

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Shri M.Balaganesh, AM & Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 320/Kol/2016

Assessment Year : 2012-13

Shri Davinder Pal Singh  
[PAN: ALDPS 1013 R]  
(Appellant)

-vs-

DCIT, Port Blair, A & N Island

(Respondent)

For the Appellant : Shri V.N. Purohit, FCA

For the Respondent : Shri Saurabh Kumar, Addl. CIT (DR)

Date of Hearing : 16.10.2017

Date of Pronouncement : 08.11.2017

**ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-1, Kolkata [in short the Ld CIT(A)] in Appeal No.1109/CIT(A)-1/P.B/2014-15 dated 02.02.2016 against the order passed by the DCIT, Circle-3(2), Port Blair [ in short the Ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 12.03.2015 for the Assessment Year 2011-12.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in restricting the disallowance of expenses at 5% of total thereon as against 10% made by the Ld. AO, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is engaged mainly in the business of hotel, restaurant, bar, tours & travels. The return of income for the assessment year 2012-13 filed by the assessee electronically on 15.05.2013 declaring total taxable

income of Rs. 33,43,580/-. The assessee has maintained regular books of accounts such as cash book, ledger and other supporting registers together with relevant bills and vouchers which were duly submitted before the Ld. AO along with the tax audit report and its annexures. These books of accounts, documents and evidences were examined by the Ld. AO on test check basis which is an admitted fact in the assessment order. The Ld. AO proceeded to make arbitrary disallowance of certain expenses on the ground that bills and vouchers were not produced by the assessee; that certain payments were made in cash and that the payment vouchers did not contain revenue stamp thereon. Accordingly, he doubted the genuineness of those expenses and proceeded to make ad hoc disallowance of the following expenditure @ 10% thereon:

	<i>Expenses</i>	<i>Amount</i>	<i>Amount Disallowed</i>
1	<i>Purchases</i>	1,17,12,569	11,71,257
2	<i>Repairs &amp; Maintenance (Total)</i>	41,94,735	4,19,474
3	<i>Gardening Expenses</i>	4,67,400	46,740
4	<i>Travelling Expenses</i>	6,83,381	68,338
5	<i>Salary, Wages &amp; Bonus</i>	26,30,100	2,63,010
6	<i>Linen A/c</i>	8,25,550	82,555
7	<i>Local Conveyance</i>	2,50,805	25,081
8	<i>Housekeeping Expenses</i>	8,95,045	89,505
	<b><i>Total</i></b>	<b>2,16,59,585</b>	<b>21,65,959</b>

Based on this, the Ld. AR disallowed a sum of Rs. 21,65,959/- in the assessment.

4. Before the Ld. CIT(A), the assessee stated that the books of accounts of the assessee had not been rejected by the Ld. AO u/s 145(3) and no defects were found in the evidences produced thereon. There was also argued that the Ld. AO's statement is contradictory in as much as, on one hand, he observes that no bills and vouchers were produced by the assessee in respect of aforesaid expenditure and on the other hand, he observes that the vouchers produced did not contain revenue stamp for payments

exceeding Rs. 5,000/-. It was also submitted that the net profit percentage declared by the assessee for the last three years including the year under appeal are as under:

Asst Year 2010-11	3.47%
Asst Year 2011-12	4.35%
Asst year 2012-13(i.e. Year under appeal)	5.58%

The assessee also submitted a table of various expenditures sought to be disallowed by the Ld. AO on an ad hoc basis explaining the percentage of each such expenditure to the turnover of the relevant year and also submitted that there was no major variation in each of the heads of expenditure in the last three years including the year under appeal.

The table produced before the Ld. AO is as under:

Expenditure	Assessment Year 2010-11 (Rupees in Lakhs)			Assessment Year 2011-12 (Rupees in Lakhs)			Assessment Year 2012-13(Rupees in Lakhs)		
	Amount	T.O.	Ratio	Amount	T.O.	Ratio	Amount	T.O.	Ratio
Purchase	37.01	99.68	37.13%	77.73	222.05	35.01%	11.71	35.21	33.26%
Rep. & Maint.	2.73		2.74%	9.90		4.46%	41.94		11.91%
Gardening	1.21		1.22%	2.54		1.15%	4.67		1.33%
Travelling	1.10		1.11%	2.59		1.17%	6.83		1.94%
Salary & W.a	11.57		11.62%	18.33		8.25%	26.30		7.47%
Linen A/c	3.57		3.59%	5.69		2.56%	8.25		2.34%
Local Conv.	0.75		0.76%	0.96		0.43%	2.50		0.71%
House Keeping	3.40		3.41%	6.68		3.01%	8.95		2.54%

Accordingly, it was pleaded that no disallowance ought to have been made by the Ld. AO in these facts and circumstances. The Ld. CIT(A) agreed with the contentions of the assessee that the net profit ratio has shown consistent increase compared between the two preceding assessment years. He held that however, that mere reliance of the audit report is not sufficient to justify the genuineness of claim of expenditure. However, he held that it is reasonable to hold that disallowance of expenditure to 5% of total thereon as against 10% disallowed by the Ld. AO and accordingly, brought the disallowance figure of Rs. 10,82,979/-. Aggrieved, the assessee is in appeal before us on the following grounds:

1. *For that on the facts and circumstances of the case, the Ld. CIT(A)-1, Kolkata has erred both in facts and in law in restricting the arbitrary and ad hoc addition to 5% of genuine business expenses Rs. 21,659,585/- i.e. restricting the addition to Rs. 1,082,979/- which is wholly unjustified and contrary to natural justice.*
2. *The appellant craves leave to add, to modify, the grounds of appeal before or at the time of hearing of the appeal.*

5. We have heard the rival submissions. At the outset, we find that the Ld. AO had not rejected the books of accounts u/s 145(3) of the Act. Without resorting to the same , there is no scope for making any addition on an estimate basis. We find that the Ld. AO has made contradictory statements as rightly contended by the Ld. AR in as much as on one hand, the Ld. AO states that no vouchers/bills were produced by the assessee and on the other hand, he states that the vouchers produced did not contain revenue stamp. This reasoning, in our considered opinion, cannot be a ground for disallowance of expenditure on an ad hoc basis. Accordingly, we hold that no disallowance of expenditure is to be made in the facts and circumstances of the case, in view of the fact, the assessee has also shown increased net profit as compared to the preceding assessment year. Accordingly, the grounds raised by the assessee are allowed.

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

**Order pronounced in the Court on 08.11.2017**

Sd/-  
[S.S. Viswanethra Ravi]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 08.11.2017  
SB, Sr. PS

