

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-1', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 3496/Del/2015 : Asstt. Year : 2008-09**

Sh. Satender Singh, A-45, Marble Market, Mangol Kalan, Delhi-110085	Vs	Income Tax Officer, Ward-21(3), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AYRPS6939H</b>		

**Assessee by : Sh. Narvinder Singh, CA**

**Revenue by : Ms. Anima Barnwal, Sr. DR**

<b>Date of Hearing : 26.07.2016</b>	<b>Date of Pronouncement : 29.07.2016</b>
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**ORDER**

This is an appeal by the assessee against the order dated 20.02.2015 of Id. CIT(A)-XIII, New Delhi.

2. Following grounds have been raised in this appeal:

*“1. That without prejudice, Hon'ble CIT-(A) has erred in law as well as in the facts of the case in arbitrarily granting a relief of 10% of various expenditure and confirming addition of 20% of expenditure amounting to Rs.2,53,258 as follows:-*

*a) Rs.2,05,940 being 20% of Purchases for Rs. 1029700/-*

*b) Rs.21,200 being 20% of Salaries for Rs. 106000/-*

*c) Rs.5,959 being 20% of Workmen and staff welfare expenses for Rs. 29793/-*

- d) Rs.3,953 being 20% of Conveyance expenses for Rs. 19769/-*
- e) Rs.3,648 being 20% of Telephone Expenses for Rs.18240/-*
- f) Rs.12,558 being 20% of Other Expenses for Rs.62789/-*

*2. That without prejudice, Hon'ble CIT-(A) has rejected the claim for deduction u/s 80C because the appellant failed to produce any documentary evidence. However, the documentary evidences are available now.*

*3. The Hon'ble CIT-(A) has erred in law as well as in the facts of the case in confirming lump sum addition of Rs. 1,56,019/- in sales. Although the Hon'ble CIT-(A) has deleted the addition of Rs. 18,80,000/- being credit entries in bank account. Hence Hon'ble CIT-(A) has accepted the sales figures provided by the appellant but erred in not deleting the enhancement in sales.*

*The appellant craves leaves to add, amend, alter or vary the above grounds of appeal before or at the time of hearing.”*

3. Vide Ground No. 1, the grievance of the assessee relates to the confirmation of addition made by the AO out of the various expenses.

4. Facts of the case in brief are that the assessee filed the return of income on 30.05.2008 declaring an income of Rs.1,10,480/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. The AO made

the disallowance of Rs.3,79,887/- by disallowing 30% of the various expenses and observing as under:

*“During the course of assessment proceedings, it is observed that the assessee has debited a sum of Rs.10,29,700/- on account of purchases, Rs.1,06,000/- on account of salaries, Rs.29,793/- on account of workmen and staff welfare expenses, Rs.62,789/- on account of conveyance expenses, Rs.18,240/- on account of telephone expenses, Rs.62,789/- on account of other expenses, Since the assessee has not furnished any bill or voucher in support of the above expenses. These expenses, therefore remains unverified and unsubstantiated. Hence 30% out of these expenses are disallowed and added back to the total income of the assessee for the year under consideration which comes to Rs.3,79,887/-.*

*(10,29,700+1,06,000+29,793+19,769+18,240+62,789 = Rs.12,66,291)*

*(Addition: Rs.31,276/-)”*

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

*“The AO has grossly erred in making this addition. This addition has been made only on presumptive basis. Even if we go through the provisions of section 44AF of Income Tax Act, 1961, the section allows the assessee to show a net profit of 5% or higher amount. All deductible expenses allowable under the provisions of section 30 to 38 are deemed to have been given full effect. Hence, the presumption of the AO in making presumption addition on account of unverified & unproduced vouchers is unsustainable.*

*Also, a lump sum increase of 10% in turnover is base of presumptive basis and without any reasonable ground is unsustainable.”*

6. The Id. CIT(A) after considering the submissions of the assessee and sustained the disallowance to the extent of 20% of the various expenses by observing as under:

*“The reason given by AO and the submission of the appellant are considered. The appellant admitted that no separate record maintained for cash received from the customers and the amount deposited in the bank account. As such the probability of excessive expenditure recorded in the books of account cannot be ruled out. However, at the same time, the disallowance of 30% expenses is also on higher side. Accordingly, the appellant is entitled to relief of Rs.1,26,629/- being 10% of the expenses and addition of the balance amount of Rs.2,53,258/- is confirmed.”*

7. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the expenses were incurred on account of business exigency and were related to the business. Therefore, the disallowance made by the AO and sustained by the Id. CIT(A) was not justified.

8. In her rival submissions the Id. Senior DR strongly supported the orders of the authorities below.

9. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it

is noticed that the AO made the disallowance out of purchase, salaries, workmen and staff welfare, conveyance and telephone expenses @ 30% and the Id. CIT(A) allowed the relief @ 10% and sustained the disallowance of those expenses to the extent of 20%. It is noticed that no cogent reason has been assigned either by the AO or by the Id. CIT(A) in support of their action. In my opinion, the disallowance made out of purchases was not justified when the sales against the said purchases have been accepted. Similarly, there is no justification for making the disallowance out of the salary expenses, workmen and other expenses, particularly when, nothing is brought on record that those expense were not incurred for the purpose of business of the assessee. Therefore, the disallowance sustained by the Id. CIT(A) relating to the aforesaid items is deleted. As regards to the remaining expenses pertaining to conveyance and telephone expenses. In my opinion, in such type of cases personal element cannot be ruled out. Therefore, the disallowance to the extent of 10% out of the conveyance expenses of Rs.19,769/-, telephone expenses of Rs.18,240/- and other expenses of Rs.16,789/- is sustained. In other words, disallowance of Rs.10,089/- (10% of Rs.62,781+18,240+19,869) is sustained and remaining disallowance is deleted.

10. Ground No. 2 was not pressed as such the same is dismissed as not pressed.

11. Next issue vide Ground No. 3 relates to the sustenance of addition of Rs.1,56,019/-.

12. The facts related to this issue in brief are that the AO made the impugned addition by observing as under:

*“The assessee has filed a return of income for Rs.1,10,480/- and the total turnover of the assessee is Rs.15,60,190/-. The assessee has not furnished any document in support of his income/turnover. Therefore to cover up any leakage of revenue a lump sum amount of Rs.1,56,019 which is 10% of the total turnover is added back to the income of the assessee.”*

13. Being aggrieved the assessee carried the matter to the Id. CIT(A) who confirmed the addition by observing that the assessee failed to substantiate the claim that entire sale was included in the declared turnover and hence 10% of the turnover declared added by the AO was confirmed.

14. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that a lump sum increase of 10% in the turnover was based on presumptive basis and without any reasonable ground. It was submitted that the Id. CIT(A) accepted the deposits of Rs.18,80,000/- in the bank account from the realization of the sales and the debtors. However, the addition made by the AO @ 10% of the sale was wrongly sustained.

15. In her rival submissions the ld. Senior DR strongly supported the orders of the authorities below.

16. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the assessee had declared taxable income of Rs.1,10,480/- and disclosed the turnover at Rs.15,80,190/-. It, therefore, appears that the income disclosed by the assessee was out of its business activity. The AO did not point out any suppressed sale or inflated purchases, therefore, the addition made @ 10% of the sales was only on the basis of surmises and conjecture which is not tenable in the eyes of law. I, therefore, considering the totality of the facts delete the addition sustained by the ld. CIT(A).

17. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 29/07/2016)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 29/07/2016**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**