IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI SANJAY ARORA, ACCOUNTANT MEMBER

ITA No.199/JAB/2018
Assessment Year: 2014-15

Harshu Construction Pvt. Ltd. 903, M.H. House, Gole Bazar, Jabalpur- 482002 [PAN: AABCH 9808B]	vs.	Asst. Commissioner of Income Tax, Circle 1(1), Jabalpur
(Appellant)		(Respondent)

Appellant by	Shri Arun Grover, CA with Shri Ashish Tarnen, CA
Respondent by	Shri I.B. Khandel, Senior DR
Date of hearing	13/12/2019
Date of pronouncement	20/01/2020

O R D E R

Per Sanjay Arora, AM:

This is an Appeal by the Assessee, directed against the Order by the Commissioner of Income Tax (Appeals)-1, Jabalpur '(CIT(A))' for short) dated 26.7.2018, partly allowing the assessee's appeal contesting its' assessment under section 143 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 26/8/2016 for Assessment Year (A.Y.) 2014-15.

2. The only issue arising for adjudication in this appeal is the maintainability of the disallowance, in law and in the facts and circumstances of the case, of a sum of Rs.3,86,775, being 10% of the expenditure claimed under the account head 'land development expenses'. The brief facts of the case are that the assessee-company, in construction business, claimed 'land development expenses' in the sum of Rs. 38,62,756 per its' return of income for the relevant year. The same, on being subject

to verification during the assessment proceedings, were found by the Assessing Officer (AO) to be, to some extent incurred per self-made debit vouchers, while some vouchers were unsigned, & some others were identified as prepared in a hasty manner with a view to 'appear' genuine. Some others were not supported by proper bills and vouchers. He, accordingly, disallowed the expenditure claimed to the extent of the 20% thereof. In appeal, the ld. CIT(A) was of the view that the objections raised by the AO being not denied or refuted by the assessee, some disallowance was called for. He, however, restricted it to 10%. Aggrieved, the assessee is in second appeal.

3. Before us, the ld. AR, the assessee's counsel, Sh. Grover, would seek to emphasize, with reference to case law, that no disallowance could arise on the basis of a suspicion, surmise or conjecture. Taking us through the concluding part of the assessment order, he would draw our attention to its last para whereby the AO had sought to justify the disallowance so as to protect possible leakage of profit, so that, as argued, it was merely protective (in nature). The ld. Sr. DR, Sh. Khandel, would rely on the orders by the authorities below, stating of them being based on definite, unrebutted findings.

4. We have heard the parties, and perused the material on record.

4.1 Our first observation in the matter is that the primary onus to prove its' return, and the claims preferred thereby, is on the assessee [*CIT vs. Calcutta Agency Ltd*. [1951] 19 ITR 191 (SC); *CIT vs. R. Venktaswamy Naidu* [1956] 29 ITR 529 (SC)]. This aspect is in fact not disputed. It is toward discharge of this obligation on the assessee that it furnishes its' books of account along with the relevant vouchers in substantiation of its' claims, which were, upon examination by the AO, found deficient in-so-far as the same related to 'land development expenses', for the following reasons:

a) lack of proper bills and vouchers;
b) self-made debit vouchers; and
c) unsigned vouchers.

4.2 It is on account of these observed deficiencies that the AO regarded the same as not verifiable and, thus, as not reliable, for which, as well as toward leakage of income, he effected a disallowance at 20% (of the claimed expenditure). It is this clear finding of fact which the assessee was required, and was unable, to dislodge in first appeal, which was accordingly confirmed, even as the ld. CIT(A) reduced the quantum of disallowance by half, reducing the AO's estimate to 10%. The same position, as far as the assessee's case goes, obtains before us as well.

4.3 The law in the matter is trite, and not either in issue or under quarrel, or could possibly be. A disallowance could arise only on the edifice of clear finding/s, arrived at on proper examination of the relevant material, the onus to adduce which is on the assessee. It is the definite finding/s of fact that is the basis of the disallowance in the instant case, and on which, therefore, the Revenue's case rests. A part of the evidence or material furnished by the assessee in support of its' claim for the impugned expenditure was, on examination, found as not reliable, so that it's claim could not be allowed in full and, accordingly, a part of the relevant expenditure had to be disallowed. The allowance of an expenditure u/s. 37(1) is on the premise of it being incurred wholly and exclusively – *which adverts to the quantum and the purpose of the expenditure*, for business purposes, the onus for which, undischarged in the instant case, is again on the assessee. The AO further makes it clear that this was with a view to protect the Revenue's interest, which cannot by itself be faulted with, i.e., as long as the same is based on definite findings of fact. The assessee has not improved its' case on facts in any manner, either before the first appellate authority or even before us. It has not explained as to why some vouchers were self-made, or some unsigned, or some others not backed by proper bills or vouchers, resulting in the endorsement of the disallowance effected by the assessing authority in principle.

Estimation is integral to assessment, even as the same must have an objective basis, with a view to be as accurate as possible under the circumstances. The part relief allowed in first appeal is, as apparent, in the absence of the AO having

specified any definite basis for the quantum of the disallowance, which was therefore reduced by the ld. CIT(A) by half. In fact, the AO having not stated any definite basis (*qua* the quantum of the disallowance made), the ld. CIT(A) ought to have required the AO to state the said basis, or otherwise – his powers being coterminous, carried out the verification exercise himself, and which only would have entitled him to, in the absence of any material being led by the assessee in substantiation of its' claim of the disallowance made being (in any case) excessive, modify the same to whatever extent, including increasing it. Reference in this regard be made, *inter alia*, to the decision in *Kapurchand Shrimal v. CIT* [1981] 131 ITR 451 (SC), wherein the Apex Court has clarified that an appellate authority is legally obliged to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh, unless forbidden from doing so by the statute.

4.4 In the facts of the instant case, the Revenue is not in appeal, while the assessee's – which has already been allowed substantial relief, claim continues to be a bald claim, i.e., as was before the first appellate authority. We do not, given the volume of the disallowance and the time lag involved, think it proper to restore the matter back to the file of either the ld. CIT(A) or the AO with suitable instructions. We, accordingly, decline interference. The decision in *Pr. CIT v. R.G. Buildwell Engineers Ltd*. (in ITA Nos. 1183 & 1187/2017, dated 22/12/2017), also relied upon, we are afraid, would not be of much assistance. Apart from being distinguishable on facts, the Hon'ble High Court, similarly, declined interference as no substantial question of law – the answer to which would be the ratio of the decision, having precedence value, arose, and the Tribunals' decision could not, in view of the historical treatment, be termed unreasonable. We decide accordingly.

5. In the result, the assessee's appeal is dismissed.

Order pronounced on January 20, 2020

Sd/-	Sd/-
(Bhavnesh Saini)	(Sanjay Arora)
Judicial Member	Accountant Member

Date: 20/01/2020

Copy of the order forwarded to :

1. The Appellant, Harshu Construction Pvt. Ltd., 903, M.H. House, Gole Bazar, Jabalpur (M.P.) Pin 482002
2. The Respondent: Asst. Commissioner of Income Tax, Cricle 1(1), Jabalpur
3. The CIT concerned
4. The CIT(A)-1, Jabalpur
5. The Sr. D.R., I.T.A.T.