

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.1043/Hyd/2017		
Assessment Year:2012-13		
LBW Consulting Pvt Ltd, Hyderabad. PAN: AABCL 3258 P (Appellant)	Vs.	Income Tax Officer, Ward-16(1), Hyderabad. (Respondent)
Assessee by:	Sri A.V. Raghuram	
Revenue by:	Sri Murali Mohan, DR	
Date of hearing:	24/08/2020	
Date of pronouncement:	03/09/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-4, Hyderabad in appeal No. 0578/14-15/ITO, Wd.16(1)/CIT(A)-4/Hyd/16-17, dated 28/0-3/2017 passed U/s. 144 r.w.s 250(6) of the Act for the AY: 2012-13.

2. The assessee has raised several grounds in its appeal however, the cruxes of the issues are as under: -

- (i) The Ld. CIT (A) has erred in confirming the addition made by the Ld. AO for Rs. 22,28,560/- being the difference

between the amount stated in Form 26AS and the gross receipts declared in the return of income.

- (ii) The Ld. CIT (A) has erred in enhancing the addition made by the Ld. AO towards salary and benefits paid to the Managing Director and Vice President of the assessee company and further confirmed the addition made by the Ld. AO towards salary and benefits paid to the employees of the assessee company.
- (iii) The Ld. CIT (A) has erred in not adjudicating the ground raised towards the addition made by the Ld. AO of Rs. 1,47,721/- being the disallowance of expenditure on estimate basis.
- (iv) The Ld. CIT (A) has erred in not adjudicating the ground raised towards the addition made by the Ld. AO of Rs. 1,33,132/- being the difference between the amount reflected in the cash book of the assessee and the bank statement.

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of rendering Consultancy Services. The assessee furnished its return of income for the AY 2012-13 on 29/9/2012 declaring NIL income and claimed refund of Rs. 14,26,657/- which was initially processed U/s. 143(1) of the Act granting the refund. Thereafter the case was taken up for scrutiny and finally assessment

U/s. 144 of the Act was completed vide order dated 17/2/2015 wherein the Ld. AO made several additions by passing *ex-parte* order because there was no compliance by the assessee. On appeal, the Ld. CIT (A) obtained a remand report from the Ld. AO wherein the assessee furnished the details sought for. The Ld. AO in the remand proceedings gave substantial relief to the assessee. However, the Ld. CIT (A) confirmed the original order of the Ld. AO and also made enhancement with respect to the salary paid to the Managing Director and the Vice President of the assessee company. Aggrieved by the order of the Ld. CIT (A), the assessee is now on appeal before us.

4. **Ground No.(i): Addition made for Rs. 22,28,560/-:-**

5. During the course of scrutiny assessment proceedings, the Ld. AO observed that the assessee has stated an amount of Rs. 1,52,08,535/- as its gross receipts while as in the Form 26AS the same was reflected as Rs. 1,74,37,095/-. Thus, there was a difference of Rs. 22,28,560/- which was not reconciled by the assessee. Therefore, the Ld. AO made addition of Rs. 22,28,560/- in the hands of the assessee. During the remand proceedings, the assessee reconciled the difference substantially and only an amount of Rs. 55,082/- remained to be reconciled. However, the Ld. CIT (A) confirmed the addition of Rs. 22,28,560/- by stating in his order in para 8.1 as under: -

“8.1.....Even though in the remand report, the AO has stated with regard to reconciliation difference of receipts as per Form 26AS, the appellant has not taken any ground on

this issue. Therefore, this issue is not to be adjudicated. Therefore, the addition made on this account amounting to Rs. 22,28,560/- stands good.”

6. At the outset, we do not find any merit in the order of the Ld. CIT(A) on this issue. When the ld. AO had examined the particulars filed by the assessee and was satisfied that the addition to the extent of Rs. 21,73,478/- [Rs. 22,28,560 – Rs. 55,082/-] is not warranted because the amount stands reconciled then the Ld. CIT (A) ought to have granted relief to that extent unless there is a contrary finding. But, under the pretext that the assessee has not raised the ground before him the Ld. CIT (A) has unjustly confirmed the entire addition. Therefore, We hereby direct the Ld. AO to delete the addition for Rs. 21,73,478/- made on this count and further we remit the matter back to the file of Ld. AO with respect to the balance unreconciled amount of Rs. 55,082/- thereby giving the assessee one more opportunity to reconcile the difference before the Ld. AO. It is ordered accordingly.

7. **Ground No.(ii): Addition made towards Salaries and other benefits to the employees, Managing Director and Vice President of the assessee company:-**

8. During the course of scrutiny assessment proceedings, the Ld.AO observed that the assessee has claimed deduction towards salary and other benefits to employees amounting to Rs. 1,10,24,820/-. Since the assessee did not furnish the details of the salaries paid to the individual employees such as the name, designation, PAN, amount of salary paid

to each individual, details of TDS made thereon, the ld. AO opined that 10% of the aggregate amount should be disallowed on estimate basis. Accordingly, the amount of Rs. 11,02,482/- was disallowed and added to the income of the assessee. In the remand proceedings, the assessee furnished the details of the salary paid and the Ld. AO observed that the expenditure was genuine. However, the Ld. CIT (A) opined that the assessee had paid an amount of Rs. 52,20,000/- to the Managing Director and Rs. 15,29,964/- to the Vice President of the assessee company which is exorbitant and does not commensurate with the turnover of the assessee which is only Rs. 1,52,08,535/-. Therefore, the Ld. CIT (A) enhanced the disallowance from 10% to 50%.

9. Before us, the ld. AR submitted that the Managing Direct and the Vice President of the company are technocrats who are well qualified and play important role in the consultancy business rendered by the assessee company. It was therefore argued that the salary paid to them was commensurate with the technical qualification and services rendered by them on behalf of the assessee company. Hence, the Ld. AR pleaded that the addition made on this count may be deleted. Though the Ld. DR vehemently argued in support of the order of the Ld. CIT (A) he could not controvert successfully against the arguments advanced by the Ld. AR.

10. After considering the rival submission, we find merit in the submission of the Ld. AR. It is a relevant fact that the entire business

operation of the assessee company has been technically operated and controlled by the Professionally Qualified Managing Director and Vice President of the assessee company. Therefore, we are of the considered view that the salary paid to the Managing Direction and the Vice President is commensurate with the professional qualification, experience and job executed by them on behalf of the assessee Company. Further, the assessee has furnished all the particulars of the salary and other benefits paid to the other employees of the assessee company which was verified and accepted by the Ld. AO. The Ld. CIT (A) could also not find any fault with the same. Therefore, We are of the view that the expenditure incurred by the assessee Company is justified and hence hereby direct the ld. AO to delete the entire addition made on this count.

11. **Ground No.(iii):- Disallowance of Rs. 1,47,721/-:-**

12. During the course of scrutiny assessment, the Ld. AO disallowed an amount of Rs. 1,47,721/- being 10% of the expenditure claimed towards Travelling & Conveyance, Internet & Telephone charges, office maintenance, Petrol & Diesel expenditure because the assessee could not produce proper bills and vouchers. In the remand proceedings, the Ld. AO observed that bills & vouchers were not available only with respect to Petrol & Diesel expenses amounting to Rs. 1,32,692/-. However, it appears that the Ld. CIT (A) failed to adjudicate the issue. Since, the issue is a petty issue, We are of the considered view only to

the extent of 1/3rd of the expenditure incurred towards petrol & diesel is required to be disallowed keeping in view of the facts and circumstances of the case. Accordingly, we hereby confirm the addition of Rs. 44,230/- (1/3rd of Rs. 1,32,692) with respect to the addition made towards Rs. 1,47,721/-. Accordingly, this ground is decided partly in favour of the assessee.

13. **Ground No: (iv): Disallowance of Rs. 1,33,132/-:-**

14. During the course of scrutiny assessment proceedings, the Ld. AO observed that in the cash book of the assessee an amount of Rs. 2,42,910/- was disclosed as the bank balance while as an amount of Rs. 3,76,042/- was reflected in the Bank Statement. Therefore, the Ld. AO added the difference of Rs. 1,33,132/- to the income of the assessee. In the remand proceedings, the assessee had furnished the reconciliation statement and the same was accepted by the Ld. AO. However, the Ld. CIT (A) failed to adjudicate the issue. Since the amount of Rs. 1,33,132/- is reconciled and verified by the Ld. AO, We are of the considered view that the addition is not sustainable. Therefore, in the interest of justice, We hereby direct the Ld. AO to delete the addition of Rs. 1,32,132/-. Accordingly, this ground raised by the assessee is allowed in its favour.

15. In the result, appeal of the assessee is partly allowed as indicated herein above.

Pronounced in the open Court on the 3rd September, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 3rd September, 2020.

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Copy to:-

1	LBW Consulting P Ltd, 15 th Floor, Ramky Grandisoe, Ramky Towers Complex, Gachibowli, Hyderabad - 500 032.
2	Income Tax Officer, Ward-16(1), 2 nd Floor, Income Tax Towers, Masab Tank, Hyderabad.
3	The CIT (A)-4, Hyderabad.
4	The Principal Commissioner of Income Tax-4, Hyderabad.
5	The DR, ITAT, Hyderabad.
6	Guard File.