

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'C', NEW DELHI**

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1110/Del/2015 : Asstt. Year : 2010-11

ITA No. 1111/Del/2015 : Asstt. Year : 2011-12

M/s Gupta Bros. (India), 232, Jor Bagh, New Delhi-110003	Vs	ACIT, Circle-38(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAFG4325Q		

**Assessee by : Sh. S. Krishna & V. Raj Kumar, Adv.
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing: 31.07.2019	Date of Pronouncement: 20.08.2019
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

ITA No. 1110/Del/2015

Brief facts of the case are that the assessee is a Civil Construction Contractor engaged in the business of repairs of civil works. During the year the assessee has incurred labour expenses of Rs.11.39 crores against the total work executed of Rs.62.81 crores. The Assessing Officer held that the 18.14% of the labour expenses over the turnover is far more excessive than the labour expenses in the earlier years of 15.22% to 16.99%. He further held that the labour payments been made in the months February and March are to the tune of Rs.1.29 crores and the gross turnover for the March month is Rs.9.97 crores and the percentage of labour is about 13.26%. Based on comparison of the payments of the

earlier years, the Assessing Officer has disallowed Rs.25 lacs on account of labour payment.

2. The Id. CIT (A) confirmed the addition on the grounds that
- The muster rolls were not signed
 - The amount of daily wage payment did not coincide with the number of present marked of that employee
 - Excess labour expense was thus booked.
 - As per the ledger account labour charges were booked twice in a month by mentioning the voucher numbers.
 - In the month of March the labour charges were booked 5 times and was 4 times the average wages debited throughout the year.

Further, the Id. CIT (A) has enhanced the disallowance to Rs.3,14,07,300/- being 5% on the gross turnover owing to (a) absence of serial no. on the vouchers (b) absence of revenue stamp (c) absence of supporting bills (d) payment being in cash (e) parties not identifiable (f) non-deduction of TDS.

3. Before us, the Id. AR argued that the Revenue Authorities have wrongly held that the payments made as excessive based on the CPWD manual and the percentage of labour charges incurred in the earlier years. It was argued that owing to the urgency of renovation of Hotel Ashoka for Common Wealth Games, the labour has been paid higher wages and also over time allowance. The earlier year parameters cannot be resorted for disallowing the labour charges as the cost of labour charges goes up every year.

4. The Id. DR argued that the assessee has not produced proper vouchers and the muster rolls are incomplete and also there is repetition of name of the labourers at frequent intervals. Hence, the rejection of

books of accounts and consequently determination of the profits by the Id. CIT (A) ought to have been confirmed.

5. Heard the arguments of both the parties and perused the material available on record.

6. We have gone through the orders of the revenue, we find that the enhancement was mainly on the following grounds:

- There was no number of the vouchers
- There was no revenue stamp
- There was no supporting bills
- The entire payment was in cash
- The parties were not identifiable
- There was no deduction of TDS

Further, the reasons for rejection of the books of accounts were non-proving of purchase of material from Ajooba Handicrafts of Rs.8,72,836/-. The Id. CIT (A) also relied on the judgments in the case of AP Singh, Abdul Rahman Vs CIT 201 ITR 406, Champa Lal Chaudhary Vs DCIT, 54 SOT 398 ITAT Jaipur and Pawan Kumar Vs ITO 137 ITD 85.

7. We hold that absence of serial no. on the vouchers cannot be a ground for rejection of books of accounts. Similarly, the lack of revenue stamp on the bills and supporting bills cannot lead to rejection of books of accounts in the absence of any observation by the Assessing Officer or the Id. CIT (A) regarding the defects in the books of accounts *per se* or in the mode and method of accounting procedure which fail to reflect correct profits. The Id. CIT (A)'s reason for rejection of the books of accounts is that the entire payment was in cash, the parties were not identifiable and there was no TDS deducted. We find that the Income Tax Act provides sufficient provisions to deal with the matters of payments in cash and non-

deduction of TDS which could have been invoked by the revenue without resorting to rejection of books of accounts. Payments in cash and TDS default cannot be a reason to rejection of books of accounts. Similarly, the lack of identification of the parties are labourers working at various sites and who are paid amounts less than Rs.20,000/- cannot be considered as reasons for rejection of books of accounts. Further, the assessee has also submitted confirmation regarding the purchases from Ajooba Handicrafts which has not been disputed by the revenue. The case laws referred by the Id. CIT (A) have been perused and we find that the judgment of the Hon'ble Allahabad High Court deals with absence of stock register, cash memo, coupled with other factors such as lack of confirmations regarding the purchases and low profits. These facts are not applicable to the instant case where the variance in the profit percentage is minimal and also no discrepancies or defects were found in the books of accounts. Similarly, in the case of Champa Lal Choudhary and Pawan Kumar (supra) dealt with defects in books of accounts pertaining to stock register to the extent they do not meet the test of deduction of true and correct profits which is not the issue in the instant case. We find that the books have rejected solely on the basis that the labour payments have been increased from 15.21% to 18.14% and net profit decreased from 4.09% to 3.74% disregarding the fact that during the year the work undertaken by the assessee needs to be completed at a faster pace for which higher level wages are required to be paid.

8. Hence, keeping in view, the entire facts and circumstances of the case, we hold that the action of the Id. CIT (A) on this ground is not legally valid.

9. Regarding the other grounds which have not been adjudicated owing to rejection of books of accounts, the matters are being referred back to

the file of the Id. CIT (A) to adjudicate on merits of the issue separately on each ground.

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Addition on account of purchases of Rs.24,13,716/- and Rs.8,36,966/-

10. During the proceedings before the Id. CIT (A), the assessee has submitted the confirmations and bills which are in the name of Gail India Ltd. and delivered at Baruch which the Id. CIT (A) did not take cognizance of owing to absence of application under Rule 46A. Before us, it was argued by the Id. AR that the Gail India Ltd. was the work site whereas the material purchase was in the name of the assessee. The Id. DR argued that the confirmations filed at a later date purportedly from the branch office cannot be held to be genuine. Since, the fact of the material purchase has not examined in perspective, in the interest of justice, we hereby remand the matter to the file of Assessing Officer to examine the issue afresh. The assessee is also directed to furnish all the relevant documents in support of their claim and comply promptly to the notices issued by the Assessing Officer from time to time.

11. Regarding the purchase of Rs.8,36,966/-, the assessee could not produce the original bill on the grounds that the same was misplaced. He submitted before the Id. CIT (A), the copy of the account of the supplier, confirmation and the payment details from bank accounts. Since, it is a matter of finding of the fact, the matter is remanded back to the file of the Assessing Officer to take a decision after conducting due enquiries as deemed fit and keeping in view the corroborative evidences filed by the assessee.

Disallowance on account of labour charges

12. The matter stands adjudicated in ITA No. 1110/Del/2015 above, the same ratio is applicable to this ground.

Interest on TDS

13. During the year the assessee has received the following refunds and against the same the following interest has been shown:

<i>Dated of Receipt</i>	<i>Refunds</i>	<i>Interest shown</i>
10.1.2011	940,105	166,985
5.10.2010	5,777,000	476,998
21.5.2010	2,418,299	872,122

The Assessing Officer found that as per the ITD system interest u/s 244A of the Act has been granted to the assessee as under:

<i>Dated of Receipt</i>	<i>Interest</i>
1.1.2011	643,982
24.9.2010	477,000
21.5.2010	405,187

The Assessing Officer made addition of Rs.654,047/- being the difference of the interest received and already shown in the return of income.

14. Before the Id. CIT (A), the assessee submitted that they have not received any intimation from the Income Tax Department for issue of Refunds and or adjustments of refunds during the year under appeal. The amounts received during the year have duly been reflected in the Books of Accounts. The Assessing Authority has not given any details of Refunds paid by Income Tax Department. The assessee do not seem to have any other refunds where the interest of Rs.6,43,982/-, and Rs.4,05,187/- has been shown to be added to the income.

15. The facts of the case as per assessment order are that the assessee did not show the interest earned or refund granted to it during the year

under consideration. The assessee claimed that it has not received any intimation on the basis of which the interest could have been shown. However, that does not justify as the amount of interest appears in the 26AS statement which any assessee has access to. Since, the fact of receipt of interest is undisputable, the addition is hereby confirmed.

Addition u/s 68 of Rs.6,80,000/-

16. During the current financial year assessee has accepted unsecured loans from Sh. Harshwardhan Arya, an NRI and Sh. Vineet Kalhan, NRI amounting to Rs.6,00,000/- and Rs.80,000/- respectively. Assessee via order sheet nothing dated 30.12.2013 was asked to produce the confirmation regarding the loan given to the assessee from both of the parties. No confirmation has been furnished by the assessee. However on 14.01.2014 one page of a bank statement has been produced without any proof of genuineness of the said statement. It is claimed to be of Sh. Harshwardhan Arya but the assessee has failed to produce confirmation regarding the same. No confirmation and copy of bank statement of Sh. Vineet Kalhan could be produced by the assessee. In the absence of supporting documents, genuineness of the transaction, the Assessing Officer held that provisions of Section 68 are attracted on these transactions. The Id. CIT (A) confirmed the same on the grounds that the assessee has failed to discharge the requirements envisaged in Section 68 of the Act. We find from the records that an E-mail confirmation regarding the loan has been filed which the revenue failed to take into cognizance. Hence, in the interest of justice, the matter is remanded back to the file of the Assessing Officer to examine the issue afresh as to whether any interest has been charged and the loan has been repaid and to take a decision in accordance with the provisions of the Act.

Disallowance u/s 40(a)(ia)

17. The assessee has made payment of Rs.17,61,055/- under the head "legal and audit fees" and deducted TDS on payment of Rs.3,03,900/-. The assessee has submitted that he would be producing a certificate from the persons to whom the payments have been made stating therein that the amounts have been reflected in their Income Tax Returns and they have paid the taxes. Hence, keeping in view the provisions of Section 201(1) of the Act, the matter is being referred back to the file of the Assessing Officer with a direction to the assessee who furnish the evidence regarding payment of taxes on the amounts received from the assessee by the recipients.

Disallowance out of Interest paid on late deposit of TDS

18. The assessee has paid Rs.17,465/- on account of interest paid on late deposit of TDS. There is no provision of Income Tax Act to allow such interest as business expense. In the case of DCIT Vs M/s Rungta Mines Ltd. (ITAT Kolkata), it was held that the interest expenses claimed by assessee on account of delayed deposit of TDS liability was allowable under section 37(1) as the TDS amount did not represent the tax of assessee but it was the tax of the party which had been paid by assessee. In the case of Shree Saras Spices & Food P. Limited Vs. DCIT after due consideration of Bharat Commerce & Industries Ltd. v. CIT (198) 230 ITR 733 (SC) and East India Pharmaceutical Works Ltd. v. CIT (1997) 224 ITR 627 (SC) held that no deduction is allowable for the interest paid on late deposit of the TDS. The legislature does not envisage utilization of the tax deducted on behalf of the State to be utilized by the deductor for personal gains and pay interest on the same and then to claim deduction on such interest. Hence, we hereby uphold the disallowance made on account of interest paid on late deposit of TDS.

Depreciation on car

19. We find that the revenue has not brought anything on record to prove that the assessee's vehicles have been utilized for personal use. In the absence of any evidence *prima facie* indicating the personal use no adhoc disallowance can be made. Hence, we hereby direct the disallowance made on this account be deleted.

20. In the result, the appeals of the assessee are partly allowed.
(Order Pronounced in the Open Court on 20/08/2019).

Sd/-

(H. S. Sidhu)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 20/08/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR