

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI N.K. BILLAIYA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 139/RPR/2014  
Assessment Year: 2011-12**

The Dy. Commissioner of Income-Tax-2(1), Central Revenue Building, Civil Lines, Raipur (C.G.)	<b>Vs.</b>	M/s Arya Energy Ltd., C/o Avinash Builders, Avinash House, Near Anupam Garden, G.B. Road, Raipur (C.G.) PAN: AAGCA2002F
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri P.K. Mishra (DR)  
Assessee by : Shri Abhishek Jain (AR)

Date of Hearing: 07/03/2018  
Date of Pronouncement: 25/05/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the revenue against order dated 25.04.2014 passed by the Ld. Commissioner of Income Tax (Appeals), Raipur, for the assessment year 2011-12, whereby the Ld. CIT (A) has allowed the appeal filed by the assessee against assessment order passed by the AO u/s 143 (3) read with section 153(1)(b) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee company is engaged in providing consultancy services. Search and seizure operation u/s 132 of the Act was carried out at the business premises of the assessee. The assessee filed return of income declaring the total income of Rs. 4,02,460/-. The assessment was completed u/s 143 (3) read with section

153A (1)(b) determining the total income at Rs. 96,93,460/- after making an addition of Rs. 92,91,000/- on account of unexplained expenditure u/s 69C of the Act on the ground that during the course of search u/s 132 of the Act a loose paper was found in which number of amounts have been recorded against different items of works/persons under the head AEL expenses. The total amount recorded in the said paper was Rs. 92,91,000/- The assessee explained that this was only a projection for the expenses which was likely to incur for the project. The AO rejected the same and added the said amount to the income of the assessee. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee allowed the appeal of the assessee and deleted the addition made by the AO. The revenue is in appeal before the Tribunal against the impugned order passed by the Ld. CIT (A).

3. The revenue has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“Whether in law and on facts & circumstances of the case, the Learned CIT (A) has erred in deleting the addition of Rs. 92,91,000/- made by the AO as unexplained expenditure u/s 69C of the I.T. Act, 1961.”*
2. *The order of the Ld. CIT (A) is erroneous both in law and on facts.”*

4. Before us, the Ld. Departmental Representative (DR) relying on the assessment rider submitted that since the assessee has failed to explain the expenditure recorded in the loose paper recovered during the search proceedings, the Ld. CIT (A) has wrongly deleted the addition made by the AO.

5. On the other hand, the Ld. counsel for the assessee relying on the findings of the Ld. CIT (A) submitted that the findings of the Ld. CIT (A) is based on the judgments of the High Courts and the decisions of the various Benches of the ITAT. The Ld. counsel for the assessee further submitted that since the Ld. CIT(A) has decided this ground of appeal by following the decisions rendered in case of *DCIT Vs. Radhe Developers India Ltd. (2010) 329 ITR 1 (Guj)*, *CIT vs Anil Bhalla (2010) 322 ITR 191 (Del)* *CIT vs. Maulik Kumar K. Shah (2008) 307 ITR 137 (Guj)*, *Commissioner of Income Tax Vs. Atam Valves (P) Ltd. (2009) 184 Taxman 6 (P&H)* *Nagarjuna Construction Co. Ltd. Vs. Deputy CIT (2012) 52 SOT 178 (Hyderabad) (URO)*, *Amar Natvarlal Vs. ACIT (1197) 57 TTJ (Ahd) 454: 60 ITD 560* and *Nishant Construction Pvt. Ltd. vs ACIT, ITA No 1505/Ahd/2015* by the Hon'ble High Courts and the Tribunal, there is no merit in the appeal of the revenue.

6. We have heard the rival submissions of the parties and also gone through the relevant material on the record including the cases relied upon by the Ld. CIT(A). The Ld. CIT(A) has decided this ground of appeal of the assessee holding as under:

*“6. I have carefully gone through the assessment order, and submissions of the appellant. Extensive search has taken place in the business premises of the appellant company and residential premises of its director. The only document found is a loose paper where lump sum amount was found noted against various heads. Neither any unexplained investment nor any other evidence was found suggesting any concealment of income. Perusal of loose paper reveals that item no. 15 is related to expenses for formation of the company amounting to*

Rs. 1,41,000/-. The company was formed on 05.03.2007 and therefore, such item cannot be related with the year under consideration. Similarly, item no. 14 regarding civil contractor for boundary wall Rs. 5,00,000/-, item no. 18 Other miscellaneous expenses Rs. 4,00,000/-, item no. 10 tour expenses, Rs. 18,00,000/- which clearly indicates that these are projected figures and not the actual expenditure. Had there been actual payment, the date of payment or actual amount of expenses would have been mentioned. The figures found to be noted in thousand clearly explain that it is a projected figure. In the absence of any period or date found therein, the presumption of incurring of expenses is incorrect. The loose paper itself is not enough to make addition unless some corroborative evidence was found during search. In the course of extensive search, no evidences were found regarding unaccounted payment and therefore, such projected figure cannot be presumed to be actual payment. In similar facts various judicial authorities have also held that additions on the basis of seized paper alone cannot be made without any corroborative evidence. In case of DCIT Vs. Radhe Developers India Ltd. (2010) 329 ITR 1 (Guj), it was held that where the addition made on the basis of figures in the loose paper have been deleted by the Tribunal after appreciating evidence on record found that the said figures were projected budgetary estimate and no transaction had taken place and no evidence on record to indicate contrary is found, no interference in the order of Tribunal is called for. In case of CIT vs Anil Bhalla (2010) 322 ITR 191 (Del) it was held that addition on account of unexplained expenditure cannot be sustained in the absence of independent material to show that jotting on paper represented unaccounted transaction of the assessee. In the case of CIT vs. Maulik Kumar K. Shah (2008) 307 ITR 137 (Guj), it was held that additions made by AO towards on money on the basis of seized paper alone without any corroborative evidence cannot be sustained. In the case of Commissioner of Income Tax Vs.

*Atam Valves (P) Ltd. (2009) 184 Taxman 6 (P&H) it was held that in absence of any other material, the loose sheet itself were not enough to make addition as per estimate of AO. In case of Nagarjuna Construction Co. Ltd. Vs. Deputy CIT (2012) 52 SOT 178 (Hyderabad) (URO) it was held that no addition can be made on the basis of dumb documents/note book/loose slips in the absence of any other material to show that the appellant has carried on money lending business. Noting on the note book/diary/loose sheets are required to be supported/corroborated by other evidence. Moreover, no tangible unaccounted assets were found during search to suggest that the expenditure were incurred to bring in existence some assets. In case of Amar Natvarlal Vs. ACIT (1197) 57 TTJ (Ahd) 454: 60 ITD 560 it was held that in view of totality of facts and circumstances, addition of a huge amount of Rs. 1.36 crores on the basis of loose papers found during search was not justified especially when no tangible asset found during search and no year was mentioned on loose papers. In view of facts and the judgments discussed above I am of considered opinion that the alleged paper indicates projected figures without any reference to date of payment and in absence of any corroborative evidence it cannot be treated as unexplained expenditure specially when extensive search has taken place and no unaccounted tangible assets were found. Addition based on loose paper is hereby deleted.”*

7. We notice that in the present case the AO has made addition on the bases of loose paper recovered by the search team in which various amounts were mentioned against different items of work/persons under the head 'AEL Expenses' amounting to Rs. 92,91,000/-. The assessee contended that the same was only a projection for expenses which was likely to incur for the project. The AO without making any enquiry and pointing out any evidence to rebut the contention of the assessee rejected

the plea of the assessee and added the said amount to the income of the assessee. So, in our considered view the order passed by the Ld. CIT(A) is based on the evidence on record and in accordance with the settled principles of law. Therefore we do not find any infirmity in the said order to interfere with the same. Hence, we uphold the findings of the Ld. CIT(A) and dismiss the sole ground of appeal of the assessee.

In the result, appeal filed by the revenue for assessment year 2011-12 dismissed.

Order pronounced in the open court on 25<sup>th</sup> May, 2018.

*Sd/-*

(N.K. BILLAIYA)

ACCOUNTANT MEMBER

Raipur, दिनांक Dated: 25/05/2018

*Sd/-*

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय  
अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

Private Secretary  
ITAT, Raipur