

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.3562/Del/2015
Assessment Year: 2011-12

M/S.BHARDWAJ CONSTRUCTION CO. 286, UPADHYAY OIL MILLS, MANDAWALI DELHI-110092	Vs.	ACIT, Circle-38(1), New Delhi
PAN : AAFFB7212A		
(Appellant)		(Respondent)

Appellant by	Sh. R.K.Mehra, CA
Respondent by	Shri Gurmel Singh, Sr. DR

Date of hearing	03.09.2019
Date of pronouncement	30.10.2019

ORDER

PER SUCHITRA KAMBLE, JM:

This appeal is filed by the assessee against the order dated 04.03.2015 passed by the CIT(A)-XX, New Delhi.

2. The grounds of appeal are as under:

1. *That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the disallowance of Rs.20,21,420/- u/s 40A(3) of The Income Tax Act, 1961 fully as made by Ld. AO and further erred in sustaining the disallowance to the extent of Rs. 19,91,420/- which is bad in law and against the facts and circumstances of the case.*

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the disallowance of*

Rs.20,21,420/- u/s 40A(3) of The Income Tax Act, 1961 fully made by Ld. AO and further erred in sustaining the disallowance to the extent of Rs. 19,91,420/- and that too without any basis, material and evidences available on record.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.4,553/- on account of 10% of telephone expenses being of personal nature and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs. 4,553/- on account of 10% of telephone expenses being of personal nature is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.2,251/- on account of donations and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing.

6. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs. 2,251/- on account of donations is bad in law and against the facts and circumstances of the case.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.22,397/- on account of 10% of conveyance expenses being of personal nature and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing.

8. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs. 22,397/- on account of 10% of conveyance expenses being of personal nature is bad in law and against the facts and circumstances of the case.*

9. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.5,083/- on account of interest on TDS and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing.*

10.*That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs. 5,083/- on account of interest on TDS is bad in law and against the facts and circumstances of the case.*

11.*That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.33,726/- on account of 10% of depreciation on vehicle being of personal nature and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing.*

12.*That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs. 33,726/- on account of 10% of depreciation on vehicle being of personal nature is bad in law and against the facts and circumstances of the case.*

13.*That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the additions/disallowance and passing the impugned assessment order being contrary to law and facts and without providing adequate opportunity of hearing and without considering the principles of natural justice and the same is not sustainable on various legal and factual*

grounds.

14. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of the Ld. AO in charging interest u/s 234B and 234C of the Income Tax Act, 1961.

15. That the appellant craves to leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. The Assessee is a firm and engaged in the business civil contractor and deals in contract line from various years. Return of income in this case was filed on 28.09.2011 declaring income at 28,42,500/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961. Subsequently the case was selected for scrutiny under CASS. First notice u/s 143(2) was issued on 01.08.2012 which was served upon the assessee within the stipulated statutory period. Further notices u/s 142(1) along with detailed questionnaires were issued to the assessee. In response Authorised Representative of the assessee attended the assessment proceedings from time to time with whom the case was discussed in detail. During the year under consideration assessee has done the Civil Contract work of Noida, G.D.A., U.P.R.N.N & Wood hill etc. The firm comprising four partners having profit share ratio of 40%, 35%, 15% and 10% . The assessee was asked to submit comparative chart of GP/ NP ratio for the current assessment year and the previous assessment years. The chart was submitted by the assessee. During the year under consideration the assessee has shown net profit of Rs. 21,66,527/- on gross receipts of 5,40,17,890/- thereby showing net profit rate of 5.86%. There is a better NP Ratio from preceding two years. Hence, no adverse inference is drawn on this issue by the assessing officer. The Assessing Officer made various additions which will as follows :-

I. Disallowance u/s 40A(3) for Rs. 2021420/- on the purchase which were above Rs. 20000/-.

- II. Disallowance of Salary and Wages of Rs. 1,25,000/-
- III. Disallowance of Telephone Expenses of Rs. 4553/-
- IV. Disallowance of Donation of Rs. 2251/-
- V. Disallowance of Conveyance Expenses of Rs. 22397/-
- VI. Disallowance of Interest on TDS for Rs. 5083/-
- VII. Disallowance of Vehicle Depreciation for Rs. 33726/-

4. Being aggrieved by the assessment order assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that Ground Nos. 3 and 4 due to smallness of the amount, same are not pressed. Hence Ground Nos. 3 and 4 are dismissed. As regards to Ground No. 13, the same is also not pressed by the Ld. AR, hence dismissed. Ground No. 14 is consequential, hence not adjudicated at this juncture.

6. As regards to Ground Nos. 1 and 2 relating to addition of Rs. 2021420/- under Section 40A(3) of the Act, as well as sustaining the disallowance to the extent of Rs. 19,91,420/-, the Ld. AR submitted that the assessee made the purchase of Cement from M/s. Nirmal Cement Store, Ghaziabad during the year and bills were issued from time to time by M/s. Nirmal Cement Store, Ghaziabad in favour of M/s. Bhardwaj Construction Co. During the year in question following payment were made as per details :-

29.01.2011	Ch. No. 401023, Indian Mercantile Bank	14,035.00
30.03.2011	Ch. No. 382732, Punjab National Bank	10,400.00
		<u>24,435.00</u>

The balance amount of Rs. 31,11,701.00 inclusive of opening balance of Rs.8,56,196.00 as on 01.04.2010 was paid in subsequent years because M/s Nirmal Cement Store is a regular supplier of Cement to the firm M/s Bhardwaj Construction Co. Actually the Cement was supplied by M/s Nirmal Cement Store during the year, for which "Confirmation of Ledger A/c" was confirmed by the Prop. Ms. Nirmali Agarwal. The Ld. AR submitted that the

said confirmation was furnished before the Assessing Officer during the assessment proceedings alongwith connected Bills, but unfortunately the “Cash Paid” has been mentioned by Pencil on Bills inadvertently. The Ld. AR submitted that the assessee did not make the payment in cash to M/s Nirmal Cement Store except two payments through cheques as mentioned. This fact was also admitted by putting the signature of Nirmala Aggarwal Prop. M/s Nirmal Cement Store in the ledger Account at the time of her confirmation. The Ld. AR further submitted that the assessee furnished various documents as demanded by the Assessing Officer from time to time and co-operating the department since the fixation of the case. As there is no payments to Nirmal Cement Store except to the extent of Rs. 24435/- during the period relevant for A.Y 2011-2012, there is no case for disallowance of any amount U/s 40A(3)of the Act.

7. The Ld. DR relied upon the assessment order as well as the order of the CIT(A).

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee made the purchase of Cement from M/s. Nirmal Cement Store, Ghaziabad during the year and bills were issued from time to time by M/s. Nirmal Cement Store, Ghaziabad in favour of M/s. Bhardwaj Construction Co. and only two payment were made as per details filed by the assessee before the Assessing Officer. The confirmation of M/s Nirmal Cement Store was also filed by the assessee during the assessment proceedings alongwith connected Bills. As per the contentions of the Ld. AR the assessee did not make the payment in cash to M/s Nirmal Cement Store except two payments through cheques as mentioned. This fact was also admitted by putting the signature of Nirmala Aggarwal Prop. M/s Nirmal Cement Store in the ledger Account at the time of her confirmation. This factual aspect was never commented by the Assessing Officer as well as the CIT(A). Besides that the Assessing Officer as well as the CIT(A) did not take the proper cognizance of the evidences produced before

the authorities. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence Ground Nos. 1 and 2 are partly allowed for statistical purpose.

9. As regards to Ground No. 5 and 6, relating to out of donation of Rs. 2251, the Ld. AR submitted that during the year, the assessee made the donation for Rs. 2251/- to different parties as per details:- :

16.07.2010	500.00	Shivratri (Kanwaris)
13.10.2010	200.00	Durga Puja
10.01.2011	1000.00	Sai Sandhya
12.02.2011	<u>551.00</u>	ShreeChitra BhimSharker Sansthan
	<u>2251.00</u>	

The Ld. AR submitted that full and complete details of expenses related to donation are recorded in the Books of A/c's of the assessee. The Ld. AR submitted that the donation has been disallowed just on presumption.

10. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

11. We have heard both the parties and perused all the relevant material available on record. The Assessing Officer as well as the CIT(A) has not taken the cognizance of the details relating to the donations and merely on the presumptions disallowed. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer for further adjudication. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence Ground Nos. 5 and 6 are partly allowed for statistical purpose.

12. As regards to Ground Nos. 7 and 8, relating to disallowance of Rs. 22,397/- on account of 10% of conveyance expenses being of personal

nature, the Ld. AR submitted that the Assessing Officer disallowed a sum of Rs. 22397/- out of total of such expenses at Rs. 223974/-. The only reason given for the disallowance is for personal use of traveling & conveyance Expenses. The Ld. AR submitted that the assessee furnished complete details of such expenses. All items of such expenses are fully supported by vouchers & bills. The expenses related to the business of the assessee and hence there was no case of the addition in question of Rs. 22397/-.

13. The Ld. DR relied upon the order of the CIT(A) and the Assessment Order.

14. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee submitted the details of the traveling and conveyance expenses, but the same was not verified by the Assessing Officer. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence Ground Nos. 7 and 8 are partly allowed for statistical purpose.

15. As regards to Ground No. 9 and 10 relating to disallowance of Rs. 5,083 on account of interest on TDS, the Ld. AR submitted that the assessee deposited the Interest on TDS amounting to Rs. 5083/- which is incidental to business and compulsory to fulfilled the terms and conditions laid down under section 194 of Income Tax Act, 1961. The Ld. AR submitted that those expenses are actual and genuine.

16. The Ld. DR relied upon the order of the CIT(A) and the Assessment Order.

17. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee was under statutory obligation to deduct the income tax at the time of credit or/and

payment to the payee. Therefore, the CIT(A) rightly sustain the disallowance on account of interest on TDS. Hence, Ground Nos. 9 and 10 are dismissed.

18. As regards to Ground Nos. 11 and 12, relating to disallowance on account of depreciation claimed at Rs. 33,726/- on Cars, the Ld. AR submitted that this disallowance is without any basis. The Ld. AR further submitted that the vehicles have been used for business purposes and are business assets. There is no valid ground given for this disallowance.

19. The Ld. DR relied upon the assessment order as well as the order of the CIT(A).

20. We have heard both the sides and perused all the relevant material available on record. It is pertinent to note that the vehicles have been used for business purposes and are business assets of the assessee. Therefore, the CIT(A) was not right in sustaining the said disallowance. Hence, Ground Nos. 11 and 12 are allowed.

21. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order is pronounced in the open court on 30th October, 2019.

Sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 30th October, 2019.

BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation:	23/10/2019
2.	Date on which the draft of order is placed before the Dictating Member:	23/10/2019
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been signed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	