

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 90/RPR/2014 (A.Y 2009-10)**

Arun Kumar Lath, Nirala Nagar, Bustand, Bilaspur (C.G).  PAN –AAJPL1693D  <b>(APPELLANT)</b>	Vs	ITO – Ward 1(1), Aaykar Bhawan, Vyapar Vihar, Bilaspur, C.G    <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Shri R.B Doshi, CA</b>
<b>Respondent by</b>	<b>Shri D.K. Jain, DR</b>

<b>Date of Hearing</b>	<b>07.08.2018</b>
<b>Date of Pronouncement</b>	<b>22.10.2018</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the Order dated 27/01/2014 passed by CIT(A), Bilaspur (CG) for the A.Y 2009-10.

2. The grounds of appeal are as under:

1. *That the order of the Ld. CIT(A) is bad in law & facts, and is arbitrary.  
Prayed that additions & disallowance be deleted.*
2. *That the Ld. CIT(A) erred in confirming the disallowances made out of depreciation of Rs. 30,000/- on the bus which is unjustified & be allowed.*
3. *The Ld. CIT(A) further erred in maintaining disallowances u/s 37(1) at Rs. 4,58,700/- & Rs. 1,00,000/- out of expenses disallowed by the Ld. A.O which is unjustified.*

*Prayed that all the expenses are supported & are for the purpose of business and therefore, no disallowance is called for.*

*Prayed to delete the disallowance maintained by the Ld. CIT(A) at Rs. 5,58,700/-*

4. *Without prejudice, the Ld. CIT(A) further erred in disallowing aforesaid Rs. 1,00,000/- which was not claimed as business expenditure by the appellant nor disallowed by the Ld. A.O, which is unjustified.*

3. The assessee is an individual and derives income from house property, interest income from bank / FDRs, interest and remuneration from partnership firm M/s. Sarwamangala Tyres and M/s. Sarwamangala Lubricants and income from plying passenger busses. Return of income for the A.Y 2009-10 was filed at Rs. 5,31,360/-, besides agricultural income of Rs. 57,020/-. The Assessing Officer assessed the income Rs. 14,26,005/- after making additions on three counts i.e. addition out of disallowance of depreciation of Rs. 30,000/-, disallowance of Rs. 2,00,087/- out of proportionate disallowance of depreciation on the basis of ratio of admissible depreciation on gross receipts and on net receipts Rs. 6,64,558/- out of proportionate disallowance of various expenses relatable to revenue receipts understated in the return.

4. As regards ground No. 2, the Ld. AR submitted that the addition of Rs. 30,000/- the same is not pressed, hence the ground is dismissed.

5. As regards ground No. 3, the Ld. AR submitted that the addition made by the Assessing Officer is totally incorrect as the Assessing Officer only presumed that the assessee must have incurred some unrecorded expenses on the differential receipt of Rs. 45,86,996/-. But there was no material on record available to draw this conclusion which is baseless and arbitrary. In fact, no existence of unaccounted expenditure found out by the Assessing Officer. The Ld. AR further submitted that CIT(A) maintained disallowance of Rs. 4,58,700/- out of bus running expenses of Rs. 45,86,996 and Rs. 1,00,000/- out of other expenses like repairs and maintenance, vehicle tax, insurance etc. The Ld. AR further submitted that the assessee submitted the requisite details such as bus account which is at page No. 10 of paper book, profit and loss

account which is at page No. 11 of paper book along with summary which is at page No. 12 of paper book to the Assessing Officer during the Assessment Proceedings. The Ld. AR further submitted that the bus running expenses of Rs.45,86,996/- supported by proper bills and vouchers. The Ld. AR further submitted that the expenses of Rs. 50,87,165/- was also supported by proper evidence. The assessee produced Books and all bills / vouchers before the Assessing Officer and there is no adverse observation by the Assessing Officer. The Ld. AR further submitted that disallowance was only on presumption and surmises and there is no material on record in support of disallowance.

6. As regards ground No. 4, the Ld. AR submitted that the disallowance of Rs. One lakh out of expenses debited to profit and loss account by the CIT(A) amounts to enhancement of assessment order as there was no such disallowance by the A.O in the Assessment Order.

7. Ld. DR on the other hand relied upon the orders of the lower authorities.

8. We have heard both the parties and perused all the relevant material available on record. As regards ground No. 3, while making disallowance u/s 37(1) at Rs. 4,58,700/- and Rs. 1,00,000/- out of expenses disallowed by the A.O has not at all considered the evidences produced before the A.O as well as CIT(A). The Ld. AR submitted that all expenses have been incurred for the purpose of business. The addition made by the Assessing Officer is only on presumption that the assessee must have incurred some unrecorded expenses on the differential receipt of Rs. 45,86,996/-. But there was no material on record available to draw this conclusion which is baseless and arbitrary. In fact, no existence of unaccounted expenditure found out by the Assessing Officer. The evidences produced by the assessee during the Assessment proceedings were not properly verified by the Assessing Officer. Therefore, it will be appropriate to remand back this issue to the file of the A.O. and the A.O. to take cognizance of the correct expenses. Thus, Ground No. 3 is partly

allowed for statistical purpose. As regards disallowance of Rs. 1 lakh the same was not disallowed by the Assessing Officer, therefore the CIT(A) cannot take up an issue which was not at all adjudicated upon by the Assessing Officer and that too without issuing any enhancement notice, hence ground No. 4 is allowed.

9. In the result the appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court on 22<sup>nd</sup> October, 2018.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 22/10/2018  
KRK/R.N

Copy forwarded to:

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

Private Secretary

ITAT Raipur.

Date of dictation	06/11/2018
Date on which the typed draft is placed before the dictating Member	06/11/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	.10.2018
Date on which the final order is uploaded on the website of ITAT	.10.2018
Date on which the file goes to the Bench Clerk	.10.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	