

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1836/Bang/2016
Assessment year : 2009-10

Y.N Prakash, Thorangatte Village and Post, Jagalur Taluk, Davanagere District – 577 521. PAN – ALDPP 0339 D.	Vs.	The Income-tax Officer, Ward-2, Davangere.
APPELLANT		RESPONDENT

Appellant by	:	Shri H Guruswamy, ITP
Respondent by	:	Dr. P.V Pradeep Kumar, Addl. CIT

Date of hearing	:	31.07.2019
Date of Pronouncement	:	07.08.2019

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the assessee is directed against the order dated 30/6/2016 passed by the Id CIT(A), Davangere and it relates to asst. year 2009-10.

2. Ground Nos.1 and 4 are general in nature. Ground No.2 relates to addition of Rs.11.52 lakhs pertaining to outstanding labour charges. Ground No.3 relates to the addition of Rs.4.73 lakhs relating to adhoc disallowances made out of expenses, which has been telescoped against the addition of Rs.11.52 lakhs.

3. At the time of hearing the Ld AR did not press ground No.3 relating to the addition of Rs.4.75 lakhs. However, we notice that the Ld CIT(A) has telescoped this addition against the addition of Rs.11.52 lakhs relating to labour charges and hence both the issues are interlinked. Hence the assessee's request could not be accepted. Accordingly, both the issues are adjudicated together.

4. We heard the parties and perused the record. The assessee is a Civil Contractor undertaking works allotted to him by EE, PRE Departments. He filed his return of income for the year under consideration declaring a total income of Rs.Rs.3.18 lakhs. The AO however completed the asst. by determining the total income at Rs.65.91 lakhs by making various additions. The appeal filed before Id CIT(A) was partly allowed. Still aggrieved the assessee has filed this appeal before us.

5. The facts relating to the addition of Rs.11.52 lakhs are stated in brief:-

The AO noticed that the current liabilities declared by the assessee was Rs.39.55 lakhs, which included outstanding labour charges of Rs.11.52 lakhs. The AO asked the assessee to obtain confirmation letters from all the creditors. In respect of outstanding labour charges, the assessee furnished the break up details of the same and also furnished letters of confirmation obtained from each of the labourers. The AO observed that the letters of confirmation did not mention the father's name of the workers and it did not contain proof of identity. He also observed that some of the

confirmation letters contained left hand Thumb impression, without being identified by another person. Accordingly he took the view that the confirmation letters furnished by the assessee cannot be accepted. Accordingly he added the entire amount of outstanding labour charges of Rs.11.52 lakhs as income of the assessee. The ld CIT(A) also confirmed the same.

6. Since the assessee did not produce books of accounts and vouchers, the AO disallowed 10% of labour charges, material consumed, earth work charges and freight charges amounting to Rs.5.77 lakhs. In the appellate proceedings, the ld CIT(A) confirmed the addition of Rs.11.52 lakhs referred above. With regard adhoc disallowance of Rs.5.77 lakhs, even though the Ld CIT(A) confirmed the same, yet he telescoped the same against the addition of Rs.11.52 lakhs relating to outstanding labour charges. Aggrieved by the order passed by Ld CIT(A), the assessee has filed this appeal.

7. The ld AR submitted that the assessee has furnished confirmation letters obtained from workers, to whom the wages have been paid during the year under consideration. He submitted that the outstanding labour charges have been squared off by making payment to the workers in the succeeding year. Accordingly he submitted that there was no reason to suspect the outstanding labour charges. He further submitted that the AO has accepted the labour charges claimed by the assessee, but has disallowed 10% of the same on adhoc basis for want of vouchers. Accordingly he submitted that there is no reason to suspect the above said amounts of Rs.11.52 lakhs, when the AO has accepted

the expenditure. Accordingly he contended that the above said addition should be deleted.

8. The ld DR, on the contrary submitted that the assessee has not produced books of account, vouchers invoices etc., before the AO. He further submitted that the confirmation letters filed by the assessee did not contain vital details like father's name and documentary evidence to prove the identity. Accordingly he submitted that the ld CIT(A) was justified in confirming the addition.

9. In the rejoinder the ld AR submitted that the AO has already disallowed 10% of labour charges and accordingly he has accepted the genuineness of the remaining labour charges. The ld AR however agreed that the addition may be restricted to Rs.2,52,650/-, being 10% of labour charges to take care of deficiencies if any relating to labour charges.

10. With regard to the adhoc addition made from other expenses, the Ld A.R submitted that the AO has made the addition without any basis. On the contrary, the Ld D.R supported the order passed by the AO.

11. We have heard rival submissions and perused the record. We notice that the assessing officer has accepted 90% of labour charges claimed by the assessee. The outstanding labour charges relates to the labour charges so claimed by the assessee. There is no dispute that the assessee has filed confirmation letters obtained

from the workers confirming the outstanding balances. We notice that the AO has rejected the confirmation letters on flimsy grounds. If the AO had any doubts, he could have summoned the concerned workers. The Ld A.R submitted that the outstanding labour charges have been fully paid in the succeeding year. Hence, we are of the view that the AO was not justified in adding the outstanding balance of labour charges and accordingly the Ld CIT(A) was not justified in confirming the said addition. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.11.52 lakhs relating to outstanding labour charges.

12. The next issue relates to adhoc disallowance made from out of expenses. Since the assessee has not produced books of account, supporting vouchers etc., before the AO, the assessing officer was constrained to disallow 10% of the expenses to take care of deficiencies, if any. We notice that the assessee has not produced the vouchers before Ld CIT(A) also and hence has confirmed the disallowance. However, the first appellate authority telescoped this addition against the addition of Rs.11.52 lakhs relating to outstanding labour charges.

13. In the preceding paragraphs, we have deleted the addition of Rs.11.52 lakhs and hence the question of telescoping would not arise. Accordingly the disallowance made out of expenses needs to be examined separately.

14. Since the assessee did not produce books of accounts and vouchers etc., before the AO, disallowance of part of expenses is warranted to take care of deficiencies. While arguing the issue relating to disallowance of Rs.11.52 lakhs, the Ld A.R agreed for confirming the disallowance of 10% of the labour charges. Accordingly we confirm the disallowance made out of labour charges. Remaining disallowance has been made out of material consumed, earth work charges and freight. We are of the view that the disallowance made out of those expenses @ 10% is on the higher side. Accordingly, we modify the order of Ld CIT(A) and direct the AO to sustain the disallowance made out material consumed, earth work charges and freight to 5% of respective expenses. We order accordingly.

15. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on **7th August, 2019.**

Sd/-
(Beena Pillai)
Judicial Member
Bangalore,
Dated, 7th August, 2019.

Sd/-
(B.R Baskaran)
Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order