

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1798/Kol/2016 Assessment Year:2012-13
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Shri Dilip Kumar Nathany, 12A, Madn Chaterjee Lane, Kolkata [PAN No.ABGPN 1342 R]	<u>बनाम/</u> V/s.	Income Tax Officer, Ward-43(3), Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shi K.M. Roy, AR
प्रत्यर्थी की ओर से/By Respondent	Shri Baijuath Singh, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	02-01-2019
घोषणा की तारीख/Date of Pronouncement	23-01-2019

आदेश /O R D E R

This assessee's appeal for assessment year 2012-13, arises against the Commissioner of Income-tax (Appeals)-13, Kolkata's order dated 22.03.2016 passed in case No.1129/CIT(A)-13/2014-15/Kol. involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. For the reason stated in assessee's condonation petition dated 16.12.2016 attributing delay of 46 days to communication gap with its Chartered Accountant on account of the fact that the Revenue has failed to convert the solemn averment, I hereby condone the impugned delay of 46 days in filing the instant appeal. The main case is now taken up on merits.

3. The assessee appears to have raised five substantive grounds in the instant appeal i.e. disallowance of carriage inward expense of ₹28,25,511/-, whole of lifting

charges of ₹3,11,427/-, whole of labour charges of ₹1,90,890/- loading and unloading charges of ₹3,22,877/- and cash deposit addition of ₹1.20 lac in personal bank of Vijaya Bank and HDCF bank; respectively. The CIT(A) confirmed the Assessing Officer's action regarding all the above five issues as follows:-

“Decision:-

6. I have gone through the contention of the assessee, the order passed by the AO and the submissions made by the Appellant. The decision of this appeal is given as under:- The appellant has filed appeal against the addition made by the AO on account of increased expenses of carriage inward to the tune of Rs.2525511/- as an inflated and bogus expenses on the ground that appellant had purchased trading goods worth Rs.5,42,89,567/- against which expenses onward carriage, inward was claimed at Rs.3056235/-. The appellant was asked to explain the failure of non-compliance of 40a(ia) of the I.T Act along with name and address of the concerned person to whom payment of transportation was made with the respective vehicle used for taking delivery of purchases of goods. The appellants did not submit any detail on the given date 03-11-2004 further hearing was refixed on his request for supplying aforesaid detail on 10-11-2014, 13-11-2014, 02-12-2014, 05-12-2014 but no details of aforesaid query were submitted and further hearing was fixed on 24-12-2014, 29-12-2014, 15-01-2014, 23-01-2015 & 30-01-2015 no compliance was made on aforesaid details called for by the AO. The AO further observed that on 22-09-2014 request for aforesaid detail was called for but till 23-01-2015 that is lapse of four month no details were submitted and appellant took various pretext on repeated adjournment. On 30-01-2015 certain details were submitted. The AO analyzed the details submitted by the appellant and found that name and address of the persons to whom payment was made were not furnished. The appellant could not explain satisfactorily as why the entire expenses were debited under trading account particularly when the appellant stated that the same were including sales detail too then why it was debited in trading account. Appellant failed to produce the name and address to whom payment were made for carrying inward and appellant also failed to explain and submit its detail as why the TDS provision are not applicable in this case. It is also observed by the AO that no transport bills were issued by the respective payee for transporting the purchases. The list submitted by the appellant mentioned date of purchase, truck registration number and some amount against each of them for part of financial year. On observing the reply dated 30-01-2015 the AO concluded that the payment were not made to the owners or drivers of the truck which were used to carry or bring goods purchased to assessee business premises. The bills issued by the manufacturer reflects only vehicle registration number and not any amount against any freight charges. There is separate column for freight charges in the bills just like cost price, excise duty in all such bills. However the columns against freight charges in all the bills are blank. The appellant submission that payment were made to local parties for hiring truck and cars, then how again the bills issued by respective suppliers shows truck number. The supplier M/s Electrosteel Casting Ltd. & M/s Veeravatan Steel Industries Pvt. Ltd. which were old and renowned suppliers, have a system of arranging of their own vehicle for transportation of good therefore the issue as to whether the freight charges paid to individual person exceeding the maximum limit stipulated in section 194C and whether such payment were to be subjected to TDS as per that section also remained unverified. In form number 3CD against column number 27 it is mentioned that provision of TDS as per chapter 14B/XVII-B

of the Act were not complied too. The AO has further bring on record that similar goods were traded in previous year where total purchases was made to the tune of Rs.3.65 crore and expenses were incurred to Rs.1,93,176/- for carriage inwards whereas during this year the purchase is of Rs.5.42 crore and expenses are to the extent of Rs.30.56 lac. In view of the above the AO concluded that the expenses were inflated and TDS provision under section 194C were not complied with.

On the contrary the appellant submitted that carriage inward is mainly a Charges paid on transporter, engaged by the supplier of whom the details of the postal address etc could not be available with the buyer. Sub section 6 of section 194C prohibits the deduction of tax at source from payment to goods carriages. The appellant complied and submitted the details with vehicle number to the extent available with him. The appellant further submitted that the carriage inward is not related with the sale. The appellant submitted that the AO has observed that the carriage and freight expenses was managed totally in unorganized way which the appellant has never stated and generally stated that the appellant failed to furnish evidence or to prove that the expenditure is incurred for the purpose of the business. The appellant further argued that though the AO has contended to have many deficiencies but the no reason for disallowance is expressible mentioned, except the quantum of the expenditure. The order of the AO and reply of the appellant has been perused. The appellant has stated that the provisions of 194C are not applicable because it is covered under sub-section 6 of 194C. In this case it is to point out that sub section 6 of section 194C excludes the small time contractor who owns 10 or less than that goods carriage at no time. During the year once the appellant failed to submit any detail regarding deduction of TDS and it also failed to prove that the name and address of the transporters' or any declaration from the transporters to state that they were owning less than ten vehicle and the appellant also failed to prove that the payment made to the transporter have been duly shown in their income the appellant did also not furnish the PAN detail of those transporters therefore provision of section 194C are clearly applicable and keeping in view that the Auditor in the audit report of in Form 3CD against column number 27 has clearly stated that provision of TDS were not complied with it is held that the TDS provision has been violated and the appellant was duly required to deduct TDS on the aforesaid payment.

Now coming to the observation of the AO that the expenses were inflated and were bogus is based on following observation:-

1. The Auditor has observed that the TDS provision were not complied.
2. Name and address of the transporters were not provided.
3. Appellant took various adjournment but no details regarding transportation were submitted.
4. The appellant submitted purchase bill issued by supplier which was showing few truck numbers and that too for the part of the financial year only. In that bill cost and excise duty was mentioned whereas no transportation charges were mentioned this goes to show that transportation charges were inclusive of purchase bills.
5. The frequent non-compliance, non-submission of details of name and address of the transporters shows that entering of truck number and that too without mentioning the charges in the purchase bill and in absence of confirmation from the supplier the same as be after thought as it failed by further supporting evidences.
6. AO observed that the supplier are of great repute they could have maintained the details of transporter too, whom payment was made

7. That in earlier year on purchase of 3.65 crore expenses of Rs.1.93 lac was incurred only whereas in the year under appeal substantial increase of Rs.30,56,235/- without any reason.

The appellant contention that earlier carriage inward was borne by the seller, is without any confirmation of third party i.e. suppliers. The perusal of bill issued by supplier mentioned only vehicle number, does not mentions any transport charges which clearly shows that transport charges were inclusive of purchase material. The appellant has also not made a claim that the payment of transportation were made through cheque which could have been verified by the AO. The above findings of the AO have not been controverted by the material evidences. Considering the aforesaid facts particularly keeping in view the auditor report and non-submission of detail of name and address of transporters and non-confirmation from the supplier relating to the issue that the carriage inward cost was borne by the appellant, the action taken by the AO in view dis-proportion increase against the last year expenses which have been worked out at Rs.2825511/- is here by upheld. The ground of the appeal is dismissed.

Ground number 02 relates to the disallowance of lifting charges of Rs.311427/- on the ground that no claim was made last year. The AO has analyzed the detail of financial year 2009-10 and 2010-11 and found that purchases of 2009-10 and 2010-11 are ranging between 3.65 crare to 5.68 crore and loading & unloading charges are constantly between Rs.58430 to Rs.59875/- where as during the year the turnover of the appellant is Rs.542 crore and lifting charges are claimed to Rs.3.11 lac approx and labour charges are claimed to Rs.1.9 lac approx and total loading & unloading charges are thus claimed at Rs4.69 lac approx. The appellant was asked to submit tile details for substantiating the above claim on 22-09-2014 and there was repeated failure on part of appellant for which the hearing fixed for more than six time and the appellant did not submit any detail. When the AO asked for terms and conditions for sale and purchase the AR of the appellant submitted that these were as per telephonic discussion and it was admitted by the appellant as the AO has mentioned in the assessment order that he was not in position to give further details or orders of purchases. The AO found that no cogent reason has been submitted. In earlier year there were no lifting charges, no labour charges. Loading & unloading charges were to the extent of Rs.58,430/- against the turnover of Rs.3.65crore and on Rs.5.68 crore. The expense of Rs.59875/- against the turnover of Rs.542crore was claimed but the new heads of expenses under lifting charges has increased to the extent of Rs.3.11 lac and labour charges to the extent of Rs.1.90 lac and .thus loading & unloading charges to the extent of Rs.4.65 lac has been claimed, therefore the AO disallowed the amount of Rs.3,32,887/- and restricted the addition of the expenses to the extent of Rs.133110/-, on proportionate basis. On the contrary the appellant submitted that the addition were unwarranted. At the appeal stage also the finding of the AO has not been controverted with material facts and considering the above fact mentioned by the AO addition made by the AO is hereby upheld and ground of appeal is dismissed.

Next ground of appeal relates to the addition of Rs.90890/- against labour charges which is included in the disallowance of Rs.311427/- for want of proof, and in absence of justification for the disproportionate increased in comparison to last year, hence the addition made by the AO is upheld for want of proof, evidences and no

material facts contrary to the findings of the AO were submitted. Hence, this ground of appeal is dismissed.

The 04th ground relates to the disallowance of Rs.332887/- as it has been depicted in ground number 02 of the appeal. The appellant failed to submit details and no cogent reason for increased of expenses with supporting evidences or the confirmation from the supplier in regard to his terms and condition, therefore the same is also upheld. In conclusion ground number 2-3-4 which relates to the disallowance of Rs.332887/- are hereby upheld and the ground of the appeal on this ground is dismissed.

Next ground number 05 relates to the addition of Rs.120000/- on account of money deposited in cash reflected in the bank account of Vijaya Bank and HDFC bank. During the assessment proceeding the appellant could not explain the same therefore addition was made under section 69. At appellate stage the appellant submitted that few of the appellant related persons deposited cash in bank account of the appellant for purchase of their personal goods, as the assessee stays in Kolkata. The argument given by the appellant is without any basis and the same is not supported by any evidences if unexplained deposit has been found in the account of appellant it could have been explained by the appellant but he failed to do so. The appellant has stated that his personal bank account are [lot part of his books of account hence the provision of section 68 cannot be invested and reliance was placed on the Guahati High Court decision of Smt Madhu Rani Vs ACIT Cir-5.

In this regard it is to point out that there was credit entry in the bank account of the appellant and the appellant could not explain. It is undisputed fact that the appellant is doing business and he is proprietor also. The appellant did not distinguished as which ne account is maintained for business and which one is for his individual transaction. The cash deposit made in the bank account is nothing but the undisclosed income of the appellant which AO has rightly added in the hands of the appellant. Alternatively the same can be added u/s 69 also, considering the decision of CIT Vis Chinna Thamban SC 292 ITR 682 and Manoj Agarwal Vis DCIT (ITAT SS DEL) 113 ITD 377, where cash deposit in bank was not explained by assessee. In view of the fact that appellant is proprietor, his deposits were neither disclosed nor explained, the addition made by the AO is here by confirmed. The order of appeal is dismissed. The case law cited by appellant is factually different. In view of the above the action taken by the AO is hereby upheld and the ground of appeal is here by dismissed.

The reliance placed by the appellant over the decision of Honorable High Court Gujarat in case of CIT V/s Reclakha Building Pvt. Ltd where in it was held that the AO has not pointed out specifically that the claimed by the appellant has been incurred for not bringing the material is factually different from the case of the appellant. In this case the AO has disallowed the expenses on many issues, one is that the appellant could not prove that the expenses were genuine with supporting evidences secondly, the Auditors clearly mentioned that the TDS provision were not complied, thirdly there was disproportionate increase in the expenses. In view of the above, the case law cited by the appellant are not applicable in case of the appellant as those are factually different. Hence the ground of appeal is dismissed.”

Heard both the parties reiterating their respective stand against and in support of impugned disallowance /addition. Case file perused.

4. Mr. Roy vehemently contends during the course of hearing that the lower authorities have disallowed / added the impugned sum on pure conjectures and surmises than based on material on record. He submits that Assessing Officer as well as CIT(A) have computed the impugned disallowance on comparison with last year's figures and estimation basis. I find no merit in assessee's contention so far as its first grievance of disallowance of inward carriage of ₹25,25,511/- is concerned. The CIT(A)'s above extracted discussion makes it clear that the Assessing Officer had gone by inflation as well as bogus expenses aspects. It has come on record that assessee could not even file the relevant confirmations of the payees in support of its impugned claim. I therefore affirm this inward carriage expense disallowance. The assessee fails in its first substantive ground.

5. Grounds No. 2 to 4 pertaining to disallowance of lifting charges, labour charges and loading unloading (supra) are stated to be interconnected. Mr. Singh fails to dispute the clinching fact that lower authorities have gone by comparative figures of the preceding assessment year in disallowing the impugned sums. They have not examined or verified the assessee's case as per relevant detailed submitted as to whether the same had been incurred wholly and exclusively for the purpose of its business u/s 37 of the Act. Mr. Roy is fair enough thereafter in conceding that assessee has also not proved its case to the hilt both the lower appellant proceedings. I therefore deem it appropriate in these peculiar circumstances to affirm the impugned disallowance forming subjected-matter of assessee's grounds 2 to 4 to the extent of 25% only. Balance 75% disallowance component thereof stands deleted.

6. Lastly comes assessee's challenge to cash deposit addition of ₹1.20 lac I find that both the lower authorities have already disallowed same expenses sum(s) to be not incurred wholly and exclusively for the purpose of business. I therefore adopt

telescoping method that said disallowance sums form part of impugned cash deposits.
This last addition of ₹1.20 lac is deleted therefore.

7. This assessee's appeal partly allowed in above terms.

Order pronounced in open court on 23/01/2019

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,

*Dkp/Sr.PS

दिनांक:- 23/01/2019 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Shri Dilip Kumar Nathany,12A, MadanChaterjee Lane, Kolkata
2. प्रत्यर्थी/Respondent-Income Tax Officer, Ward-43(3), Kolkata
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।