

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'SMC', LUCKNOW**

BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.360/Lkw/2019
Assessment Year:2014-15

Shri Anurag Rastogi, 87/110, Bhannana Purwa, Kanpur. PAN:AEUPR2583M (Appellant)	Vs.	Income Tax Officer-3(1), Kanpur. (Respondent)
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Appellant by	Shri Swarn Singh, C.A.
Respondent by	Shri Ajay Kumar, D.R.
Date of hearing	04/09/2019
Date of pronouncement	06/09/2019

ORDER

This appeal has been filed by the assessee against the order of learned CIT(A)-I, Kanpur dated 09/06/2017 pertaining to assessment year 2014-15. In this appeal the assessee has raised the following grounds:

- "1. That the order of learned CIT(A)-1, Kanpur is bad in law, unsustainable and deserves to be quashed.*
- 2. That the direction contained in the order of learned CIT(A) purportedly enhancement of income is wholly unwarranted, without giving any notice for enhancement of income to the assessee therefore, is insupportable in law and on facts and deserves to be set aside.*
- 3. That the additions/disallowance sustained by the learned CIT(A) are unjustified, contrary to the principles of natural justice and equity and in any case much too high and excessive.*

4. That any other relief or reliefs as may be deemed fit on the facts on record, be granted."

2. At the outset, Learned A. R. invited my attention to the fact that the appeal filed by the assessee is delayed by 721 days and our attention was also invited to copy of application for condonation of delay. Our further attention was invited to copy of affidavit signed and notarized by assessee wherein the reason for delay in filing the appeal has been mentioned. Learned A. R. explained that the assessee was wrongly advised to file petition u/s 264 of the Act and therefore, on a wrong advice, the delay, in filing the appeal, has occurred. It was prayed that the assessee was prevented by reasonable and sufficient cause in not filing the appeal within the prescribed time and therefore, the delay may be condoned and the appeal may be heard on merits. Learned D. R. had no objection to the condonation of delay. Finding the plausible cause for delay in filing the appeal, I condoned the delay and directed learned A.R. to argue on merits.

3. Learned A. R. submitted that the Assessing Officer, during the course of assessment proceedings, had made certain ad hoc disallowances without pin pointing any defect in the books of account or in the vouchers and he simply stated that to cover up the possible leakage, he is making the disallowance and in this respect took us to the copy of assessment order. Learned A. R. argued that without rejection of books of account and without pointing out any defect in the books of account, the disallowances cannot be made, as has been held in a number of cases decided by this Bench.

3.1 Arguing upon the second addition, Learned A. R. submitted that the assessee had taken unsecured loans from relatives and non relatives and had paid interest @18% which the authorities below have restricted to 15% by holding that the interest was excessive. Learned A. R. in this respect submitted that complete details of the payees along with their confirmations

were filed and the rate of interest from market was around 18% only as the loans from market is always unsecured and therefore, it carried a higher rate of interest and therefore, the disallowance should not have been made.

3.2 Regarding the third addition out of advertisement expenses, Learned A. R. submitted that the authorities below have made the disallowance as the notices issued by the Assessing Officer u/s 133(6) had returned back. Learned A. R. argued that while making the disallowance, the authorities below have ignored the fact that the payments were made through banking channels. He further argued that similar payments were made to same parties in earlier years also and no disallowance was made.

4. Learned D. R., on the other hand, supported the orders of the authorities below.

5. I have heard the rival parties and have gone through the material placed on record. As regards the additions made on ad hoc basis, I find that the Assessing Officer has passed order u/s 143(3) of the Act and has made the disallowance on ad hoc basis without pointing out any defect in the books of account of the assessee. He simply held that the expenses paid in cash were completely not open to verification and therefore, to cover up the possible leakage, 1/5th of the expenses have been disallowed. I find that such a disallowance is not warranted under the law as the Assessing Officer has to point out the specific voucher or expenses which he deems to be fit for disallowance. Hon'ble Tribunal in the case of Commercial Auto Products Private Limited vs. Income Tax Officer in I.T.A. No.541/Lkw/2016 has decided the issue of ad hoc disallowance in favour of the assessee by holding as under:

"4. We have heard the rival parties and have gone through the material placed on record. We find that Assessing Officer

had made disallowance by holding that the expenses of vouchers were not properly vouched and he also held that major expenses were supported by self-made vouchers. The Assessing Officer did not point out any specific voucher on which we was not satisfied and had made the addition on ad hoc basis. Before learned CIT(A), the assessee submitted that no defect was pointed out by the Assessing Officer in any of the vouchers and had relied on a number of case laws. Learned CIT(A), on the basis of submissions, restricted the disallowance of 10% to 5% and also upheld a part of certain disallowances. The learned CIT(A) had also not cited any reason for partly confirming the additions and partly allowing the additions. In view of the above, the disallowances sustained by learned CIT(A) are not in order and therefore, we allow the appeal of the assessee."

Therefore, the addition sustained by learned CIT(A) on the basis of ad hoc disallowance is deleted.

6. Now coming to the addition on account of advertisement expenses, I find that the Assessing Officer issued notices to 11 parties to whom the assessee had claimed to have paid advertisement expenses and such notices had returned back. The Assessing Officer has held that the bills produced by the assessee were not genuine as the notices had returned back. The Assessing Officer has further held that the notices were returned back with the remark that the address is not correct. However, I find that assessee was not confronted with the fact of returning back of notices. Therefore, I deem it appropriate to remit the issue back to the Assessing Officer who should redecide the issue after confronting the assessee and after hearing the assessee. As a result, this issue is allowed for statistical purposes.

7. Now coming to third issue of disallowance out of interest expenses. I find that assessee had paid interest @18% to relatives as well as to non relatives. I find that there is bound to be difference between the interest

charged by the bank and the interest charged by private lender as for obtaining loans from bank, the assessee needs to maintain margin also and there are other expenses charged by bank in the form of bank charges, penalty etc. Therefore, the basis for disallowance made by the Assessing Officer and confirmed by CIT(A) is not correct. It is not in dispute that assessee had made payments of interest after deducting tax at source and it is also not the case of the authorities below that loans were not utilized for the business purposes. Under these facts, I do not see any reason in sustaining the disallowance. Accordingly, the order of learned CIT(A) is reversed and this ground of assessee is allowed.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

(Order pronounced in the open court on 06/09/2019)

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:06/09/2019

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow