

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1214/Chd/2017
Assessment Year: 2011-12

Shri Kamal Kishore Mahajan
Near Bus Stand Tissa
Tehsil Bhuraha, Chamba
Himachal Pradesh

Vs.

The ITO
Dalhousie at Banikhet
Chamba, H.P.

PAN No. AFXPM9245B

(Appellant)

(Respondent)

Assessee By : Sh. P.N. Arora
Revenue By : Smt. Chandrakanta

Date of hearing : 05/03/2018
Date of Pronouncement : 22/05/2018

ORDER

PER DR. B.R.R. KUMAR A.M.

The present appeal has been filed by the Assessee against the order of Ld. CIT(A), Palampur (H.P.) dt. 30/05/2017.

2. In the present appeal assessee has raised following effective grounds:

5. That the worthy CIT(A) has erred in confirming the following disallowances made by the A.O.:-

(i) Wages and Labour expenses	Rs. 440133/-
(ii) Misc. Expenditure & Repair & Maintenance	Rs. 5567/-
(iii) Telephone Travelling & Vehicle Expenditure.	Rs. 41,784/-

All these expenses are related to business and should have been allowed in toto. Alternatively, the disallowance made by the Assessing Officer and confirmed by the worthy CIT(A) is very high & excessive.

6. That again the Ld. CIT(A) has grossly erred in confirming the addition of Rs. 278741/- under the head shuttering material expenses made by the A.O. All the expenses are related to business and should have been allowed in toto. Alternatively, the disallowance made is very high & excessive.

7. That again the worthy CIT(A) has grossly erred in confirming the addition of Rs. 217441/- on account of so-called low household expenses. The expenses shown are quite adequate and reasonable and should have been accepted by the authorities below. Alternatively the addition made by the Assessing Officer and confirmed by the Ld. CIT(A) is very high & excessive.

8. That again the CIT(A) has erred in confirming the addition of Rs. 30,28,065/- on account of so called cash payments exceeding Rs. 20,000/- in a day. The authorities below did not appreciate that all the payments made to single person in a day were below Rs. 20,000/- and there was no violation of provision of section 40A(3) and this point was made clear vide our reply dt. 10/03/2014 before the Assessing Officer in which it was made clear that no payment exceeding Rs. 20,000/- was made to single person in a day. Alternatively the addition made is very high & excessive.

3. The assessee has filed amended grounds of appeal which are considered for disposal herein.

4. Brief facts of the case are that the assessee is a Civil Contractor filed return of income declaring taxable income of Rs. 9,69,110/- . The hearings / adjournments were held on 31/10/2013 , 06/11/2013, 12/11/2013, 28/11/2013, 06/12/2013, 16/12/2013, 20/12/2013, 26/12/2013, 15/01/2014, 28/01/2014 and 31/01/2014 before the Assessing Officer. Hearings were fixed on 05/07/2016, 26/07/2016, 06/09/2016, 15/12/2016, 10/03/2017, 19/04/2017 and 26/05/2017 before the Ld. CIT(A).

5. Disallowance – Wages, Repair and Maintenance, Telephone and Travelling Expenses.

5.1 The Assessing Officer disallowed 10% of expenditure owing to non production of complete books of accounts from which vouchers / muster rolls. The Ld. CIT(A) has confirmed the order of the Assessing Officer as books of accounts and bills were not produced.

5.2 Before us, the Ld. AR contested that no disallowance can be made without rejecting the books of accounts under section 145(3). He further argued that wages and labour expenses, Repair and Maintenance, Telephone and Travelling Expenses are related to business and the expenses were fully vouched. Since the disallowance was made as assessee could not produce the bills / vouchers before the Assessing Officer, the assessee is hereby directed to produce the bills / vouchers so as to allow the expenditure. It is hereby directed that the expenses may be allowed as per the law after verification of the vouchers submitted by the assessee.

5.3 The appeal of the assessee on this ground is allowed for statistical purposes.

6. Disallowance – Shuttering material expenses

6.1 The Assessing Officer disallowed the shuttering material expenses treating the same as capital expenditure. Shuttering material is used for erection and execution of concrete works and the material cannot be reused. It is the expenses incurred while executing the contract works on a regular basis. Hence it cannot be treated as a capital expenditure. The addition made is hereby deleted.

6.2 The appeal of the assessee on this ground is allowed.

7. Disallowance- House Hold Expenses

7.1 The Assessing Officer made addition by observing that the total expenses incurred by the assessee were Rs. 3,20,000/- out of which payment of Rs. 1,97,530/- to SREI Finance Rs. 41,000/- to M&M and Rs. 58,866/- paid to LIC. The Assessing Officer held that the assessee was left with only Rs. 22,500/- with which he cannot meet the household expenses. The Ld. AR argued that the wife of the assessee is assessed to income tax and withdrew an amount of Rs. 1,80,000/- for household expenses. The assessee is also residing in self occupied house hence there were no rental expenditure. Keeping in view the facts and circumstances peculiar to this case no addition on this ground is called for.

7.2 The appeal of the assessee on this ground is allowed.

8. Cash Payments under section 40A(3):

8.1 The Assessing Officer has disallowed the amounts under section 40A(3) on account of material purchases as the assessee did not produce relevant accounts before him.

8.2 Before the Ld. CIT(A) the assessee contested that no amount exceeding Rs. 20,000/- was paid on a single day to a single person. The Ld. CIT(A) held that the assessee has filed only a copy of the ledger account for the material purchased which do not depict the details of the persons to whom the payments have been made and also held that no bills and vouchers for the material expenses were produced and accordingly confirmed the addition.

8.3 Having gone through the facts of the case and hearing the arguments, we feel that interest of justice would be met if another opportunity be given to the assessee. Hence we direct the assessee to produce the bills and vouchers

along with copy of the ledger account for verification. The Assessing Officer is directed to examine the details submitted and allow the expenditure as per law.

8.4 The appeal of the assessee on this ground is allowed for statistical purposes.

9. As a result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Dated : 22/05/2018

AG

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR

Sd/-
(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER