

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

ITA No. 5437/Mum/2018(Assessment year : 2013-14)

Krishna Petroleum Survey No.220, Village Khati PAN : AAHFK6098B	vs	ITO, Wd.2(2), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri Maira K Sachdev
Respondent by	Ms. Samastha Mullamadi
Date of hearing	14-10-2019
Date of pronouncement	14-10-2019

ORDER

Per Pawan Singh, JM :

1. This appeal filed by the assessee is directed against the order of Id. CIT(A)-3, Mumbai dated 15.06.2016 for Assessment Year 2013-14.

The assessee has raised the following grounds of appeal:

- “1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[(CIT(A))] is bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in making addition of Rs. 14,24,871/- on account of Various expenses claimed under profit and Loss Accounts.
3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in making addition of Rs.90,000/- on account of Delay charges paid to dealer claimed under the head Administrative expense of profit and Loss Accounts
4. The learned CIT(A) erred in failing to appreciate that all expenses have been duly vouched and verified and audited by statutory auditors as is

evident from audited balance sheet and profit and loss account filed with the return of income. Hence, the Ld. CIT(A) held that disallowance made was entirely presumptuous and adhoc. Hence, these adhoc addition made for Rs. 14,24,871/- is liable to be deleted.

5. The learned CIT(A) has made addition of Rs. 14,24,871 (as per 6 in assessment order) and Rs. 90,000 (Para 7 of assessment order) /- on account of Business expenses claimed by the assessee, alleging that no documentary evidences were filed by the assessee in support of the these expenses before him.

In this regard, we submit that it is a settled law that in the absence of any specific finding, the adhoc additions made by the AO cannot be sustained. Reliance in this regard is placed-on the judgment of this Hon'ble IT AT in the case of DCIT VS. Norma IndiCJ Ltd. in IT A No. 4562/Del/2010 dated 04.12.2015.

6. On the facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in totally ignoring the assessment orders in the case of the Appellant for the earlier year(s) which had same business and similar results and further erred in proceeding to make the additions in an arbitrary and biased manner.”

2. Brief facts of the case are that the assessee is authorised dealer of Hindustan Petroleum Corporation Limited (HPCL) and engaged in the business of reseller of petroleum product, filed return of income for AY 2013-14 on 12-11-2013 declaring total income at Rs.6,98,400/-. The return of income was taken up for scrutiny for the low net profit. During the assessment proceedings the assessing officer asked the assessee to produce documentary evidence in respect of expenses claimed. The assessing officer noted that the

assessee failed to produce documentary evidence in respect of following expenses:-

S.No.	Head of expenditure	Amount of expenditure claimed (Rs.)
1	Power and fuel	1,17,640
2	Salary and wages	19,13,480
3	Other insurance	22,217
4	Workman and Staff welfare expenses	4,85,262
5	Sales promotion	3,75,800
6	Conveyance expenses	5,33,250
7	Other expenses	13,01,970
	Total	47,49,569

3. The assessee was asked to substantiate the expenses by producing the evidence. As the assessee could not produce the evidence for incurring of these expenses, the AO disallowed 30% of each expenses claimed as power and fuel, salary and wages, other insurance, workman and staff welfare expenses, sales promotion, conveyance expenses and other expenses totalling to Rs.14,24,871. The assessing officer also disallowed Rs.90,000/- claimed on account of penalties claimed in the P&L Account.
4. On appeal before the Id. CIT(A), the action of Assessing Officer was sustained as nobody appeared before the CIT(A) to present the case of the assessee despite several opportunities. Further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

5. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record. The Id. AR of the assessee submits that the Ld. CIT(A) was not justified in upholding the additions made by the AO. He submitted that the Ld. CIT(A) confirmed the additions, as the assessee could not appear before the Ld.CIT(A). The Ld.AR of the assessee submits that the assessee has all the evidences in support of its claim of expenditure and could be produced before the Ld.CIT(A), provided another opportunity of hearing is given to the assessee before the CIT(A).
6. On the other hand, the Id. Departmental Representative (DR) for the revenue supported the order of lower authorities. The Id. DR submits that the assessee have not produced any evidences to substantiate the expenses before the lower authorities.
7. We have considered the rival contentions and also perused the material available on record. We notice that the Ld.CIT(A) dismissed the appeal of the assessee as nobody appeared before him to explain the case of the assessee. However, now the Ld.AR of the assessee before us pleads that the assessee may be given another opportunity of hearing before the Ld. CIT(A) as the assessee is in

possession of all the evidences in respect of expenses claimed by it. Considering the submissions of the Id AR for the assessee and keeping in view the principle of natural justice and the fact that the Id CIT(A) has not discussed the issue on merit, we restore the matter to the file of the CIT(A) to decide all the issues raised in the appeal afresh, after providing opportunity of hearing to the assessee and decide in accordance with law. The assessee is directed to produce all the evidences that may be sought for and not to seek adjournment without any valid reasons.

8. In the result, appeal of the assessee is treated as allowed.

Order pronounced in the open court on 14 -10-2019.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 14th October, 2019

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai