

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Hon’ble Shri J.Sudhakar Reddy, AM and Hon’ble Shri A. T. Varkey, JM

ITA No. 907/Kol/2019
Assessment Year: 2015-16

Garbeta Ice & Cold Storage PAN: AACFG5118R	Vs.	ACIT, Cir-34, Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	01-09.2020
Date of Pronouncement	10.09.2020
For the Appellant	None appeared
For the Respondent	Shri Supriyo Pal, Addl. CIT/Ld.DR

ORDER

Shri A. T. Varkey, JM

This is an appeal preferred by the assessee against the order of Ld. CIT(A),10, Kolkata dated 27-02-2019 for the assessment year 2015-16.

2. None appeared for the assessee. However, from perusal of the grounds of appeal raised by the assessee in the impugned appeal, it can be noted that only effective issue is against the action of the Ld. CIT(A) in confirming the ad-hoc disallowance of Rs. 2,09,135/- as made by the AO.

3. Brief facts of the case as noted by the AO are that the assessee had filed its return of income declaring loss of (-) Rs. 44,72,059/-. The case was selected for scrutiny through CASS. However, according to the AO the scrutiny was a complete scrutiny. The AO noted that the assessee had incurred an expenses of Rs. 2,09,135/- and all these expenses were incurred in cash and supported by self-made debit vouchers. Therefore, the AO issued show cause notice to the assessee mentioning as to why 10% of the expenses should not be disallowed.

4. The AO reproduced the reply of assessee as under:-

"all the payments are made although by cash but are supported by proper vouchers and the quantity handled as per register maintained for the purpose. No disallowance was ever made in the past and whatever evidence of payment could be kept, we have tried our best to maintain it. In these village areas, we cannot get any establishment contractor and as such we have to employ local people to perform this work otherwise the local unions will not allow us to work. They are more vigilant than any other government department to look after the interest of the poor workers".

5. After noting the assessee's reply supra, the AO did not accept the contention of assessee for the following reasons:-

*"1. The assessee was asked to provide party-wise details of coolie and cartage expenses vide letter dated 16/10/2017 which he failed to provide. Consequently, the genuineness of the transaction could not be established.
2. Merely because of non-disallowance in the past is no ground for non-addition in this case. It is also pertinent to note that no scrutiny assessment has been done in the case since 2008
3. The fact that assessee has made payments as per local unions rules does not prove that the excess expenditure has not been booked."*

6. Thereafter, he (AO) disallowed 10% of the claim of Rs. 2,09,135/- made by the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to dismiss the same. Therefore, the assessee is before us and has challenged the action of the Ld. CIT(A) in confirming the said ad-hoc disallowance as made by the AO.

7. We note that the assessee is into the business of running a Cold Storage at Garbeta, Dist-Midnapore, where potatoes are stored on payment of rent. The local farmers/traders stores potatoes at cold storages during the month of February/March and takes out the same from June onwards for sale in the market. For the conduct of this business, the assessee has to incur expenses in respect of collie and cartage charges for loading on the racks and unloading from the racks for loading on the truck/carts brought by the owner of potatoes. Some charges are incurred for shifting of potatoes from outside to Drying Shed as some potatoes, which are wet had to be dried up before these are stored on the storage racks. Every year, the payments are made to collies on the basis of quantity handled and the rates are almost fixed in all the nearby Cold Storages in the locality. We also note that

all the payments have been made on different dates to the workers for loading / unloading & shifting of potatoes. We note that the AO did not accept the evidence produced by the assessee for the following three reasons:-

- (a) Party-wise details of collie and cartage not provided.
- (b) Non-disallowance in earlier years is no ground.
- (c) Local Union Rules does not prove that no extra expenditure is booked.

8. We note that sample bills were produced before AO for verification. During loading season, the bills are only for loading. Some small bills are there for shifting between drying shed and the racks where the potatoes are stored. It is noted that though the assessee is into this business for last 50 years, never in the past, any disallowance was made. It is noted that the collie charges are linked with the quantity stored and each bill clearly mention the quantity, rate & amount and the total quantity is matching with the return filed by the assessee with Govt of West Bengal, Agricultural Deptt., Midnapur. The assessee contended that it has maintained all these records and vouchers and that the assessee's books are statutorily audited. So no ad-hoc disallowance was warranted. However, the Ld. CIT(A) was not impressed with the contention of the assessee and therefore, he dismissed the appeal.

9. We note that an assessee who would be claiming a deduction is expected to have some evidence of such expenditure incurred, as no one is expected to incur expense by any payment to another without there being any proof of it. Having said so, the AO should have item-wise examined the expenditure as claimed by the assessee and in case if he is not convinced by the genuinity of the expenditure as claimed by the assessee, then he can item-wise deny the expenditure. However, in this case, the AO without rejecting the books of account as required u/s. 145(3) of the Income-tax Act, 1961 (hereinafter referred to the as the ' Act') has resorted to estimate the income by ad-hoc disallowance of expenditure claimed by the assessee and according to us if the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) of section 145 of the Act has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2) of section 145 of the Act, then the

Assessing Officer may make an assessment in the manner provided in [section 144](#), which allows the AO to make Best Judgment Assessment. However, this is not what the AO did. Thus, the AO has not followed the procedure prescribed by the statute and therefore, he violated the principle of “Rule of Law” and the action of the AO is arbitrary and therefore, the ad-hoc disallowance of 10% made by the AO cannot be allowed. Therefore, the Ld. CIT(A)’s impugned order in confirming the action of the AO is not justified and therefore, cannot be countenanced. Therefore, we direct the AO to delete the disallowance of Rs. 2,09,135/-.

9. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 10 September 2020.

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 10 September 2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –M/s. Garbeta Ice & Cold Storage, 56 Netaji Subhash Road, Burra Bazar, Kolkata-700 001..
2. Respondent – The ACIT,Cir-34, Kolkata, Aaykar Bhawan, Poorva, 7th Fl., 110 Shantipally, EM Bypass, Kolkata-107.
3. CIT(A)-, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)
By order,

/True Copy,

Assistant Registrar