO in making the addition by invoking net profit rate 9.4% on account of alleged difference in sales account.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has submitted that sales as per return for the assessment year 2014-15 at Rs. 8,60,600/- whereas, actual sales, which were disclosed as additional sales in the statement of affairs is Rs. 43,60,600/- and thereby there is difference in sales of Rs. 35 lacs. The assessee before the AO and before the CIT(A) contended that the NP rate varies from year to year and in this year it is 9.40% whereas in immediate succeeding years i.e. AY 2015-16 the net profit rate is declared 3.25%,. The AO adopted the net profit rate at 9.40% hence, he accordingly added Rs. 3.29 lacs. The CIT(A) also confirmed the same.

7. We have noted that the profit rate varies in year to year and in this assessment year i.e. 2014-15 the profit rate declared by the assessee is 9.40% whereas in the immediately succeeding year the profit rate is 3.25% i.e. in assessment year 2014-15. Hence, taking the average of both the 6.46%, we direct the AO to restrict the NP rate on the above differential sales of Rs. 35 lacs @ 6.46%. Accordingly, this issue of assessee is partly allowed.

8. The next issue in this appeal of assessee is as regards the order of the CIT(A) in confirming the action of the AO in making aggregate addition of Rs. 22.36 lacs on account of unsecured loans u/s. 68 of the Act.

9. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the AO has recorded the fact that the assessee has taken unsecured loan of Rs. 24.50 lacs from Nirmal Kumar at the end of March, 2014. AO added Rs. 21,50,000/- being fresh unsecured loan given by Sh. Nirmal Kumar to the assessee, into the hands of the assessee. Similarly, Assessee added Rs. 1.86 lacs being fresh unsecured loan to the returned income of the assessee. The assessee was unable to prove the creditworthiness, genuineness of the loan creditors, hence, the AO added the amount of Rs. 22.36 lacs in the hands of the assessee u/s. 68 of the Act. Aggrieved assessee preferred the appeal before the Ld. CIT(A), Ld. CIT(A) confirmed the action of the AO. Aggrieved assessee is in appeal before us.

10. We noted that in the case of Shiv Kumar Gupta who has advanced Rs. 86,000/- and Shri Shiv Kumar Gupta being regular income tax payee who has filed the return at Rs. 3,17,030 and this amount was given through banking channel, copy of proof of the same are enclosed in the Assessee's paper book, hence, we delete the addition and allow this ground of appeal.

11. As regards the loan added by the AO on account of Nirmal Kumar amounting to Rs. 24.50 lacs, Ld. Counsel for the assessee filed the copy of statement confirming the bank account and stated that the assessee has taken Rs. 24.50 lacs loan but amount of Rs. 5 lacs i.e. opening balance as on 1.4.2013 i.e. received in earlier year and that cannot be considered as an amount of this year. As regards to balance amount of Rs. 19.50 lacs Ld. Counsel for the assessee submitted that assessee has filed complete details including the bank account of Nirmal Kumar which was never verified by the AO or by the CIT(A). Hence, he requested that the matter may be remitted back to the file of the AO for fresh adjudication to examine the creditworthiness and genuineness of the loan creditors, for which Ld. CIT(DR) has not objected for the same.

12. In view of the above, we restore this issue to the file of the AO to examine the creditworthiness of this loan creditor Nirmal Kumar of Rs. 19.50 lacs and genuineness of the alleged transactions in terms of section 68 of the Act. Accordingly, the issue is restored back to file the AO with the above directions. Since no further ground has been raised before us, hence, the same have become academic and need not be adjudicated at this juncture.

13. As regards ground no, 1, 2, & 6 are concerned, the same are generic and hence, need not be adjudicated.

14. As regards confirming the action of AO in charging interest u/s. 234A, 234B and 234C is concerned, the same are consequential in nature, hence, need not be adjudicate at this stage.

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

Order pronounced on 12.11.2025.

Sd/-

**(KRINWANT SAHAY)
ACCOUNTANT MEMBER**

Sd/-

**(MAHAVIR SINGH)
VICE PRESIDENT**

Date: 12-11-2025

SR Bhatnagar

Copy forwarded to: -

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

ASSTT. REGISTRAR, ITAT