

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

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

ITA No.3569/Del/2019
Assessment Year: 2015-16

Dynamix India Drill – Con Co. G-4, 208-209, Sector-16, Rohini, New Delhi-110085 PAN No. AADFD2170K	Vs.	DCIT Circle – 62 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Dr. M. K. Bhatt & Malav Goswami, CA's
Respondent by	Ms. Ashima Neb, Sr. DR.

Date of hearing:	26/08/2019
Date of Pronouncement:	15/10/2019

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 15.03.2019 of CIT(A)-38, New Delhi relating to A.Y. 2015-16.

2. Facts of the case, in brief, are that the assessee is a partnership firm engaged in construction business. It filed its return of income on 29.09.2015 declaring total income of Rs.80,16,210/-. During the course of assessment proceedings the

AO noted from the balancesheet that the assessee has shown unsecured loan of Rs.3 lacs from Sumit Gas Agency in the head current liabilities. Since the assessee failed to furnish the bank details or income tax return of the said loan creditor, the AO invoking the provision of section 68 of the IT Act made addition of Rs.3 lacs to the total income of the assessee.

2.1 The AO noted from the profit & Loss account that the assessee has debited an amount of Rs.5,94,45,793/- as sub-contractor expenses. Since the assessee could not substantiate the above expenses with adequate supporting bills and vouchers and since a large number of payments were made in cash for which these were not verifiable, the AO made ad-hoc disallowance of Rs.5 lacs out of sub contractor expenses to plug the leakage of revenue. The AO also made addition of Rs.5,90,550/- on account of discrepancy in the figure mentioned as per Form 26 AS and the amount shown in the profit and loss account by invoking the provision of section 68 of the IT Act as undisclosed income of the assessee. Similarly, the AO made addition of Rs.3,50,000/- on estimate basis out of the various expenses debited in the Profit & Loss account in absence of supporting bills and vouchers. The AO also made addition of Rs.70,903/- on estimate basis out of telephone expenses, Diwali expenses and travelling and conveyance expenses total of which comes to Rs. 7,09,030/- for want supporting bills and vouchers.

3. In appeal the Ld. CIT(A) dismissed the appeal filed by the assessee for which the assessee is in appeal before the Tribunal by raising the following grounds :-

1. *“That the learned CIT (Appeals) has erred in law and on the fact while confirming the additions made by the learned AO, without even discussing the matter at once and affording even a single reasonable opportunity to the assessee/appellant to represent its case, which is against the law of natural justice. Thus, violated the principles as laid down in the matter by the Jurisdictional ITAT (Delhi) Bench-F, in case of Rajkamal Associates Ltd., vs ITO, (ITA No. 704/Del/2014) order pronounced on 19-02-2015.*

2. *That the learned CIT (Appeals) has erred in law and on the fact while rejecting the additional evidences adduced by the assessee/appellant under Rule 46A of the Income Tax Rules 1962 before her, without affording an opportunity to be heard to the assessee/appellant on the remand received from the office of the learned AO despite knowing the vital facts that the evidences so produced were relates to the roots of the matter before her. Thus, violated the principles as laid down recently in the matter of Dharmendra Sevantilal Shah vs ITO (2019), 103 Taxmann.com 394 (Surat ITAT) order pronounced on 20-06-2018.*

3. *That order passed by the learned CIT (Appeals) under section 250(6) of the Income Tax Act, 1961 is against law and facts, as the Learned Commissioner of Income Tax (Appeals), was not justified to arbitrarily uphold the addition of Rs. 3,00,000/- on account of unsecured loan, ignoring the fact that appellant produced substantive evidence to prove the identity, creditworthiness and genuiness of the transaction as condition laid down under section 68 of the Act.*

4. *That order passed by the learned CIT (Appeals) under section 250(6) of the Income Tax Act, 1961 is against law and facts, as she was not justified to arbitrarily uphold the Disallowance out of the following expenses :*

- a. *Rs. 5,00,000/-, out of Sub contractors expenses, due to non-production of bills and vouchers,*
- b. *Rs. 3,50,000/- out of Repairs and maintenance, Business promotion, Food and conveyance expenses, on account of unverifiable expenses,*
- c. *Rs. 70,903/-, 1/10 of Telephone Expenses, Diwali Expenses, Travelling Expenses and Conveyance expenses being the personal expenses.*

Thus, violated the principles as laid down recently in the matter by the Jurisdictional ITAT (Delhi) Bench-G, in case of Silent Business Solutions Limited vs DCIT, (ITA No. 6297/Del/2013-14) order pronounced on 19-05-2017.

5. *That the learned CIT (Appeals) has erred in law and on the fact in confirming the additions on account of difference in contract receipts of Rs. 5,90,550/- with remark "Dismissed for statistical purposes", ignoring the all possible reconciliation submitted during the course of the assessment as well as in the appeal.*
6. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard or disposed of."*

4. The Ld. Counsel for the assessee at the time of hearing submitted that no proper opportunity was granted by the AO at the time of hearing. Even before the CIT(A) no adequate opportunity was granted to the assessee to make rejoinder to the remand report received from the office of the AO. He further submitted that when the accounts of the assessee are audited and auditors have not found any defect in the books of accounts, the AO without specifically pin pointing any defect in any bills and vouchers or books of accounts could not have made addition on estimate basis. Relying on various decisions the Ld. Counsel for the assessee submitted that the revenue authorities cannot

comment on the reasonableness of the expenses and it is the assessee who has the privilege to conduct his business and revenue authorities cannot sit on the arm chair of the assessee. Further in order to disallow any expenditure the AO has to establish that the same was not incurred for carrying out business. Merely because certain expense was incurred in cash cannot be the basis for making any disallowance. Referring to various decisions he submitted that where the AO failed to give details of expenses which were found unverifiable and made ad-hoc disallowance, the said disallowance has to be deleted. He accordingly submitted that the various additions made by the AO and upheld by the CIT(A) should be deleted.

5. The Ld. DR on the other hand strongly relied on the order of the CIT(A). Referring to the order of the CIT(A) she submitted that a perusal of the confirmation of Sumit Gas Agency shows that it is a private limited company, copy of which is placed at page 23 of the paper book. The assessee in his confirmations has given the name of the lender as M/s. Sumit Gas Agency, Sh. Raman Lamba (partner). Therefore, the assessee was himself not giving the correct details for which no other option is left to the AO and the CIT(A) but to make the addition. So far as the disallowance of various expenses are concerned, she submitted that the assessee had not filed the requisite details and, therefore, the AO was fully justified in making ad-hoc disallowance. She accordingly submitted that the order of the CIT(A) be upheld.

6. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.3 lacs being the unsecured loan from Sumit Gas Agency on the ground that no bank details or copy of income tax return was filed. Further a perusal of the confirmation given by the loan creditor shows the name of the lender as Sumit Gas Agency Private Limited whereas the assessee before the CIT(A) had given the name of the lender as M/s. Sumit Gas Agency and Raman Lamba as partner. Therefore, it is not coming out clearly as to whether who has given the loan to the assessee i.e. whether it is a private limited company or a partnership firm. Unless the Income Tax return copy and bank account of the said lender is furnished it is difficult for anybody to verify the creditworthiness and identity of the said parties. Similarly, when the assessee failed to substantiate with evidence to the satisfaction of the AO regarding the allowability of certain expenses, he cannot take the shelter of various case decisions to say that the AO cannot make ad-hoc disallowance without pinpointing the details of certain expenses which according to him are unverifiable. However, it is also an argument by the Ld. Counsel for the assessee that the assessee was not given adequate opportunity to file a rejoinder to the copy of the remand report of the AO. It is also his grievance that the Ld. CIT(A) had rejected the additional evidences submitted by the assessee under Rule 46 A of the Income Tax Rules 1962 which go to the roots of

the matter. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to decide the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

7. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 15.10.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 15.10.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	14.10.2019
Date on which the typed draft is placed before the dictating Member	15.10.2019
Date on which the approved draft comes to the Sr.PS/PS	15.10.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	15.10.2019
Date on which the fair order comes back to the Sr. PS/ PS	15.10.2019
Date on which the final order is uploaded on the website of ITAT	15.10.2019
Date on which the file goes to the Bench Clerk	16.10.2019
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	