

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

**ITA No. 649/Del/2019
Assessment Year: 2015-16**

Raj Kumar Jain C-13/74, Ground Floor, Sector-3, Rohini, New Delhi. PAN No. AAHPJ8735E	vs	ITO Ward 38(2) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Shri Gautam Jain, Adv. Shri Lalit Mohan, CA
Revenue by	Shri S.L. Anuragi, Sr. DR

Date of Hearing	04.07.2019
Date of Pronouncement	09.07.2019

ORDER

This appeal filed by the assessee is directed against the order dated 26.12.2018 of the Ld. CIT(Appeals)-13, New Delhi relating to AY 2015-16.

2. The assessee in his only effective ground of appeal has challenged the order of Ld. CIT(A) in sustaining the disallowance of Rs. 2,26,160/- out of the addition of Rs. 3,55,139/- made by the AO.

3. Facts of the case in brief are that the assessee is an individual and is engaged in the business of wholesale trading of

wheat and cattle feed under the name and style of M/s Shree Mahavira Enterprises. He filed his return of income on 28.09.2015 declaring total income of Rs. 4,87,000/-. The AO during the course of assessment proceedings noted that assessee has debited various expenses under different heads out of which some of the expenses are as under: -

S.No.	Heads of Expenses	Amount
1.	Salary	8,10,000
2.	Labour expenses	1,47,725
3.	Electricity	53,000
4.	General expenses	15,748
5.	Car petrol expenses	15,500
6.	Freight outward	1,41,825
	Total	11,83,798

4. Although the assessee furnished the ledger account and some vouchers/bills to substantiate its claim, the AO noted that all the payments were made in cash only. He, therefore, disallowed an amount of Rs. 3,55,139/- being 30% out of the total expenses claimed on estimate basis.

5. In appeal the Ld. CIT(A) restricted such disallowance to 20% as against 30% made by the AO and thereby sustained an addition of Rs. 2,26,160/-.

6. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee relying on various decisions submitted that the disallowance made by the AO and partly sustained by the CIT(A) is uncalled for which was made on *ad hoc* basis. He submitted that no defects were found in the books of

accounts and assessee has furnished all the details including supporting evidences. Merely because the payments were made in cash, the same cannot be disallowed especially when none of the payment is above 20% in cash in violation of provisions of section 48(3) of the Act. Referring to the copy of the assessment order for AY 2014-15 he submitted that the AO in the said order has made disallowance of Rs. 50,000/- only on *ad hoc* basis, whereas for the impugned assessment order he estimated the disallowance @ 30% which was reduced only to 20% by the Ld. CIT(A). He, accordingly, submitted that the disallowance sustained by the CIT(A) being very excessive and on the higher side, the same should be deleted.

8. The Ld. DR on the other hand, heavily relied upon the order of the CIT(A).

9. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited before me. I find the AO made disallowance of Rs. 3,55,139/- being 30% of the expenses of Rs. 11,83,798/- on *ad hoc* basis on the ground that all the payments were made in cash. I find the CIT(A) restricted such disallowance to 20% of the expenses. I find from the assessment order for AY 2014-15, copy of which is placed at pages 99 to 104 of the Paper Book that the AO in the assessment order passed u/s 143(3) has disallowed an amount of Rs. 50,000/- only on *ad hoc* basis. Further, for the impugned assessment year the AO has not

rejected the books of account or pointed out any defects in the bills and vouchers except stating that the payments have been made in cash. There is no violation of provisions of section 40A(3) of the Act. Since, no other defects were pointed out either in the books of accounts or in the bills and vouchers, therefore, merely because the payment has been made in cash cannot be a ground for disallowance. Further, the disallowance so sustained by the CIT(A) appears to be on higher side when compared with the disallowance made by the AO in scrutiny assessment for AY 2014-15, where such disallowance has been made at Rs. 50,000/- on *ad hoc* basis. Considering the totality of the facts of the case, I am of the considered opinion that disallowance of Rs. 50,000/- on *ad hoc* basis will meet the ends of justice. I, therefore, set aside the order of the Ld. CIT(A) and direct the AO to restrict the disallowance to Rs. 50,000/- only. The grounds raised by the assessee are accordingly partly allowed.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 09/07/2019

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 09/07/2019

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	04.07.2019/ 09.07.2019
Date on which the typed draft is placed before the dictating Member	05.07.2019/ 09.07.2019
Date on which the typed draft is placed before the Other Member	09.07.2019
Date on which the approved draft comes to the Sr. PS/PS	09.07.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	09.07.2019
Date on which the fair order comes back to the Sr. PS/PS	09.07.2019
Date on which the final order is uploaded on the website of ITAT	09.07.2019
Date on which the file goes to the Bench Clerk	09.07.2019
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	

