

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.323/Lkw/2025
Assessment Year: 2020-21

Surya International Pvt. Ltd., A2/272, Vaibhav Khand, Gomti Nagar, Lucknow-226 010 PAN:AACCR1636G	Vs.	Central Processing Center, Bengaluru.
(Appellant)		(Respondent)

Appellant by	Shri Shubham Singh, C.A.
Respondent by	Shri Amit Kumar, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) This appeal vide I.T.A. No.323/Lkw/2025 has been filed by the assessee pertaining to assessment year 2020-21 against impugned appellate order dated 18/03/2025 (DIN & Order No.ITBA/APL/S/250/2024-25/1074634772(1) passed by learned Addl./Jt. Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. In this appeal the assessee has raised the following grounds:

"BECAUSE,

(1) Ld. CIT(A) has erred in law and on facts in upholding the validity of Assessment order under section 2(8) of the Act in the form of 'intimation' under section 143(1) dated 24.12.2021, after observing that

"Ground A: Disallowance of Rs.3,18,342/- u/s 40A(3):

The description in column 21(d) and the reply filed is as under :

<u>(d)Disallowance/deemed income u/s 40A(3)</u>	
1. On the basis of examination of books of accounts and other relevant documents/evidence, whether the expenditure covered u/s 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not furnish the details	

The reply of the auditor in this column is negative. Thus the auditor has certified that the payments were not made by account payee cheque/account payee bank draft. On the basis of the Auditor's report in Form 3CD, the CPC, Bangalore has rightly disallowed the expenses amounting to Rs. 3,18,342/- reflecting in the column 21(d) as Disallowance/deemed income under section 40A(3). In view of these facts, this ground of appeal is dismissed.

Ground C & D: Disallowance of Bank Guarantee of Rs.1,75,00,000/-

The said amount is mentioned in column 21(g) of Form 3CD uploaded by the appellant in ITBA as Particulars of any liability of a contingent nature. The column 21 of form 3 CD is regarding the expenses debited to the Profit and Loss account. The appellant in the audit report certified by an auditor itself has admitted that this bank guarantee of Rs.1,75,00,000/- has been debited to the Profit and Loss account, thus the same has been rightly disallowed by the CPC. In view of these facts as the disallowance has been made on the basis of information uploaded by the appellant in the Form 3 CD which has been prepared by the Auditor on examination of books of accounts/documents/evidences, this ground of appeal is dismissed"

(2) the said observations were made by the Id. CIT(A) on account of addition made under section 40A(3), as on account of disallowance of electricity expenses aggregating Rs.3,18,342/-, without considering the fact that as enumerated below :

- (a) *electricity Expenses had been paid by appellant, in cash at village Asroga, where no banking facilities were available, about which there was no dispute whatsoever;*
- (b) *such payments had been made to Uttar Pradesh Power Corporation Limited, a State Government Undertaking and thus payments had been made to the Government, which were covered under Rule 6DD of Income Tax Rules 1962.*

(3) *observations made by Id. CIT(A) in Ground No. 1 on account of addition made as Disallowance of Bank Guarantee amounting to Rs.1,75,00,000, without considering the facts that as enumerated below :-*

- (a) *such Bank Guarantee has not been claimed as deduction in profit and loss account and due to inadvertent mistake of auditor, same could not be added back to income of appellant*
- (b) *such Bank Guarantee has been provided by Punjab National Bank as per the proposal sanctioned by its Head office and the same was in nature of contingent liability;*

(4) *the order appealed against is contrary to facts, law and principles of natural justice.”*

(B) In this case, assessee's return of income was processed u/s 143(1) of the I. T. Act wherein the assessee's returned income was disclosed at Rs.52,32,430/- . An intimation was issued to the assessee u/s 143(1) of the Act, wherein adjustments were made and total income was determined at Rs.2,30,50,770/- after the adjustment. The aforesaid adjustments included an amount of Rs.1,75,00,000/- on account of bank guarantee. Further, an adjustment of Rs.3,08,342/- was also made on account of disallowance amounting to Rs.3,08,342/- made u/s 40A(3) of the Act, out of electricity expenses. The assessee's appeal against the aforesaid adjustments was dismissed by the learned CIT(A) vide impugned appellate order dated 18/03/2025. The present appeal has been filed by the assessee against the aforesaid impugned appellate order of learned CIT(A). In the course of

appellate proceedings in Income Tax Appellate Tribunal, a paper book containing the following particulars was filed from the assessee's side:

PAPER BOOK

Sl. No.	Particulars
1.	Copy of Independent Auditor's Report as per companies Act, 2013 for the Financial Year 2019-20.
2.	Copy of 'original' Form 3CA (Tax Audit Report) as per section 44AB, for the Financial Year 2019-20, dated 17 October, 2020 .
3.	Copy of Form 29 B for computing Book Profit
4.	Copy of computation of Income for the Assessment Year 2020-21.
5.	Copy of written submission dated 2nd June, 2022 filed before ld. Commissioner of Income Tax (Appeals)/ NFAC, Delhi for the Assessment Year 2020-21.
6.	Copy of written submission dated 22nd October, 2022 filed before ld. Commissioner of Income Tax (Appeals)/ NFAC, Delhi for the Assessment Year 2020-21.
7.	Copy of written submission dated 1st January, 2024 filed before ld. Commissioner of Income Tax (Appeals)/ NFAC, Delhi for the Assessment Year 2020-21.
8.	Copy of written submission dated 12th January, 2024 filed before

	Hon'ble Commissioner of Income Tax, Appeal, Pune, for the Assessment Year 2020-21.
9.	Copy of written submission dated 14 th February, 2025 filed before ld. Commissioner of Income Tax (Appeals)/ NFAC, Pune, for the Assessment Year 2020-21
10.	Copy of 'Revised' Form 3CA (Tax Audit Report) as per section 44AB, for the Financial Year 2019-20
11.	Copy of order dated 8.5.2025 passed by Hon'ble ITAT, Ahmedabad 'D' Bench, Ahmedabad in the case of The Asstt. CIT vs. Mahesh Mohanbhai Patel (HUF) in ITA No.1147/Ahd/2024.
12	Copy of order dated 6.12.2013 passed by Hon'ble ITAT, Delhi 'B' Bench, New Delhi in the case of DCIT vs. M/s Dwarikadish Spinners Ltd in ITA No.4782 & 4783/Del/2012.
13	Copy of order dated 21.12.2011 passed by Hon'ble ITAT, Kolkata 'A' Bench, Kolkata in the case of The Asstt. CIT vs. M/s Kay Bee Industrial Alloys Pvt. Ltd in ITA No.1032/Kol/2011.

(C) First we take up the issue regarding adjustment made on account of bank guarantee. The relevant portion of the order of the learned CIT(A) is reproduced as under:

"Ground C & D: Disallowance of Bank Guarantee of Rs.1,75,00,000/-

The said amount is mentioned in column 21(g) of Form 3CD uploaded by the appellant in ITBA as Particulars of any liability of a contingent nature.

The column 21 of form 3CD is regarding the expenses debited to the Profit and Loss account. The appellant in the audit report certified by an auditor itself has admitted that this bank guarantee of Rs.1,75,00,000/- has been debited to the Profit and Loss account, thus the same has been rightly disallowed by the CPC. In view of these facts as the disallowance has been made on the basis of information uploaded by the appellant in the Form 3CD which has

been prepared by the Auditor on examination of books of account/documents/evidences, this ground of appeal is dismissed."

(C.1) At the time of hearing, learned A.R. for the assessee submitted that the amount of Rs.1,75,00,000/- was mentioned by the tax auditor by mistake, in Column 21(g) of Form 3CD of the audit report. He further submitted that revised tax audit report was prepared by the auditor rectifying the aforesaid mistake. He placed reliance on the order dated 08/05/2025 of the Ahmedabad Bench of the ITAT in the case of ACIT vs. Mahesh Mohanbhai Patel (HUF) in I.T.A. No.1147/Ahd/2024, order dated 06/12/2013 of Delhi Bench of the ITAT in the case of DCIT vs. Dwarikadish Spinners Ltd. in I.T.A. No.4782/Del/2012 and order dated 12/12/2011 of Kolkata Bench of the ITAT in the case of CIT vs. Kay Bee Industrial Alloys Pvt. Ltd. in I.T.A. No.1032/Kol/2011. He also drew our attention to the copy of independent auditor's aforesaid report as per Companies Act. He also placed reliance on the aforesaid paper book, referred to in foregoing paragraph (B) of this order.

(C.2) Learned D.R. submitted that the adjustment was made by Income-tax Department on the basis of documents filed by the assessee along with return of income; and If there was any mistake in reporting, in these documents, it was brought to the notice of the learned CIT(A) for the first time. Further, he submitted, although in the paper book the assessee has certified that documents mentioned at Sl. No. 1 to 10 of the index were placed before the authorities below; the fact is that documents at Sl.No. 5 to 10 of the paper book were filed for the first time before the learned CIT(A). He submitted that the documents submitted by the assessee for the first time before the learned CIT(A) should be subjected to verification at the end of the Assessing Officer. For this purpose, he submitted, the issue

should be remitted to the file of the Assessing Officer with the direction to pass order in accordance with law.

(E) We have heard both sides. The aforesaid amount of Rs.1,75,00,000/- has been reported by the tax auditor at Sl.No.21(g) of the audit report in Form 3CD. Under Sl.No. 21, the tax auditor is to give the details of amounts debited to profit & loss account, which are either not allowable, or are of doubtful allowability. These include the following:

21	a)	Please furnish the details of amounts debited to the profit & loss account, being in the nature of capital, personal, advertisement expenditure etc.		
		1	Expenditure of capital nature	NIL
			Particulars	Amount in (Rs.)
				Remarks if any
		2	Expenditure of personal nature	
			Particulars	Amount in Rs.
			DONATION	2,25,000
		3	Expenditure of advertisement in any souvenir, brochure, tract, pamphlet or the like, published by a political party	NIL
			Particulars	Amount in Rs.
				Remarks if any
		4	Expenditure incurred at clubs being entrance fees and subscriptions	NIL
			Particulars	Amount in Rs.
				Remarks if any
		5	Expenditure incurred at clubs being cost for club services and facilities used	NIL
			Particulars	Amount in Rs.
				Remarks if any
		6	Expenditure by way of penalty or fine for violation of any law for the time being force	NIL
			Particulars	Amount in Rs.
				Remarks if any
		7	Expenditure by way of any other penalty or fine not covered above	NIL
			Particulars	Amount in Rs.
				Remarks if any
		8	Expenditure incurred for any purpose which is an offence or which is prohibited by law	NIL
			Particulars	Amount in Rs.
				Remarks if any

b) Amounts inadmissible under section 40(a)															
i	As payment to non-resident referred to in sub-clause (i)														
	A Details of payment on which tax is not deducted		NIL												
	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the payee	Address Line 1	Address Line 2	City or town or district	PINcode	Remarks if any					
	B Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)										NIL				
	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the payee	Address Line 1	Address Line 2	City or town or district	PIN Code	Remarks if any					
ii	As payment to resident referred to in sub-clause (ia)														
	A Details of payment on which tax is not deducted		NIL												
	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the payee	Address Line 1	Address Line 2	City or Town or District	PIN Code	Remarks if any					
	B Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139										NIL				
	Date of payment	Amount of payment	Nature of payment	Name of the payer	PAN of the payer	Address Line 1	Address Line 2	City or town or district	PIN Code	Remarks if any					
iii	As payment referred to in sub-clause (iv)														
A	Details of payment on which levy is not deducted		NIL												
	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the payee	Address Line 1	Address Line 2	City or town or district	PIN Code	Remarks if any					
B	Details of payment on which levy has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139										NIL				
	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the payee	Address Line 1	Address Line 2	City or Town or District	PIN Code	Remarks if any					
iv	Fringe benefit tax under sub-clause (ic)														
v	Wealth Tax under sub-clause (iia)														
vi	Royalty, license fee, service fee etc. under sub-clause (iib)														
vii	Salary payable outside India/to a non resident without TDS etc. under sub-clause (iii)		NIL												
	Date of payment	Amount of payment	Name of the payee	PAN of the payee	Address Line 1	Address Line 2	City or Town or District	PIN code	Remarks if any						
Viii	Payment to PARTNERSHIP FIRM/other fund etc. under sub0clause (iv)														
IX	Tax paid by employer for perquisites under sub-clause (v)														
c)	Amounts debited to profit & loss account being interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof		NIL												
	Particulars	Section	Amount debited to profit & loss account	Description	Amount admissible	Amount inadmissible	Remarks								
d)	Disallowance/deemed income under section 40A(3)														
	A On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details		No												
	Date of payment	Nature of payment	Amount	Name of the payee	PAN of the payee										

						(Optional)
	24 DEC 2019	Electricity Charges	85,998	State Power Corporation		
	07 Feb 2019	Electricity Charges	1,27,085	State Power Corporation		
	25 Feb 2020	Electricity Charges	1,05,259	State Power Corporation		
B	On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in section 40A(3A) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft if not, please furnish the details of amount deemed to be the profits and gains of business or profession under section 40A(3A)					Yes
	Date of payment	Nature of payment	Amount	Name of payee	PAN of payee	Remarks if any
e)	Provision for payment of gratuity not allowable under section 40A(7)			NIL		
f)	Any sum paid by the assessee as an employer not allowable under section 40A(9)			NIL		
g)	Particulars of any liability of a contingent nature			Nature of liability	Amount	
				Bank Guarantee	17500000.00	
h)	Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income			NIL		
	Particulars		Amount	Remarks if any		
i)	Amount inadmissible under the proviso to section 36(1)(iii)		Nil			

When the tax auditor reports a figure in Sl.No. 21(g) and the tax audit report is filed by the assessee himself in the Income Tax Department, and no case is made with supporting materials for allowability of the reported figure, *prima facie* adjustment of the amount u/s 143(1) of the Act is quite understandable. What the assessee desires is a decision on merits that the aforesaid amount of Rs.1,75,00,000/- reported at Sl.No. 21(g) of the tax audit report was not disallowable, and was not to be included as assessee's total income. For this, decision on merits, it is quite a reasonable request from Revenue that the entire issue should first be examined at the level of the Assessing Officer. The reliance placed by the assessee on the aforesaid orders of Ahmedabad Bench of the ITAT in the case of ACIT vs. Mahesh Mohanbhai Patel (HUF) in I.T.A. No.1147/Ahd/2024, Delhi Bench of the ITAT in the case of DCIT vs. Dwarkadish Spinners Ltd. in I.T.A. No.4782/Del/2012 and Kolkata Bench of the ITAT in the case of CIT vs. Kay Bee Industrial Alloys Pvt. Ltd. in I.T.A. No.1032/Kol/2011 does not have any force because this case before us stands on a totally different factual matrix. In the aforesaid cases relied upon by learned A.R. for the assessee,

additions were made by Income Tax Department in an assessment order and not by way of adjustment and intimation u/s 143(1) of the Act. Consequently, cases on which the learned A.R. for the assessee has placed reliance, orders have been passed by the Income Tax Appellate Tribunal on merits. However, in the present case before us, the merits of the case cannot be decided without proper factual verification of the case at the level of the Assessing Officer. There could be many aspects requiring verification. What was the exact nature of the figure reported as contingent liability? Was it reported on gross basis or net basis? What were the accounting entries in the books of account? Does it have any connection with earlier and/or subsequent year(s)? etc. etc. Material on records are insufficient for a categorical decision by us, either way, on merits. In this set of facts and circumstances, we are in agreement with the submissions made by learned D.R. that the matter requires verification at the end of the Assessing Officer. We also note that learned CIT(A) did not provide any opportunity to the Assessing Officer to examine the documents filed for the first time during appellate proceedings before the learned CIT(A). Therefore, we remand this matter to the file of the Assessing Officer with the direction to pass order in accordance with law after providing reasonable opportunity to the assessee and after considering all relevant materials.

(E.1) We now come to the second issue regarding addition amounting to Rs.3,18,342/- made under section 40A(3) of the Act. At the time of hearing, the learned A.R. for the assessee submitted that the aforesaid amount represented payment of electricity expenses in cash. Learned A.R. for the assessee submitted that these payments had to be made in cash because banking facilities were not available in close vicinity in the area. In response to a specific query from the Bench whether all the payments were made in cash or some of the payments of electricity expenses were made through

banking channels also; the A.R. for the assessee submitted that payments of electricity expenses were made both in cash and through banking channels. The learned Departmental Representative relied on the impugned appellate order of learned CIT(A). There is lack of clarity on perusal of materials on record why, partly the electricity expenses could not be made through banking channels in expenses due to fact of banking facility in close vicinity, whereas the remaining expenses were paid through banking channels. It is not clear whether the payments of electricity expenses pertained to different installations located at different places and whether some of the places were indeed such where banking facilities were not available in close vicinity. Therefore, this issue is also remitted back to the file of the Assessing Officer with the direction to pass order in accordance with law after providing reasonable opportunity to the assessee and after considering all relevant materials. All the grounds of appeal are treated as disposed of in accordance with the aforesaid directions.

(F) In the result, the appeal is partly allowed for statistical purposes.

(Order pronounced in the open court on 08/01/2026)

Sd/.
(KUL BHARAT)
Vice President

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:08/01/2026

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. D.R. ITAT