

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

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

ITA No.8089/Del/2019
Assessment Year: 2016-17

Vayudoot Security Services Private Limited,
2209, Kucha Alam Chand,
Chandni Chowk,
New Delhi.

Vs ACIT,
Circle-26(1),
New Delhi.

PAN: AAACV4575E

(Appellant)

(Respondent)

Assessee by : Shri Ajay Wadhwa, Advocate
Revenue by : Smt. Sushma Singh, CIT-DR
Date of Hearing : 29.01.2020
Date of Pronouncement : 20.02.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 29th July, 2019 of the CIT(A)-19, New Delhi, relating to assessment year 2016-17.

2. Although a number of grounds have been raised by the assessee, they all relate to the order of the CIT(A) in confirming the addition of Rs.13,89,71,528/-

out of ₹Salaries, wages and bonus and Rs.2,65,48,736/- out of ₹Gift and business promotion expenses.

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of providing skilled, semi-skilled and unskilled manpower for housekeeping and sanitation services, security services, cash van services, trained para-medical staff such as staff nurse, ward boys, OT technicians, Radiographers, etc. and also provide trained manpower such as malis, drivers, electricians, plumbers, etc., undertakes repair and maintenance work and annual maintenance contracts by providing trained labour force to Government organizations, Government authorities, hospitals, companies, banks, firms and other private sectors.. It filed its return of income on 25th February, 2017 declaring the total income at Rs.49,32,430/-. During the course of assessment proceedings, the AO asked the assessee to file various details as per notice u/s 142(1) of the Act. From the assessment order, it appears that the AO has issued notice u/s 142(1) on 23.11.2017, 08.05.2018, 11.11.2018, 12.11.2018, 23.11.2018 and 08.12.2018. From the assessment order itself, it is seen that the assessee has also filed various replies giving details as called for by the AO from time to time. As per the notice u/s 142(1) dated 08.12.2018, the assessee was required to give the details of the name, PAN or Adhar No. and address of the various employees to whom salary amounting to Rs.13,89,71,528/- has been paid and also to give the details of the salary payable amounting to Rs.7,66,74,403/-. Similarly, the AO also asked the

assessee to produce the bills and vouchers to substantiate the claims of :-Gifts and business promotion expenses. Since the assessee did not furnish the details of employees by giving PAN and Aadhaar No. and did not furnish the bills and vouchers on account of gifts and business promotion expenses claimed, the AO disallowed the entire amount of Rs.13,89,71,528/- on account of :-Salaries, wages and bonus and Rs.2,65,48,736/- on account of :-Gift and business promotion expenses.

4. In appeal, the Id.CIT(A) upheld the action of the AO. So far as the disallowance of Rs.13,89,71,528/- is concerned, the Id.CIT(A) sustained the addition made by the AO by observing as under:-

5.1 I have considered the facts of the ground, contention of the AR of the appellant. It is noted that disallowance of Rs.13,01 crores was made by the AO on account of non furnishing of requisite documents such as PAN/ADHAR details and other details such as bills, voucher, payments slip and other concerned and relevant documents which could have established the genuineness of the transaction. But the appellant failed to do so. In fact during the course of appellate proceedings as well, the AR of the appellant was asked to furnish adhar or PAN no of the employees which were being issued salary which could have substantiated the claim of the appellant and also the genuineness of the claim made by the AR of the appellant. But the appellant failed to do so. The onus is on the appellant to prove its claim bonafide and genuine and as has been held by various courts and tribunals. It has been held in the case of CIT vs Calcutta Agency Ltd (1951) 19 ITR 191 by the Honøble Apex Court that in order to claim that an expenditure falls u/s 37(1), the burden of proving the necessary facts in that connection is on the assessee. Similarly, the Honøble High Court of Guhawati in the case of Assam Pesticides and Agro Chemical vs CIT (1997) 227 ITR 846 held that it cannot be said that even if the taxpayer does not produce any evidence in support of the claim for allowance, the ITO himself independently is to collect evidence and decide that the allowance claimed is baseless having regard to the legitimate business needs of the assessee. It is for the taxpayer to establish by evidence that a particular allowance is justified. The law does not prescribe any quantitative test to find out whether the onus in a particular case has been duly discharged. A decision of the final fact finding authority is conclusive

and binding. Similarly, the jurisdictional high court of Delhi in the case of CIT Vs. Modi Stone Ltd. [2011] 15 taxmann.com 112 (Delhi), while deciding the issue of business expenditure u/s 37(1) of the Act held that the onus of proving alleged payment was on assessee, and since he had not produced any evidence to prove such payment, neither commissioner appeal nor tribunal could have allowed those payment having any material before them to substantiate such payments.

The appellant has simply failed to discharge its onus by failing to produce the necessary documents and ledger as called for. Hence, in view of the factual matrix of the case, I am not inclined to grant relief to the appellant on this ground. The appellant fails in this ground. The ground is dismissed.ö

5. Similarly, he sustained the disallowance of Rs.2,65,48,736/- on account -Gift and business promotion expensesøby observing as under:-

ö5.3 I have considered the facts of the ground and contention of the AR of the appellant. It is noted that the appellant claims to have incurred to Rs.2,65,48,736/- on account of providing of gifts to the clients and works on the occasion of festival gifts and promotion gifts and so on to remain in the competition. However, it is noted that the appellant failed to produce necessary documents, relevant vouchers and so on during the course of assessment proceedings. Mere making of a claim as to Rs.10,10,000/- were incurred for promoting business does not lead to the genuineness of the claim. The appellant had to produce the relevant information which were called for during the assessment proceedings as well as during the course of appellate proceedings. The onus was on the appellant to prove the business purpose of the expenses so incurred. However, the appellant has failed to do so.ö

6. The ld. counsel for the assessee strongly objected to the order of the CIT(A) in sustaining both the additions made by the AO. He submitted that the reason for disallowing the entire salary expenses is because of non-production of the PAN and Adhar number of the employees. Referring to page 62 of the paper book, the ld. Counsel for the assessee drew the attention of the Bench to the column No. 11 of the Notes to Financial Statements, wherein the salary, wages and bonus have been shown at Rs.13,89,71,528/-, Directorø remuneration at Rs.11,25,000/- and

staff welfare expenses at Rs.84,07,001/-. He submitted that the AO has allowed the staff welfare expenses, but, has disallowed the entire salary and wages expenses only for the reason that the assessee did not provide PAN and Adhar of the employees. Referring to page 68 of the paper book, the Id. Counsel drew the attention of the Bench to clause No.20b of the Tax Audit Report and drew the attention of the Bench to the contribution received from the employees for various funds and the amount deposited to the credit of PF and ESI A/cs. Referring to page 75-78 of the paper book, which is a letter dated 08.08.2018 addressed to the AO, the Id. Counsel drew the attention of the Bench to column No.19 which gives complete party-wise details of liabilities. Referring to page 85 to 238 of the paper book, the Id. Counsel for the assessee drew the attention of the Bench to the letter addressed to the AO vide letter dated 17th December, 2018 wherein the assessee has given the list of employees with their ESI and EPF nos. He submitted that the assessee in his said reply has stated that all employees belong to worker category, so, it is very difficult to provide their PAN details. He submitted that the assessee has given the full details of 2342 employees giving the name of employees, his/her father's name, date of joining, date of birth, PF No., insurance no. and the site where he/she has been posted. Referring to pages 37 to 48 of the paper book, the Id. Counsel for the assessee drew the attention of the Bench to Form No.26AS which gives the details of tax deducted by the various parties to whom the assessee has supplied manpower. He submitted that the parties to whom the assessee has supplied manpower include Canara Bank Currency Chest department, Canara

Bank, ESI Hospital, Deepak Gupta Memorial Foundation, IGESI Hospital, JNU, LIC of India, State Bank of India, ISKCON, State Bank of Patiala, Varun Beverages Ltd., Yashoda Hospital & Research Centre Ltd., Indian Acrylics Limited, Oriental Insurance Company Ltd., ESI Model Hospital, to name a few. He submitted that in the immediately preceding assessment years, no such disallowance has been made on account of salary. He accordingly submitted that when the only source of income is from supply of manpower and the assessee has deployed a number of employees at the places of different customers about whom the assessee has given full details before the AO, therefore, merely because the PAN or Adhar details were not provided cannot be a ground to disallow the entire expenditure. He submitted that the Id.CIT(A), also without going through the month-wise and client-wise salary, upheld the order of the AO in making huge disallowances. He submitted that without employing such manpower the assessee could not have earned such huge income from manpower supply which is the only source of income of the assessee. He accordingly submitted that the addition made by the AO and sustained by the CIT(A) on account of disallowance of salary and wages should be deleted.

6.1 So far as the disallowance on account of gifts and business promotion expenses is concerned, he submitted that the same includes festival gifts, promotional gifts and business promotion expenses which were explained before the AO as well as the CIT(A). Therefore, the same should have been accepted and

no addition should have been made on this account. He accordingly submitted that both the additions made by the AO and sustained by the CIT(A) should be deleted.

7. The Id. DR, on the other hand, heavily relied on the order of the AO and the CIT(A). The Id. CIT-DR submitted that despite a number of opportunities granted by the AO, the assessee failed to furnish the details of PAN and Adhar details of the staff. Therefore, merely because the assessee has given the list of employees, the same is not sufficient. She submitted that for allowing any expenditure u/s 37(1) of the IT Act, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO regarding the genuineness of such expenses wholly and exclusively for the purpose of business. In the instant case, the assessee failed to provide the PAN and Adhar details of the employees, therefore, the order of the CIT(A) should be upheld and the ground raised by the assessee on this issue should be dismissed. So far as the disallowance on account of gifts and business promotion expenses is concerned, she submitted that the assessee failed to produce necessary documents, relevant vouchers, etc., during the course of assessment proceedings as well as appeal proceedings. Since the onus is always on the assessee to substantiate the necessity of such expenses for the purpose of business which the assessee failed to discharge in the instant case, therefore, the order of the CIT(A) being in accordance with the law, should be upheld.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the

assessee. We have also considered the various decisions relied upon by both the sides. We find, the AO, in the instance case, made addition of Rs.13,89,71,528/- being the entire salary expenses debited in the P&L A/c for want of PAN and Adhar details of the respective employees. Similarly, he made addition of Rs.2,65,48,736/- being the entire amount of gifts and business promotion expenses claimed by the assessee for non-submission of the details. We find the Id.CIT(A) upheld both the additions, the reasons for which have already been reproduced in the preceding paragraphs. We find force in the submission of the Id. Counsel for the assessee that although the assessee has not given the PAN and Adhar details of the employees, however, the assessee has given the names of the employees, his/her father's name, date of joining, sex, date of birth, PF No., insurance no. and the site where the employee has been posted. The dispute going on between the assessee and the PF/ESI authorities was also within the knowledge of the AO. It is also a fact that the major source of income of the assessee is only manpower supply. Under these circumstances, it is unthinkable that without any employee the assessee would have earned such huge income from various clients which include banks, insurance companies, hospitals, etc. No doubt, the assessee has not furnished PAN and Adhar details of the large number of employees employed by him. However, at the same time, the assessee has given sufficient other information which could have been at least considered by the AO and the CIT(A). It is also an admitted fact that in the immediately preceding assessment year no such disallowance has been made out of the salary account. Further, the AO has

allowed staff welfare expenses meaning thereby that some staff are employed by the assessee company. Since the assessee has given the list of employees giving their father's name, date of joining, date of birth, PF No., insurance no. gender and the site where he has been posted and the lower authorities have not disbelieved the site where they have been posted, therefore, we are of the considered opinion that disallowance of the entire salary expenses made by the AO which has been upheld by the CIT(A) is not justified. However, considering the fact that the assessee did not provide the PAN and Adhar details, at least on sample basis of some employees, therefore, considering the totality of the facts of the case, and possible leakage of revenue, we modify the order of the CIT(A) and direct the AO to restrict the disallowance to Rs.25,00,000/-. The ground raised by the assessee on this issue is accordingly partly allowed.

9. So far as the disallowance of gifts and business expenses is concerned, it is an admitted fact that the assessee has made a general remark without giving the bills and voucher of such expenses. It is the settled proposition of law that for claiming any expenditure as an allowable business expenditure, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO regarding the incurring of such expenditure for the purpose of business. However, in the instant case, the assessee has not furnished the requisite details and the lower authorities have also disallowed the entire amount. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue

to the file of the AO with a direction to grant one final opportunity to the assessee to furnish the requisite details and substantiate to his satisfaction regarding the incurring of such expenditure wholly and exclusively for the purpose of business. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee relating to the disallowance of expenses to the tune of Rs.2,65,48,736/- on account of gifts and business promotion expenses is, accordingly, allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 20.02.2020.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 20th February, 2020.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi