

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

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

ITA No.2577/Del/2015
Assessment Year: 2010-11

M/s. MGCPL & VCBPL 1626/32, 2 nd Floor, Naiwala, Karol Bagh, New Delhi -110005 PAN No. AAAAM8822B	Vs	Assistant Commissioner of Income Tax Circle – 38 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. P. C. Yadav, Advocate
Revenue by	Sh. P. V. Gupta, Sr. DR

Date of hearing:	28/03/2019
Date of Pronouncement:	01/04/2019

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the assessee is directed against the order dated 05.03.2015 of the CIT(A)-XX, New Delhi, relating to A. Y. 2010-11.
2. The facts of the case, in brief, are that the assessee is an AOP and engaged in the business of Civil Contractors comprising of two JV partners. It filed its return of income on 26.07.2010 declaring total income of Rs.99,10,151/-. The assessee has declared net profit of Rs.99,10,151/- on gross receipt of Rs.21,23,60,260/-. During the course of assessment proceedings the Assessing Officer observed from the various details filed by the assessee that the ledger accounts of Diesel & Lubricants along with the supporting documents show that there are several payments made in cash for Example ; Cash memo

no- 29611 dated 20.04.2009 for Rs.3,89,400/-. Further in respect of the other parties the assessee has only given a summary of the payments made to the parties while it is not clear as to whether the payments have been made by cash or cheque. Further on going through the bills he noted that most of them are Kacha bills except for invoice for BPCL. When the assessee was asked to provide the complete supporting documents for Diesel & Lubricants for purchases above Rs.5 lacs and was also required to provide the cash book for verification, these were not provided and the available records are not sufficient to support the expenditure incurred by the assessee during the year on account of Diesel & Lubricants totaling to Rs.1,98,20,813/-. Hence, due to lack of supporting documents leakage of revenue on account of payments made in cash cannot be ruled out. He further observed from the ledger accounts of the expenses submitted by the assessee that the assessee has incurred expenses on account of Repair & Renewal of Tyres amounting to Rs.13,35,419/-. However, as per the schedule of Fixed Assets there is no vehicle owned by the assessee except one scooter. Hence, the amount of expenditure incurred on account of purchase of tyres is not justified. According to the Assessing Officer even if the assessee had taken the machinery on hire the amount incurred is highly excessive because the total hire charges incurred were only Rs.3,025/-. Hence, 20% of the amount was disallowed by him to prevent loss of revenue. He accordingly made addition of Rs.19,82,000/- on account of Diesel and Lubricants expenses and addition of Rs.2,67,083/- on account of Repair and Renewal expenses. The Assessing Officer had also disallowed salary expenses of Rs.2,60,923/-. Accordingly the Assessing Officer determined the total income of the assessee at Rs.1,24,122,157/-.

3. In appeal the Ld. CIT(A) although deleted the addition on account of salary expenses, however, sustained the addition of Rs.19,82,000/- on account of Repair and Renewal and enhanced the Diesel and Lubricant expenses from 19,82,000/- to Rs.99,10,406/-.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising following grounds of appeal :-

“1. That on the facts and circumstance of the case Ld. CIT(A) XX, New Delhi has wrongly confirmed the action of the Ld. AO regarding disallowance of ‘Repairs & Renewals of Tyers at Rs.267083/- on estimate basis and in disregard of bills and vouchers.

2. That on the facts and circumstances of the case an arbitrary and unjustifiable harsh action has been taken by Ld. CIT(A) XX, New Delhi by enhancing the disallowance of ‘Diesel and Lubricants Expenses’ from 10% to 50% (from Rs.1982000/- to 9910406/-).

3. That the appellant prays for deletion of these disallowances.

4. That the appellant craves leave to add, delete and modify any grounds of appeal before decision.”

5. The Id. Counsel for the assessee at the outset submitted that the books of account of the assessee are audited and no defects were pointed out by the Assessing Officer or the CIT(A) in such books of accounts. Therefore, the ad-hoc additions made by the Assessing Officer which has been enhanced by the CIT(A) cannot be sustained. Referring to page 2 of the assessment order the Ld. Counsel for the assessee drew the attention of the bench to the comparative chart of turnover and net profit ratio and submitted that the Assessing Officer in the assessment order himself has admitted that the net profit rate of 4.67% is better than the net profit declared in the two preceding assessment years. Referring to page No.76 of the paper book he drew

the attention of the bench to clause No.9 of the work order according to which the expenses on repair and renewal, tyres, Diesel and lubricants expenses etc of machinery used for execution of work will be borne by the JV.

6. So far as the allegation of the Assessing Officer that the assessee has made cash payment of Rs.3,89,400/- vide memo No.29611 dated 20.04.2009 is concerned, the Id. Counsel for the assessee submitted that the same is factually incorrect. Referring to page 79 of the paper book, he submitted that only an amount of Rs.52,425/- was paid in cash on different dates not exceeding Rs.20,000 at a time and the balance payments were made by cheque. Further the ledger account and confirmation of the parties from whom diesel and petrol are being purchased were produced before the lower authorities. Therefore, under these circumstances when the expenses are genuine and the parties from whom purchases have been made had confirmed, the payments were made through banking channels and the accounts are audited and no defects were found, ad-hoc addition could not have been made.

7. Relying on various decisions he submitted that the addition made by the Assessing Officer which has been enhanced by the CIT(A) should be deleted.

8. The Ld. DR on the other hand heavily relied on the order of the AO and CIT(A). Referring to the findings given by the CIT(A) he submitted that the observations given by the CIT(A) while enhancing the income speaks in volumes, therefore, the order of the CIT(A) should be upheld.

9. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We have also considered the various decisions cited before us. We find the

Assessing Officer in order passed u/s 143 (3) of the Act made addition of Rs.19,82,000/- being 10% of the diesel expenses on the ground that there are several payments made in cash and assessee failed to provide the complete supporting document for purchase of diesel/lubricant exceeding Rs.5 lacs. Similarly the Assessing Officer made disallowance of Rs.2,67,083/- being 20% of the expenses on account of repair and renewal of tyres. We find the Ld. CIT(A) upheld the disallowance of Rs.2,67,083/- out of repair and renewal of tyres and enhanced the disallowance on account of diesel and lubricants from 10% to 50%. It is the submission of the Ld. Counsel for the assessee that the books of accounts are audited and no defects were found. It is also his submission that the net profit declared by the assessee for the impugned year is better than the two preceding assessment years and the observations of the Assessing Officer and CIT(A) regarding non maintenance of proper bills and vouchers and payments made in cash are irrelevant observations without looking into the details already filed during the assessment proceedings.

10. We find merit in the above arguments made by Ld. Counsel for the assessee. A perusal of the paper book shows that assessee had furnished not only the ledger account of the parties from whom purchases were made on account of diesel and petrol but also filed their confirmations. So far as allegations of the Assessing Officer that assessee has made cash payment of Rs.2,89,400/- is concerned, a perusal of the various details filed by the assessee shows that except an amount of Rs.58,24,25/- paid in cash that to not exceeding Rs.20,000 at a time, the assessee has paid the balance amount by cheques. Further a perusal of clause 9 of work order shows that the expenses on repair and renewal of tyres, diesel and lubricants etc of machinery used for execution of work will be borne by the JV. We

find the books of account were audited and no defects have been pointed out by the auditors. Even the Assessing Officer or the CIT(A) has also not pointed out any defects in the books of accounts and the books were not rejected. We find the Assessing Officer in the assessment order has also accepted the net profit declared by the assessee during the year as better than the net profit declared in the two preceding assessment years. Under these circumstances we are of the considered opinion that when the assessee has filed all the requisite details before the lower authorities including confirmation of the parties from whom purchases have been made and such confirmations have not been proved to be false or untrue and since books of accounts or book results were not rejected, therefore, in absence of any contrary material brought to our notice the ad-hoc disallowance made by the Assessing Officer which has been enhanced by the CIT (A) cannot be sustained. We, therefore, set aside the order of the CIT(A) and direct the Assesing Officer to delete the addition. The grounds raised by the assessee are allowed.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 01.04.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Neha

Date:- 01.04.2019

Copy forwarded to:

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

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28.03.2019
Date on which the typed draft is placed before the dictating 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	02.04.2019
Date on which the final order is uploaded on the website of ITAT	02.04.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	