

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 2293/Del/2017
(Assessment Year: 2013-14)**

Shri Rajinder Singh, C-60, Basement, Malviya Nagar, New Delhi-110017.	Vs.	ACIT, Circle 63(1), New Delhi.
PAN No: AWWPS0999N		
APPELLANT		RESPONDENT

Assessee by : None
Revenue by : Shri Surender Pal, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM

[A] This appeal has been filed by the assessee against the impugned appellate order dated 31.01.2017 passed by Learned Commissioner of Income-Tax (Appeals)-20, New Delhi, [in short, "Ld.CIT(A)"] pertaining to Assessment Year 2013-14. The Assessee has raised following grounds of appeal:-

"1. Disallowance on account of Purchase of Material:-

{1.1} Contention of the Assessing Officer:-

On perusal of Profit & Loss Account, it is observed that the assessee has debited a sum of Rs. 1,04,40,429/- on account of purchase of material.

The assessee was asked to furnish the detail tow whom the same paid. For the

*verification of claim of assessee notices u/s 133(6) were sent.
From the following parties notice were returned back/ No reply received*

S.No	Name of the party	Amount	Remarks
1	M/s Balaji marble & Granite, Plot No. E-410, Paryavaran Road, Indl. Area, Madanganj- Kishangarh (Ajmer) Rajasthan -305801	255000	Returned back
	M/s Vandana Timbers, 5-A, Rajdhani Park, Main Rohtak Road, Nagloi, New Delhi	916998	Returned back
3	M/s Pal Enterprises, Savitri Nagar, Malviya Nagar, New Delhi-110017	2400000	Returned back
4	M/s R.K. Electronics, E-2/9, Malviya Nagar, Delhi-110017	403000	No reply Received
7	M/s Garg Timber Traders, 550, Chirag Delhi, New Delhi-110017	210250	No reply Received
	M/s Guru Nanak Building Material Store, 33, Corner Market Malviya Nagar, New Delhi-110017	911811	No reply Received
	Total	50,97,059	

For 133(6) Returned back/No reply received, the AR of the assessee was asked to give the justification that why it should not be added to the income of the assessee. The AR of the assessee replied vide note sheet entry dated 10.02.2016 stating that the addresses are correct.

This reply has been considered but not tenable as no reply/confirmation has been received from concerned parties. The above 133(6) issued were returned back or no reply received.

Hence, the said parties, payment of Rs.50,97,059/- is disallowed and added back to the total income of the assessee on account of bogus purchases. The AR submitted invoices.

As evident from this invoice, there is not TIN / PAN which also raises doubts about its authenticity. Further, there is no name mentioned.

(Refer page-9 Para No 5& 5.1 of the Appellate Order)

{1.2} Appellants Submission:-

The assessee went out of the way to attain and file detailed confirmation, with narrated bank statement, acknowledgement of return of income, and PAN of the creditors, on their behalf respectively, which are filed vide page no. 90 to 95 of the paper book for your reference.

6. *That Detailed Ledger account along with all copies of bills/ invoice of purchase of building material during the year under consideration, are enclosed again (vide page no.35 to 88) of the paper book, your ready perusal.*
7. *That the AO in his order(page 13 of the paper book) has stated that there is no TIN/PAN on the invoice of M/s Pal Enterprises. The AO neither directed the assessee to submit the same nor noted on the order sheet to make submissions. The AO has not given any opportunity to the assessee to explain the above. Also there are 13. Invoices raised by M/s Pal enterprises during the year, against the Assessee's name. The AO has only pointed out the bill, which did not have purchasing dealer's name [assessee] on it. All the bills, with the creditor's addresses and PAN are enclosed vide page no. 35 to 41 of the paper book.*
8. *That "merely because the notices u/s 133(6) could not be served upon/ returned back/ or no reply received from/ to the creditors, does not mean the transaction were bogus". All the transactions with creditors were made through banking channels (bank statement duly narrated is annexed vide page no. 33 to 34 of the paper book) and all documentary evidences prove that the assessee has transacted with the purchasing dealers genuinely.*
9. *That the AO issued notice u/s 133(6) to the business creditors on 20/01/2016 only and never again. Meaning thereby, that the AO did not intend to give another opportunity to the said creditors. As explained earlier, all detail vide letter mentioned above were filed and placed on record. Thus, the onus to prove the transaction and its genuineness no more lie upon the assessee.*
10. *The AO in his order said that 'the counsel stated that the addresses are correct'. It is vehemently denied. Neither the assessee nor the counsel issued any such statement in regard to the addresses of the creditors. The Ld.AO has made false allegation in his order vide page no. 35 to 43 of the paper book.*
11. *That the remarks in the order that, the assessee has furnished inaccurate particulars and concealed the income, because there is no TIN/PN on one creditor's invoice, is baseless. As said in para 7, all the transactions are through banking channels and are genuine. Also all the bills have the TIN and PAN incorporated and enclosed vide page 35-43 of the paper book. Addition of Rs. 50,97,059/- may very kindly be deleted.*

(Refer page-10 Para-5.2 of the appellate order)

{1.3} Decision of the Ld. CIT(A)- XX:-

The AO has made an addition of Rs.50,97,059/- on account of purchase of material on the ground that notice under section 133(6) came back un served/no reply received and the invoices were not having TIN/PAN. The Assessing Officer has made this addition by simply writing that the AR of the appellant was asked to justify this and he stated that addresses are correct. During the course of appellate proceedings, the appellant has filed paper book along with the documents, which were filed before the Assessing

Officer and claimed that confirmation of the purchasers, bank statement, the copy of return of income, PAN etc. were filed before the Assessing Officer vide letter dated 21.10.2015,09.02.2016 and 17.02.16 which were ignored by the Assessing Officer. The appellant has also claimed that all these purchases are made through cheques. That to verify the claim of the appellant, the assessment record was called from the Assessing Officer & verified and it is gathered that during the assessment proceedings, the appellant filed the confirmation of the purchasers, ledger account, bank Statement showing cheque payment to these parties, copies of bill having TIN /PIN but the Assessing Officer has not discussed at all about these documents. It appears that the AO was only guided by the notices issued under section 133(6) which came back unserved or where no reply was received. From the assessment record it is also gathered that in the following cases notices u/s 133(6) came back unserved with the following remarks:-

<i>Sr. No.</i>	<i>Name of the party</i>	<i>Remarks</i>
<i>1.</i>	<i>M/s. Vandana Timbers & granite Plot No.E-410, Paryavarana Road, Indl. Area Madanganj Kishangrah(Ajmer) Rajasthan-305801</i>	<i>Unfound</i>
<i>2.</i>	<i>M/s. Pal Enterprises, Savitri Natar, Malviya Nagar, New Delhi</i>	<i>Insufficient Address</i>
<i>3.</i>	<i>Balaji Marble SiGrantie Plot No.E-410, Paryavarana Road, Indl. Area Madanganj Kishangrah (Ajmer) Rajasthan-305801</i>	<i>Not known address returned back</i>

Further, the following creditors have not responded to the notices u/s 133(6) of the Assessing Officer:-

<i>M/s R.K. Electronics, E-2/9, Malviya Nagar, Delhi-110017</i>
<i>M/s Garg Timber Traders, 550, Chirag Delhi, New Delhi-110017</i>
<i>M/s Guru Nanak Building material store, 33, Corner market, Malviya Nagar, New Delhi-110017</i>

In this light, the claim of the appellant has been considered and found that the Assessing Officer vide notice u/s 142(1) dated 29.07.2015 has asked for the name

and address for the party from whom purchases was made of more than Rs. 5 lacs. In compliances to this on 21.10.2015 the appellant has filed these details where the name and address of the appellant has filed these details where the name and address of Gurunanak Building Material, Pal Enterprises, Nav Durga Steel And Sanitary, Ahluwalia Marbles and Vandana Timbers was given. In these accounts only Pal Enterprises and Vandana Timbers credit balance of Rs. 19,12,000/- and Rs.7,67,234/- was shown respectively. On 26.10.2015 vide order sheet entry the Assessing Officer has asked the appellant to file the confirmation to the creditors. Subsequently vide letter dated 07.12.2015 the appellant has filed the confirmed copy of Pal Enterprises and Vandana Timbers. On 20.01.2016 the Assessing Officer vide order sheet entry has asked for purchase voucher & bills and creditors address and confirmation. Vide letter dated 28.01.2016 again confirmed copies of Vandana Timbers, Pal Enterprises, Gurunanak Building Material Store, Bills & vouchers of Pal Enterprises, Vandana Timbers, Gurunanak Building Material, Ahluwalia Marbels, R.K. Electricals and Garg Timber Traders as well as ledger copies of these parties in the books of the appellant was produced. Again the appellant vide letter dated 10.02.2016 has mentioned the following:-

"That confirmations from sundry creditors namely M/s Balaji Marbles, M/s Vandana Timber (PAN- AAEFV9228P)-, M/s R.K. Electricals (PAN- AAFFR8583G), M/s Nav Durga Steel, M/s Garg Timber, M/s Gurunanak Building Material (PAN- AAKPM9550H)-, M/s Pal Enterprises (AKHPB4641B)-. All the above confirmation are filed by the assessee vide letter dated 18-11-2015 para 5."

On 10.02.2016 vide order sheet entry the Assessing Officer has made the following Entry in relation to the notices which came back unserved:-

"He was informed returned 133(6) from vendors. AR stated that address are correct. On AR request, final date 17 Feb 2016"

On 17 Feb the appellant has filed letter along with documents. The relevant portion of the letter dated 17.02.2016 of the appellant is reproduced as under:-

"that confirmations from sundry creditors, with their acknowledgement of return of income & PAN, namely: M/s. Gurnanak Building Material (PAN AAKPM9550h), M/s. Pal Enterprises (AKHPB4641B)- are enclosed for your ready reference."

On 17th Feb the following order sheet entry has been made:-

"Shri Sameer Malhotra AR attended and filed final response from side of assessee. Case was discussed." On this date no adverse observation was made in the order sheet nor any further query was made by the Assessing Officer in the order sheet.

All the confirmations of the above mentioned six parties are also produced before me during the course of appellate proceedings. Besides this, the copy of ledger account, bank statement showing cheque payment to these parties, PAN etc. are also filed before me which were already filed before Assessing Officer.

In this light, the appellant was asked to submit the detail of the gross profit and net profit of the last 3 years which is submitted by the appellant and reproduced as under:-

<i>Assessment Year</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>
<i>Gross Profit</i>	<i>13.60</i>	<i>14.36</i>	<i>18.79</i>
<i>Net Profit</i>	<i>5.92</i>	<i>7.32</i>	<i>15.33</i>

From this it is apparent that the gross profit has increased from 13.60 to 18.79 and net profit has increased from 5.92% to 15.33% from the assessment year 2013-14 which is quite reasonable in this line of business. The AO has not made any effort to make enquiries from bank when the payments were made through cheques and ignored the relevant details and documents filed by the appellant during the course of the assessment proceeding in the form of confirmations, Return of income, PAN, bills and cheque payment through bank statements. In the light of these evidences produced by the appellant and the increased net profit shown by the appellant, I do not find any justification of the addition made by the Assessing Officer regarding purchase. Even when the appellant has filed confirmations of these parties, the AO has not made any adverse observation in the order sheet or any query to the appellant. From the assessment record and order sheet entries, it is also apparent that Assessing Officer has made any query to the appellant regarding the non compliance by the three parties i.e. Gurunanak Building Material, R.K. Electricals and Garg Timber Traders and only asked about the return of notices in the case of another three parties i.e. Pal Enterprises, Vandana Timbers and Balaji Marble & Granite.

Finally, the order u/s 143(3) has been passed on 07.03.2016 by the Assessing Officer without giving any show cause letter or opportunity to the appellant and addition of Rs.50,97,059/- in respect of the purchase made from above six parties was made by the Assessing Officer.

But the observation of Assessing Officer regarding the missing name of the appellant as well as PAN/TIN on the invoices of Pal Enterprises are correct and in the following invoices name the appellant has not been given:-

<i>S.No.</i>	<i>Date</i>	<i>Bill No.</i>	<i>Amount</i>
1.	02/11/2012	604	187000.00
2.	09/11/2012	610	236000.00
3.	16/11/2012	618	114400.00
4.	19/11/2013	621	84300.00
5.	23/11/2012	626	99200.00
6.	30/11/2012	630	117400.00
7.	05/12/2012	633	184000.00
8.	17/12/2012	642	96000.00
9.	28/12/2012	648	56000.00
10.	04/01/2013	653	14300.00
11.	14/01/2013	661	98000.00
12.	06/02/2013	672	88400.00
13.	26/02/2013	685	73500.00
14.	01/03/2013	689	23900.00
15.	17/03/2013	693	87000.00
16.	29/03/2013	699	55900.00
			1615300.00

It is also strange that the appellant is marking cheque payments on regular basis to all the parties including Pal Enterprises, but no payments has been made after 22.10.2012 relating to these bills which are outstanding even on 31.03.2013. The frequency of transaction and series no.of bills staring from 604 to 699 is also doubtful as before this the transaction from Pal Enterprises was made through bill no.2188,

2254, 2316 and 2361 from 20.06.2012 to 20.10.2012. As no independent confirmation was received from Pal Enterprises, the transaction of above-mentioned bills where the name of the appellant is missing could not be substantiated. Further, during the course of appellate proceedings the appellant could not produce any evidence of subsequent payments made relating to these bills. Hence, the addition of the amount of Rs.16,15,300/- relating to these bills of Pal Enterprises made by the Assessing Officer is confirmed and the addition of amount of Rs.34,81,759/- (5097059 -1615300) made by the Assessing Officer is deleted. The appellant will get relief accordingly.

(Refer page -11 to 14 Para- 5.3 of the appellate order

{1.4} Contention of the Assessee to the hon'ble bench: -

- A. THAT the Ld. CIT(A)- 20 has erred in passing the 'Appellate Order', without affording sufficient opportunity to the assessee.
- B. THAT it is brought to your honor's kind notice that neither at the time of assessment, nor at the time of hearing of Appeal, the assessee was directed to produce evidence of payments made to M/s Pal Enterprises, post 31/03/2014.
- C. THAT M/s Pal Enterprises is one of the business creditors of the assessee and has an amount receivable to the tune of Rs, 19,20,000/- from the assessee concern, as on 31/03/2014 (copy of ledger enclosed). The CIT(A)- 20 has only confirmed the addition of the Ld. AO an amount to the tune of Rs. 16,15,300/- because the bills/ invoices (16 nos.) did not have name of the assessee on the same.
- D. Although, the evidence of payments made to M/s Pal Enterprises post 31/03/2014 are made available to the Hon'ble bench, along post 31/03/2014 are made available to the hon'ble bench, along with copies of all the bills/ invoices, ledger account & confirmation issued by M/s Pal Enterprise, to the assessee during the year under consideration and in the subsequent years.
- E. THAT Copy of ledger accounts, confirmations, PAN, duly narrated bank statement in regard to the transactions between the assessee and the seller/ sundry creditor, who sold building material to the assessee during the year, namely, M/s Pal Enterprises (AKHPB4641B) are enclosed for your honor's ready perusal. The same were filed during assessment and appellate proceedings vide letter dated 17/02/2016, 18/11/2015 and 21/10/2015. Copies of letters are also enclosed for your reference.
- F. THAT no opportunity was afforded to the assessee to establish if the payments were made to M/s Pal Enterprises in the subsequent years.
- G. THAT keeping the facts and circumstances in view, the addition of Rs. 16,15,300/- on the above account may very kindly be deleted.

{2}Disallowance on account of Personal Expenses:-

{2.1} Contention of the Assessing Officer:-

The assessee in his books of A/c's claimed the following expenses which are reproduced as under:

(a) Car insurance	Rs.22,932/-
(b) Interest on car Loan	Rs.50,361/-
(c) Car depreciation	Rs.1,86,507/-
Total Amount	Rs.2,59,800/-

As possibility of these expenses for non business/personal purpose could not be ruled out, due to the facts that no log book is maintained by the assessee nor is produced from which it can be verified that these expenses were used wholly and exclusively for the business use only.

Therefore, an ad-hoc edition of 20% of the total amount spent on these expenses Rs. 2,59,800/- i.e. Rs. 51,960/- is made and added back to the income of the assessee on account of personal use of these expenses.

{2.2} Appellant's Submission:-

19. *THAT disallowance made on for. 20% disallowance of Rs.22,932/- from card insurance, Rs. 50,361/- as Interest on car loan has already been made by the AO in his order vide para IV (page 12 of the paper book). Meaning thereby the AO has made the same addition twice i.e. vide para IV & V both, in his order (refer page 12 of the paper book). Copy of ledger account is filed vide page no. 96 to 99 of the paper book. It also shows the kind of interest taken and the intention of the AO while passing the order.*

20. *That 20% of Rs.1,86,507/- claimed as car depreciation is disallowed. The depreciation is claimed at 15% of the total value, i.e. Rs. 1,86,507. The same is allowable under the provisions of the act. In addition to this, the AO has not given any reason before making the addition/disallowance of depreciation claimed. The addition/disallowance may kindly be deleted.*

21. *That it may also be considered that assessee lives close by to his office. He does not use the vehicle for his personal use. He the vehicle to visit construction sites and makes purchase for building material within **Delhi/NCR**. The use of the said vehicle is completely official. Addition of Rs. 51,96.0/- is totally unjustified.*

(Refer page-18 & Para -9.1 or 9.2 of the Appellate order)

{2.3} Decision of the CIT(A)- XX:-

The AO has made adhoc addition @ 20% of the total amount spent on account of car insurance of Rs.22,932, interest on car loan of Rs.50,361/- and car depreciation of Rs.186507/-. The expenditure on car insurance and interest on car loan are fixed expenditure and has to be incurred by the appellant even if there is no personal element on such expenses. However, the car depreciation has to be disallowed u/s 38(2) of the Act on persona element specially on the ground that during the course of hearing vide order sheet entry dated 06.12.2016 the appellant had accepted this fact that the proprietor is having only one vehicle in his name which is used in the business and there is no vehicle in the name of his wife also for personal use which was claimed earlier. In this light, the personal use of the vehicle cannot be ruled out. However, the disallowance @20% made by Assessing Officer is excessive and it is reasonable to

restrict the disallowance @ 10% which comes to Rs.18, 650/- and appellant will get relief accordingly.

(Refer page -19 & Para -9.3 of the Appellate order)

(2.4} Contention of the Assessee to the hon'ble bench: -

A. THAT it is apparent that the gross profit has increased from 13.60 to 18.79 and net profit has increased from 5.92% to 15.33% from the assessment year 2013-14 which is quite reasonable in this line of business. Considering the facts & circumstances of the case, ad hoc addition @10% may very kindly be deleted on the above ground."

[B] Vide Assessment Order dated 07.03.2016 passed under Section 143(3) of the Income Tax Act, 1961 (in short "the I.T. Act"). The relevant portion of the Assessment Order dated 07.03.2016 is reproduced as under:-

"

2. The assessee is an individual engaged in the business of taking small houses in collaborations/purchase of all houses & construction of residential flats in B&C categories areas of Delhi and selling the same in market and derived income from Business or Profession and Income from Other Sources. During the year under consideration, the assessee has shown net profit of ₹24,78,709/- on gross receipts of ₹1,61,67,420/- thereby showing net profit rate of 15.33%.

Non granting of TDS Claim and less income shown than 26AS: -

As per act "[Credit for tax deducted.

199. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.]"

As per rule 37BA "[Credit for tax deducted at source of the purposes of section 199.

(3)(i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable".

During the course of assessment proceedings, assessee was asked to submit 26AS reconciliation.

Details of the submission dated 17.02.2016 shows that the assessee has claimed TDS credit from 26AS having income on bank interest, from Axis Bank Ltd. and Sub-Contractor charges from M/s Oasis Infra Services Pvt. Ltd. amounting to ₹5,00,000/-. Assessee stated that he has received only ₹4,00,000/- instead of ₹5,00,000/- appearing in 26AS, hence, the TDS claim of ₹1,000/- is being denied to the assessee.

Further, the assessee neither submitted any explanation nor submitted any conclusive proof for less receipt of income than shown in 26AS. Assessee submitted a bank statement showing ₹4,00,000/- bank entry as receipt from M/s Oasis Infrservices This reply has been considered but not found tenable. Hence, difference of ₹1,00,000/- (₹5,00,000/- as per 26AS (-) ₹4,00,000/- shown) is added back to income of the assessee.



(Addition of ₹1,00,000/-)

3. During the course of assessment proceedings, A/R was asked to produce original books of accounts, bills, vouchers, muster-rolls, wage sheets etc. for verification. After verification of the same on test check basis following disallowances have been made:-

I. **Disallowance on account of Purchase of Material:-** On perusal of Profit & Loss accounts, it is observed that the assessee has debited a sum of ₹1,04,40,429/- on account of Purchase of Material. The assessee was asked to furnish the details to whom the same was paid. For the verification of claim of assessee notices u/s 133(6) were sent. From the following parties notices were Returned back/No reply received.

S.No.	Name of the party	Amount	Remarks
1	M/s Balaji Marble & Granite, Plot No. E-410, Paryavaran Road, Indl. Area, Madanganj-Kishangarh (Ajmer) Rajasthan-305801	255000	Returned back ✓
2	M/s Vandana Timbers, 5-A, Rajdhani Park, Main Rohtak Road, Nangloi, New Delhi	916998	Returned back ✓
3	M/s Pal Enterprises, Savitri Nagar, Malviya Nagar, New Delhi-110017	2400000	Returned back ✓
4	M/s R. K. Electronics, E-2/9, Malviya Nagar, Delhi-110017	403000	No reply received ✓
7	M/s Garg Timber Traders, 550, Chirag Delhi, New Delhi-110017	210250	No reply received ✓
8	M/s Guru Nanank Building Material Store, 33, Corner Market, Malviya Nagar, New Delhi-110017	911811	No reply received ✓
Total		50,97,059	

NO OPPORTUNITY GIVEN BY ALL. 09.02.2016

21.10.2015
17.02.2016

21.10.2015
17.02.2016

17.02.2016
09.02.2016

NO OPPORTUNITY GIVEN BY ALL. 09.02.2016

1.10.2015
7.02.2016

For 133(6) Returned back/No reply received, the AR of the assessee was asked to give the justification that why it should not be added to the income of the assessee. The AR of the assessee replied vide note sheet entry dated 10.02.2016 stating that the addresses are correct.

This reply has been considered but not tenable as no reply/confirmation has been received from concerned parties. The above 133(6) issued were returned back or no reply received.

Hence, the said parties Payment of ₹50,97,059/- is disallowed and added back to the total income of the assessee on account of bogus purchases. The AR submitted invoices which is reproduced as under:-

to submit the evidence /bills in support of his claim but the assessee has failed to produce the same. This was confirmed by note sheet entry dated 10.02.2016. Therefore, the total deduction claimed of ₹83,690/- by the assessee is being disallowed and added back to the income of the assessee.

(Addition of ₹83,690/-)

- IV. **Disallowance on account of Indirect Expenses:** - The assessee has debited an amount of ₹2,65,312/- on account of Indirect Expenses and ₹9,94,622/- on account of other expenses. The AR of the assessee was asked vide note sheet entry dated 26.10.2015 to submit bills/vouchers of for the same. But, no documents are filed. Again the AR, vide note sheet entry dated 20.01.2016 was informed that no vouchers are produced. Even then, the assessee did not file any bills/vouchers for these expenses. Vide letter dated 10.02.2016 assessee provided details of only indirect expenses which mainly pertain to car but failed to provide even the details of other expenses. Thus, ₹9,94,622/- on account of other expenses are disallowed. It is pertinent to mention that major indirect expenses are made in cash and as such leakage of revenue cannot be ruled out completely. Considering the business expediency of such expenses an ad-hoc addition of 20% on total amount of ₹2,65,312/- i.e. 53,062/-. Therefore, (₹9,94,622/- (+) ₹53,062/-) ₹10,47,684/- ₹10,47,684/- addition is made and added back to the income of the assessee.

(Addition of ₹10,47,684/-)

- V. **Disallowance on account of Personal Expenses:** - The assessee in his books of A/c's claimed the following expenses which are reproduced as under:-

(a)	Car insurance	:	₹22,932/-
(b)	Interest on Car Loan	:	₹50,361/-
(c)	Car depreciation	:	₹1,86,507/-
	Total Amount	:	₹2,59,800/-

As possibility of these expenses for non business/personal purpose could not be ruled out, due to the facts that no log book is maintained by the assessee nor is produced from which it can be verified that these expenses were used wholly and exclusively for the business use only. Therefore, an ad-hoc addition of 20% of the total amount spent on these expenses ₹2,59,800/- i.e. ₹51,960/- is made and added back to the income of the assessee on account of personal use of these expenses.

(Addition of ₹51,960/-)

4. Subject to above discussions, the income of the assessee is recomputed as under:-

S.No.	Particulars	(Amount in ₹)
	Income as per computation filed by the assessee	₹26,39,680/-
I.	Non granting of TDS Claim and less income shown than 26AS (₹1,000/-)	₹1,00,000/-
II.	Disallowance on account of Purchase of Material	₹50,97,059/-
III.	Disallowance on account of Direct Wages	₹3,58,368/-
IV.	Addition on account of deduction claimed u/s 80C & 80D	₹83,690/-
V.	Disallowance on account of Indirect Expenses	₹10,47,684/-
VI.	Disallowance on account of Personal Expenses	₹51,960/-
	Total disallowance	₹67,38,761/-
	Total Income	₹93,78,441/-
	Rounded off	₹93,78,440/-

[C] The Assessee filed appeal before the Ld. CIT(A). Vide impugned appellate order dated 31.01.2017, wherein the Ld. CIT(A) partly allowed the assessee's appeal. The relevant portion of the order dated 31.01.2017 of the Ld. CIT(A) is reproduced as under:

{4} The Assessing Officer has made the following observations in the assessment order: -

{4.1} Non granting of TDS claim: - Ground No. 4 to 8

{4.2} Contention of the Assessing Officer: -

The assessee is an individual engaged in the business of taking small houses in collaborations/purchase of all houses & construction of residential flats in B&C categories areas of Delhi and selling the same in market and derived income from Business or Profession and Income from Other Sources. During the year under consideration, the assessee has shown net profit of Rs.24,78,709/- on gross receipts of Rs.1,61,67,420/- thereby showing net profit rate of 15.33%.

Non granting of TDS Claim and less income shown than 26AS: -

As per act "[Credit for tax deducted.

199. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.] "

As per rule 37BA "[Credit for tax deducted at source of the purposes of section 199.

{3}(i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable".

During the course of assessment proceedings, assessee was asked to submit 26AS reconciliation.

Details of the submission dated 17.02.2016 shows that the assessee has claimed TDS credit from 26AS having income on bank interest, from Axis Bank Ltd. and Sub-Contractor charges from M/s Oasis Infra Services Pvt. Ltd. amounting to Rs.5,00,000/-. Assessee stated that he has received only Rs.4,00,000/- instead of Rs.5,00,000/- appearing in 26AS, hence, the TDS claim of Rs.1,000/- is being denied to the assessee.

Further, the assessee neither submitted any explanation nor submitted any conclusive proof for less receipt of income than shown in 26AS. Assessee submitted a bank statement showing Rs.4,00,000/- bank entry as receipt from M/s Oasis Infrservices This reply has been considered but not found tenable. Hence, difference of Rs.1,00,000/- (Rs.5,00,000/- as per 26AS (-)Rs.4,00,000/- shown) is added back to income of the assessee.

{4.3} Appellant's Submission: -

1. *PARA 1 of paper book: - That as per submissions made vide order sheet entry dated 20/11/2015 the assessee was directed to file 26AS reconciliation. In response to which replies were filed vide letters dated 18/11/2015 para 3, and 27/11/2015 para 3, with annexures, and placed on record. Kindly refer to page no 35 to 41 of the paper book.*

2. *That at the time of filing of the return of Income Form 26AS was downloaded which showed TDS to the tune of Rs. 1,030/- by M/s Axis Bank Ltd and as such the same was claimed. Now after filing of return & during the assessment proceeding afresh form 26AS was downloaded. M/s Oasis Infrservices (P) Ltd deducted at source a sum of Rs. 5,000/- on 09/07/2012 u/s 194C of the Act. And the same was ignored by the AO. Kindly refer to page no. 22 to 32 of the paper book.*

3. *That the AO in his order has stated that the assessee has not submitted any explanation nor any conclusive proof for less receipt of income than shown in form 26AS. The assessee has submitted his bank statement having two transactions, i.e. Rs. 4,00,000/- and Rs. 95,000/- dated 09/07/2012 and 16/07/2012 respectively vide page no. 22 to 32 of the paper book.*

4. *That the assessee received total payment of Rs. 4,95,000/- as contract receipt from M/s Oasis Infrservices (P) Ltd. Out of which Rs. 4,00,000/- were received on 09/07/2012 and Rs. 95,000/- were received on 16/07/2012 submitted vide page no. 33 of the paper book. Cheque of Rs. 10,000/- as petty contract receipt from Mrs Bina Grover and Rs. 95,000/- from M/s Oasis Infrservices (P) Ltd. were deposited on 16/07/2012 vide a single pay slip (page 31 of the paper book). As a result an amount of Rs. 1,05,000/- is reflected in the bank statement vide page no. 31 to 33 of the paper book. Both these amount are duly shown/ disclosed as contract receipt in the P&L A/c as per page 89 of the paper book.*

5. *That TDS of Rs. 5,000/- was not claimed while filing the return of income, as the payer/ Deductor had not uploaded their TDS return. The above amount was reflected in the AIR under the head '26AS details'. It was submitted before the Ld. AO to provide credit of the above TDS, because*



the relevant receipt of Rs. 5,00,000/- was declared/ disclosed. P&L a/c enclosed vide page no. 89 of the paper book.

{4.4} Decision: -

The contention of the Assessing Officer and submission of the appellant has been considered. The appellant has filed a paper book having documents which were filed before the Assessing Officer in support of the claim. The assessment record of the appellant has also been called from the Assessing Officer to verify the submission of the appellant that the Assessing Officer has not considered the reply and documents filed during the course of assessment proceedings.

From the perusal of the assessment record as well as the paper book it is gathered that the difference of 26AS has duly been filed before the AO vide letter dated 07.12.2015 in which the appellant has mentioned the following :-

"During the year under reference the assessee has received contracts receipts amounting to Rs.5,00,000/- from Oasis Infrservices (P) Ltd. A sum of Rs.4,00,000/- was received by the assessee on 09.07.2012 and another sum of Rs.95,000/- was received on 16.07.2012. However the Bank had credited a sum of Rs.1,05,000/- to the account of the assessee on 16.07.2012 by clubbing the amount of two cheques i.e. of Rs.10,000/- issued by Bina Grover which was also a petty contract receipt. Both these amounts are duly shown as contract income which is included in the contract income shown in the Profit & Loss A/c. This TDS of Rs.5000 was not claimed while filing the return as at that time the payer had not uploaded its TDS return & this amount has come now in the AIR under the head Form 26 AS details. It is requested that necessary credit of this TDS of Rs.5,000/- may be allowed as the relevant receipts has been duly declared. Copies of necessary documents are enclosed herewith."

During the course of appellate proceedings this fact has been verified from the bank statement of the appellant already filed before Assessing Officer. As the appellant has shown necessary evidences that the amount of Rs.5 lacs has been shown as income during the year, there is no justification of disallowance of Rs.1 lac by the Assessing Officer and the addition of Rs.1 lac is deleted. As the corresponding TDS of Rs.5,000/- was claimed by the appellant during the course of the assessment proceedings, the Assessing Officer is directed to give credit of this TDS u/s 199 of the Act read with Rule 37BA.

{5} Disallowance on account of Purchase of Material: - Ground No. 9 to 14

{5.1} Contention of the Assessing Officer: -

On perusal of Profit & Loss accounts, it is observed that the assessee has debited a sum of Rs.1,04,40,429/- on account of Purchase of Material. The assessee was asked to furnish the details

to whom the same was paid. For the verification of claim of assessee notices u/s 133(6) were sent. From the following parties notices were Returned back/No reply received.

S.No.	Name of the party	Amount	Remarks
1	M/s Balaji Marble & Granite, Plot No. E-410, Paryavaran Road, Indl. Area, Madanganj-Kishangarh (Ajmer) Rajasthan-305801	255000	Returned back
	M/s Vandana Timbers, 5-A, Rajdhani Park, Main Rohtak Road, Nangloi, New Delhi	916998	Returned back
3	M/s Pal Enterprises, Savitri Nagar, Malviya Nagar, New Delhi-110017	2400000	Returned back
4	M/s R. K. Electronics, E-2/9, Malviya Nagar, Delhi-110017	403000	No reply received
7	M/s Garg Timber Traders, 550, Chirag Delhi, New Delhi-110017	210250	No reply received
	M/s Guru Nanank Building Material Store, 33, Corner Market, Malviya Nagar, New Delhi-110017	911811	No reply received
	Total	50,97,059	

For 133(6) Returned back/No reply received, the AR of the assessee was asked to give the justification that why it should not be added to the income of the assessee. The AR of the assessee replied vide note sheet entry dated 10.02.2016 stating that the addresses are correct.

This reply has been considered but not tenable as no reply/confirmation has been received from concerned parties. The above 133(6) issued were returned back or no reply received.

Hence, the said parties Payment of Rs.50,97,059/- is disallowed and added back to the total income of the assessee on account of bogus purchases. The AR submitted invoices.

As evident from this invoice, there is no TIN/PAN which also raises doubts about its authenticity. Further, there is no name mentioned.

{5.2} Appellant's Submission: -

The assessee went out of the way to attain and file detailed confirmations, with narrated bank statement, Acknowledgement of return of Income, and PAN of the creditors, on their behalf respectively, which are filed vide page no. 90 to 95 of the paper book for your reference.

6. That detailed ledger account along with all copies of bills/ invoice of purchase of building material during the year under consideration, are enclosed again (vide page no. 35 to 88) of the paper book, for your ready perusal.

7. That the AO in his order (page 13 of the paper book) has stated that there is no TIN/ PAN on the invoice of M/s Pal Enterprises. The AO neither directed the assessee to submit the same nor noted on the order sheet to make submissions. The AO has not given any opportunity to the assessee to explain the above. Also there are 13. invoices raised by M/s Pal Enterprises during the year, against the assessee's name. The AO has only pointed out the bill, which did not have purchasing dealer's name (assessee) on it. All the bills, with the creditor's addresses and PAN are enclosed vide page no. 35 to 41 of the paper book.

8. THAT "merely because the notices u/s 133(6) could not be served upon/ returned back/ or no reply received from/ to the creditors, does not mean the transactions were bogus". All the

transactions with the creditors were made through banking channels (bank statement duly narrated is annexed vide page no. 33 to 34 of the paper book) and all documentary evidences prove that the assessee has transacted with the purchasing dealers genuinely.

9. *That the AO issued notices u/s 133(6) to the business creditors on 20/01/2016 only and never again. Meaning thereby, that the AO did not intend to give another opportunity to the said creditors. As explained earlier all details vide letters mentioned above were filed and placed on record. Thus, the onus to prove the transaction and its genuineness no more lie upon the assessee.*

10. *The AO in his order said that 'the counsel stated that the addresses are correct'. It is vehemently denied. Neither the assessee nor the counsel issued any such statement in regard to the addresses of the creditors. The Ld. AO has made false allegation in his order vide page no. 35 to 43 of the paper book.*

11. *That the remarks in the order that, the assessee has furnished inaccurate particulars and concealed the income, because there is no TIN/ PAN on one creditor's invoice, is baseless. As said in para 7, all the transactions are through banking channels and are genuine. Also all the bills have the TIN and PAN incorporated and enclosed vide page 35- 43 of the paper book. Addition of Rs. 50,97,059/- may very kindly be deleted.*

{5.3} Decision: -

The AO has made an addition of Rs.50,97,059/- on account of purchase of material on the ground that notice under section 133(6) came back unserved/no reply received and the invoices were not having TIN/PAN. The Assessing Officer has made this addition by simply writing that the AR of the appellant was asked to justify this and he stated that addresses are correct. During the course of appellate proceedings, the appellant has filed paper book alongwith the documents which were filed before the Assessing Officer and claimed that confirmation of the purchasers, bank statement, the copy of return of income, PAN etc. were filed before the Assessing Officer vide letter dated 21.10.2015, 09.02.2016 and 17.02.16 which were ignored by the Assessing Officer. The appellant has also claimed that all these purchases are made through cheques. The appellant has also claimed that all bills are having TIN/PAN which was given to the Assessing Officer. To verify the claim of the appellant the assessment record was called from the Assessing Officer & verified and it is gathered that during the assessment proceedings, the appellant has filed the confirmation of the purchasers, ledger account, Bank Statement showing cheque payments to these parties, copies of bills having TIN/PAN but the Assessing Officer has not discussed at all about these documents. It appears that the AO was only guided by the notices issued under section 133(6) which came back unserved or where no reply was received. From the assessment record it is also gathered that in the following cases notices u/s 136 came back unserved with the following remarks:-

Sr. No.	Name of the party	Remarks
1.	M/s.Vandana Timbers & Granite Plot No.E-410, ParyavaranRoad, Indl. Area Madanganj Kishangarh	Unfound

	(Ajmer) Rajasthan-305801	
2.	M/s.Pal Enterprises, Savitri Natar, Malviya Nagar, New Delhi	Insufficient address
3.	Balaji Marble & Granite, Plot No.E-410, Paryavaran Road, Indl.Area, Madantganj Kishan Garg (Ajmer) Rajasthan 305801	Not known address returned back

Further, the following creditors have not responded to the notices u/s 133(6) of the Assessing Officer: -

M/s R. K. Electronics, E-2/9, Malviya Nagar, Delhi-110017
M/s Garg Timber Traders, 550, Chirag Delhi, New Delhi-110017
M/s Guru Nanank Building Material Store, 33, Corner Market, Malviya Nagar, New Delhi-110017

In this light, the claim of the appellant has been considered and found that the Assessing Officer vide notice u/s 142(1) dated 29.07.2015 has asked for the name and address for the party from whom purchases was made of more than Rs. 5 lacs. In compliance to this on 21.10.2015 the appellant has filed these details where the name and address of Gurunanak Building Material, Pal Enterprises, Nav Durga Steel and Sanitary, Ahluwalia Marbels and Vandana Timbers was given. In these accounts only Pal Enterprises and Vandana Timbers credit balance of Rs.19,12,000/- and Rs.7,67,234/- was shown respectively. On 26.10.2015 vide order sheet entry the Assessing Officer has asked the appellant to file the confirmation to the creditors. Subsequently vide letter dated 07.12.2015 the appellant has filed the confirmed copy of Pal Enterprises and Vandana Timbers. On 20.01.2016 the Assessing Officer vide order sheet entry has asked for purchase vouchers & bills and creditors address and confirmation. Vide letter dated 28.01.2016 again confirmed copies of Vandana Timbers, Pal Enterprises, Gurunanak Building Material Store, bills & vouchers of Pal Enterprises, Vandana Timbers, Gurunanak Building Material, Ahluwalia Marbels, R.K. Electricals and Garg Timber Traders as well as ledger copies of these parties in the books of the appellant was produced. Again the appellant vide letter dated 10.02.2016 has mentioned the following: -

"That confirmations from sundry creditors namely M/s Balaji Marbles, M/s Vandana Timber (PAN- AAEFV9228P)-, M/s R.K. Electricals (PAN- AAFFR8583G), M/s Nav Durga Steel, M/s Garg Timber, M/s Gurunanak Building Material (PAN- AAKPM9550H)-, M/s Pal Enterprises (AKHPB4641B)-. All the above confirmations are filed by the assessee vide letter dated 18-11-2015 para 5."

On 10.02.2016 vide order sheet entry the Assessing Officer has made the following entry in relation to the notices which came back unserved: -

"..... He was informed returned 133(6) from vendors. AR stated that address are correct. On AR request, final date 17 Feb 2016"

On 17th Feb the appellant has filed the letter alongwith documents. The relevant portion of the letter dated 17.02.2016 of the appellant is reproduced as under: -

"that confirmations from sundry creditors, with their Acknowledgement of Return of income & PAN, namely: M/s. Vandana Timber (PAN AAFFV9228P), M/s. Nav Durga Steel and Sanitary (PAN AADFN8655K), M/s. Gurunanak Building Material (PAN AAKPM955H), M/s. Pal Enterprises (AKHPB4641B)- are enclosed for your ready reference."

On 17th Feb the following order sheet entry has been made: -

"Shri Sameer Malhotra AR attended and filed final response from side of assessee. Case was discussed." On this date no adverse observation was made in the order sheet nor any further query was made by the Assessing Officer in the order sheet.

All the confirmations of the above mentioned six parties are also produced before me during the course of appellate proceedings. Besides this, the copy of ledger account, bank statement showing cheque payment to these parties, PAN etc. are also filed before me which were already filed before Assessing Officer.

In this light, the appellant was asked to submit the details of the gross profit and net profit of the last 3 years which is submitted by the appellant and reproduced as under: -

Assessment Year	2011-12	2012-13	2013-14
Gross Profit	13.60	14.36	18.79
Net Profit	5.92	7.32	15.33

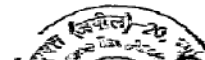
From this it is apparent that the gross profit has increased from 13.60 to 18.79 and net profit has increased from 5.92% to 15.33% from the assessment year 2011-12 to assessment year 2013-14 which is quite reasonable in this line of business. The AO has not made any effort to make enquiries from the bank when the payments were made through cheques and ignored the relevant details and documents filed by the appellant during the course of the assessment proceedings in the form of confirmations, Return of Income, PAN, bills and cheque payment through bank statements. In the light of these evidences produced by the appellant and the increased net profit shown by the appellant, I do not find any justification of the addition made by the Assessing Officer regarding purchases. Even when the appellant has filed confirmations of these parties, the AO has not made any adverse observation in the order sheet or any query to the appellant. From the assessment record and order sheet entries, it is also apparent that Assessing Officer has not made any query to the appellant regarding the non compliance made by the three parties i.e. Gurunanak Building Material, R.K. Electricals and Garg Timber Traders and only asked about the return of notices in the case of another three parties i.e. Pal Enterprises, Vandana Timbers & Granite and Balaji Marble & Granite.

Finally, the order u/s 143(3) has been passed on 07.03.2016 by the Assessing Officer without giving any show cause letter or opportunity to the appellant and addition of Rs.50,97,059/- in respect of the purchases made from above six parties was made by the Assessing Officer.

But the observation of Assessing Officer regarding the missing name of the appellant as well as PAN/TIN in the invoices of Pal Enterprises are correct and in the following invoices name of the appellant has not been given: -

S.No.	Date	Bill No.	Amount
1.	02/11/2012	604	187000.00
2.	09/11/2012	610	236000.00
3.	16/11/2012	618	114400.00
4.	19/11/2012	621	84300.00
5.	23/11/2012	626	99200.00
6.	30/11/2012	630	117400.00
7.	05/12/2012	633	184000.00
8.	17/12/2012	642	96000.00
9.	28/12/2012	648	56000.00
10.	04/01/2013	653	14300.00
11	14/01/2013	661	98000.00
12	06/02/2013	672	88400.00
13	26/02/2013	685	73500.00
14	01/03/2013	689	23900.00
15	17/03/2013	693	87000.00
16	29/03/2013	699	55900.00
			1615300.00

It is also strange that the appellant is making cheque payments on regular basis to all the parties including Pal Enterprises, but no payment has been made after 22.10.2012 relating to these bills which are outstanding even on 31.03.2013. The frequency of transaction and series no. of bills starting from 604 to 699 is also doubtful as before this the transaction from Pal Enterprises was made through bill no.2188, 2217, 2254, 2316 and 2361 from 20.06.2012 to 20.10.2012. As no independent confirmation was received from Pal Enterprises, the transaction of above mentioned bills where the name of the appellant is missing could not be substantiated. Further, during the course of appellate proceedings the appellant could not produce any evidence of subsequent payments made relating to these bills. Hence, the addition of the amount of Rs.16,15,300/- relating to these bills of Pal Enterprises made by the Assessing Officer is confirmed and the addition of amount of Rs.3481759/- (5097059 - 1615300) made by the Assessing Officer is deleted. The appellant will get relief accordingly.



{6} Disallowance on account of Direct Wages: - Ground No.15 to 17

{6.1} Contention of the Assessing Officer: -

On perusal of Profit & Loss accounts for the year under consideration, it is observed that the assessee has debited a sum of Rs.17,91,840/- on account of Direct Wages. The AR of the assessee was asked vide note sheet entry dated 26.10.2015 to submit bills/vouchers of for the same. But, no documents are filed. Again the AR, vide note sheet entry dated 20 01.2016 was informed that no vouchers are produced. Even then, the assessee did not file any bills/vouchers for these expenses. Hence, an ad-hoc 20% addition on total amount of Rs.17,91,840/- is made out of Direct Wages to cover up the possible leakage of revenue arising nature of the expenses which is added back to the income of the assessee.

{6.2} Appellant's Submission: -

12. *That in the order the AO has stated, the assessee debited a sum of Rs. 17,91,840/- on account of direct wages for which no documents are filed. He also stated that no bills/ vouchers were filed for these expenses. The statement is not true and vehemently denied. The assessee has filed the entire documentary evidence to prove the genuineness of the transaction vide page no. 96 to 101 of the paper book for your reference. All the vouchers, muster roles, and detailed ledger accounts are enclosed vide page 90-95 of the paper book.*

13. *That complete details of direct wages are filed and placed on record vide letter dated 28/01/2016 (page no. 96 to 99 of the paper book) for your reference. 'Direct wage' is entirely official and work/ profession related expense. An ad-hoc 20% addition of total amount of Rs. 17,91,840/-, i.e. 3,58,368/- is baseless and unnecessarily.*

14. *That out of a total sum of Rs. 17,91,840/-, payment of Rs. 12,06,840 is made to one Mr. Ram Nivas through banking channel. Other payments of Rs. 5,85,000/- are made to labors on the basis of completion of work during the year. Attendance registers/ master role prescribed under Form XVI u/r 78(1) (a) (ii) of the Act were maintained, filed, and placed on record vide (page no. 33 to 34 of the paper book).*

{6.3} Decision: -

The AO has made this addition on the ground that on 26.10.2015 and 20.01.2016, the appellant was asked to submit bills and vouchers which was not produced. From the perusal of the order sheet of the assessment record it is gathered that on 26.10.2015, the AO has asked the appellant to submit "all expenses ledger and vouchers" and on 20.11.2015 vide order sheet the AO has only mentioned that the AR attended and filed part details and the Assessing Officer has not made any specific query. Subsequently also on 14.12.2016 hearing took place and the AO mentioned that the AR has filed part details and the case was adjourned to 21.12.2015. On 21.12.2015 again the hearing took place and AO mentioned that the AR attended and filed reply to queries and the case was discussed. From the perusal of the assessment record it is gathered that on 21.12.2015 the appellant has filed the details of muster roll sheets alongwith the letter and the next date of hearing was given on 06.01.2016 without asking any details. During

the course of appellate proceedings, the appellant has mentioned that all the vouchers muster rolls, and details were produced before the Assessing Officer which were also produced before me. I find merit in the contention of the appellant that the Assessing Officer has made ad-hoc disallowances without considering the documents on record and without making any adverse observation and without giving any opportunity to the appellant to explain this. Further, considering the net profit of the appellant which is 15.33% and reasonable in this line of business, adhoc addition made by the AO on account of direct wages of Rs.17,91,840/- is deleted.

{7} Addition on account of deduction claimed u/s 80C & 80D: -
Ground No. 18 & 19

{7.1} Contention of the Assessing Officer: -

During the course of assessment proceedings upon perusal of computation of income filed by the assessee vide his letter dated 11.09.2015. It is observed that the assessee has claimed deduction of Rs.73,220/- u/s 80C & Rs.10,470/- u/s 80D respectively. The assessee was asked vide order sheet entry dated 20.01.2016 to submit the evidence /bills in support of his claim but the assessee has failed to produce the same. This was confirmed by note, sheet entry dated 10.02.2016. Therefore, the total deduction claimed of Rs.83,690/- by the assessee is being disallowed and added back to the income of the assessee.

{7.2} Appellant's Submission: -

15. *That the AO in his order has stated that the assessee has failed to produce the evidence/ bills in support of deductions claimed u/s 80C & 80D of the Income Tax Act, 1961. Please refer page no. 33 to 41 of the paper book. This is not true and against the facts and circumstances of the case.*

16. *That deduction claimed of Rs. 73,220/- was paid as school fee of the assessee's son, to Lakshman Public School during the year. The transaction was made through bank and the same is evident from the bank statement filed vide letter dated 11/09/2015 para 6 and vide page no. 33 to 34 of the paper book. Another deduction claimed of Rs. 10,470/- was paid as insurance premium to M/s ICICI Lombard Insurance Ltd through Axis Bank, which is evident from the documents filed vide letter dated 11/09/2015 and page no. 33 to 34 of the paper book.*

{7.3} Decision: -

The submission of the appellant has been considered and from the perusal of the assessment record it is gathered that the appellant vide letter dated 20.11.2015 has filed reply that "school fee of child amounting to Rs.73220/- has been paid by cheques which are duly reflected in the bank statement enclosed herewith." Further, vide letter dated 10.02.2016 the appellant has filed the following before Assessing Officer :-

** School fee paid to Laxman Public School, vide cheque no. 225537, 225406, 214069, 235307 and 235310 amounting to Rs.73,220/-.*

Premium for Mediclaim paid vide cheque no.226107 (Axis Bank) to M/s. National Fin Corp Ltd- Rs.10,470/-."

The necessary bank statement showing these payments were also produced during the course of appellate proceedings. On the basis of this it is held that the disallowance of the deduction by the Assessing Officer of the claim of the appellant under section 80C and 80D of the Act of Rs.73,220/- and Rs.10,470/- has no basis and the addition made by the Assessing Officer under these heads are deleted.

{8} Disallowance on account of Indirect Expenses: - Ground No. 20 to 22

{8.1} Contention of the Assessing Officer: -

The assessee has debited an amount of Rs.2,65,312/- on account of Indirect Expenses and Rs.9,94,622/- on account of other expenses. The AR of the assessee was asked vide note sheet entry dated 26.10.2015 to submit bills/vouchers of for the same. But, no documents are filed. Again the AR, vide note sheet entry dated 20.01.2016 was informed that no vouchers are produced. Even then, the assessee did not file any bills/vouchers for these expenses. Vide letter dated 10.02.2016 assessee provided details of only indirect expenses which mainly pertain to car but failed to provide even the details of other expenses. Thus, Rs.9,94,622/- on account of other expenses are disallowed. It is pertinent to mention that major indirect expenses are made in cash and as such leakage of revenue cannot be ruled out completely. Considering the business expediency of such expenses an ad-hoc addition of 20% on total amount of Rs.2,65,312/- i.e. 53,062/-. Therefore, (Rs.9,94,622/- (+) Rs.53,062/-) Rs.10,47,684/- Rs.10,47,684/- addition is made and added back to the income of the assessee.

{4.3} Appellant's Submission: -

17. THAT details of all the direct expenses of Rs. 2,65,312/- and other expenses of Rs. 9,94,622/-, i.e. expenses incurred to pay, Stamp Duty, Property Tax (MCD) and fee to L&DO, etc., along with their documentary evidence are filed and placed on record vide letter dated 10/02/2016 (para 5) and page no. 96 to 101 of the paper book. The AO did not consider the same,

18. That it is brought to your kind notice that the AO has not had a close look into the facts of the case. It may be noted that the same expenses are disallowed twice by the AO vide para IV and V of the asstt. order. The addition made is infructuous in law. Addition of Rs. 10,47,684/- is unjustified and may very kindly be deleted. Inclusions under the head Indirect expenses include the following:-

Car insurance	Rs. 22,932/-
Electricity Expense	Rs. 1,36,070/-
Interest on car loan	Rs. 50,361/-
water expenses	Rs. 55,949/-
Total	Rs.2,65,312/

The AO has disallowed 20% on ad- hoc basis without knowing the facts. Car insurance (Rs. 22,932/-), and interest on car loan (Rs. 50,361/-), are added twice under the head Disallowance

on account of Indirect expenses' vide para IV of the order and 'disallowance on account of personal expenses' vide para V of the order. Please refer to page 12, para IV & V of the paper book.

{8.3} Decision: -

The claim of the appellant has been examined and found correct regarding the double addition made by the Assessing Officer on account of car insurance and interest on car loan. Further, considering the nature of expenses and the net profit rate of the appellant which is 15.33% which is reasonable in this line of business, the adhoc addition of Rs.1047684/- made by the Assessing Officer is deleted.

{9} Disallowance on account of Personal Expenses: - Ground No. 23 to 25

{9.1} Contention of the Assessing Officer: -

The assessee in his books of A/c's claimed the following expenses which are reproduced as under:-

(a) Car insurance	Rs.22,932/-
(b) Interest on Car Loan	Rs.50,361/-
(c) Car depreciation	Rs.1,86,507/
Total Amount	Rs.2,59,800/

As possibility of these expenses for non-business/personal purpose could not be ruled out, due to the facts that no log book is maintained by the assessee nor is produced from which it can be verified that these expenses were used wholly and exclusively for the business use only. Therefore, an ad-hoc addition of 20% of the total amount spent on these expenses Rs.2,59,800/- i.e. Rs.51,960/- is made and added back to the income of the assessee on account of personal use of these expenses.

{9.2} Appellant's Submission: -

19. THAT disallowance made on expenses for. 20% disallowance of Rs. 22,932/- from car insurance, Rs. 50,361/- as Interest on car loan has already been made by the AO in his order vide para IV (page 12 of the paper book). Meaning thereby the AO has made the same addition twice i.e. vide para IV & V both, in his order (refer page 12 of the paper book). Copy of ledger account is filed vide page no. 96 to 99 of the paper book. It clearly indicates that the AO has not had a close look and is unaware of the facts of the case. It also shows the kind of interest taken and the intention of the AO while passing the order.

20. THAT 20% of Rs.1,86,507/- claimed as car depreciation is disallowed. The depreciation is claimed at 15% of the total value, i.e. Rs. 1,86,507. The same is allowable under the provisions of the Act. In addition to this, the AO has not given any reason before making the addition/ disallowance of depreciation claimed. The addition/ disallowance may very kindly be deleted.

21. That it may also be considered that the assessee lives close by to his office. He does not use the vehicle for his personal use. He uses the vehicle to visit construction sites and make purchases for building material within Delhi/ NCR. The use of the said vehicle is completely official. Addition of Rs. 51,960/- is totally unjustified.

{9.3} Decision: -

The AO has made adhoc addition @ 20% of the total amount spent on account of car insurance of Rs.22,932, interest on car loan of Rs.50,361/- and car depreciation of Rs.186507/-. The expenditure on car insurance and interest on car loan are fixed expenditure and has to be incurred by the appellant even if there is no personal element on such expenses. However, the car depreciation has to be disallowed u/s. 38(2) of the Act on personal element specially on the ground that during the course of hearing vide order sheet entry dated 06.12.2016 the appellant had accepted this fact that the proprietor is having only one vehicle in his name which is used in the business and there is no vehicle in the name of his wife also for personal use which was claimed earlier. In this light, the personal use of the vehicle cannot be ruled out. However, the disallowance @ 20% made by Assessing Officer is excessive and it is reasonable to restrict the disallowance @ 10% which comes to Rs.18,650/- and appellant will get relief accordingly. "

[D] This present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 31.01.2017 of the Ld. CIT(A). At the time of hearing, Revenue was represented by Shri Surender Pal, the learned Senior Departmental Representative ("Ld. Sr. DR", for short). However, none was present from the assessee's side. In the absence of any representation from assessee's side, at the time of hearing before us, we heard the Ld. Sr. DR; who relied upon the order dated 07.03.2016 of the Assessing Officer and the aforesaid impugned appellate order dated 31.01.2017 of the Ld. CIT(A). After perusal of the materials on record, including the order of the AO and the aforesaid impugned order dated 31.01.2017 of the Ld. CIT(A), we find that the Ld. CIT(A) has passed speaking order on merits. Relevant portion of the impugned order of the Ld. CIT(A) has already been reproduced in foregoing paragraph **[C]** of this order. We find that the Ld. CIT(A) has given detailed reasons for

his decision on merits in the aforesaid impugned appellate order dated 31.01.2017 of Ld. CIT(A). During appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short) no material has been brought for our consideration to persuade us to take a view different from the view taken by the Ld. CIT(A) in the impugned order on merit. After hearing the Ld. Sr. DR and after perusal of materials on record, and further, in view of the foregoing discussion, we decline to interfere with the aforesaid impugned appellate order dated 31.01.2017 of Ld. CIT(A), and accordingly, this appeal is dismissed.

[E] Before we part; we explicitly clarify that the assessee will be at liberty to approach ITAT for restoration of the appeal in accordance with Proviso to Rule 24 of Income Tax (Appellate Tribunal), Rules, 1963. If the assessee does approach ITAT for restoration of the appeals in ITAT, the matter will be considered in accordance with law having regard to the facts and circumstances.

[F] In the result, appeal filed by Assessee is dismissed.

Order pronounced in the open court on 18/12/2019.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 18/12/2019
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	