

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.1487/AHD/2015

(निर्धारणवर्ष / Assessment Year: (2010-11))

(Virtual Court Hearing)

M/s. Jay Khodiyar Engineering, 52, New Shakti Vijay Society, Varachha Road, Surat-395010.	Vs.	Assistant Commissioner of Income Tax, Circle-9, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFJ3305P		
(Assessee)		(Respondent)

Assessee by : Shri Sapnesh Sheth - CA

Respondent by : Ms Anupama Singla – Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 15/10/2020

घोषणाकीतारीख/Date of Pronouncement: 06/11/2020

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

By way of this appeal, the assessee has challenged correctness of the order dated 04.03.2015 passed by the learned CIT(A), in the matter of assessment under section 143(3) the Income Tax Act 1961(for short ‘the Act’), for the assessment year 2010-11. Grievances raised by the assessee, are as follows: -

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in partly confirming the action of assessing officer in disallowing labour expenses by sustaining disallowance to the extent of Rs. 35,65,140/- as against disallowance of Rs. 66,01,113/- made by assessing officer.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in observing that assessing officer is justified in rejecting book results although the same are not rejected by assessing officer & he further erred in estimating G.P @ 12% without any basis.

3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in disallowing interest expense of Rs.20,000/-.

4. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in disallowing expenditure of Rs.1,00,000/- u/s40(a)(ia) of the I.T. Act, 1961.

5. It is therefore prayed that the above addition made by Assessing officer and confirmed by learned Commissioner of Income-tax (Appeals) may please be deleted.

6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. At the outset, Shri Sapnesh Sheth, Learned Counsel for the assessee informs the Bench that assessee does not want to press Ground No.3 raised by him, to which, Id. Departmental Representative (DR) did not raise objection, therefore we dismiss Ground No.3 as not pressed. Ground No.6 raised by the assessee is general in nature hence it does not require adjudication.

3. Ground No.1 and 2 raised by the assessee relates to disallowance of labour expenses sustained by the Id.. CIT(A) to the extent of Rs.35,65,140/- as against disallowance of Rs.66,01,113/- made by Assessing Officer.

4. Brief facts *qua* the issue are that during the assessment proceedings, the Assessing Officer examined the month-wise labour charges for the accounting year April, 2009 to March,2010 and noticed that in the month of January 2010 assessee paid the labour charges at Rs.50,42,420/-, for the month of February 2010 at Rs.41,67,885/- and for month of March at Rs.1,12,06,265/-.

The assessing officer noticed that the assessee has shown unpaid labour charges of Rs.90,75,500/- in the assessment year 2010-11. In order to verify the details of unpaid labour charges, copy of labour charges account of subsequent year 2010-11 was called for and furnished by the assessee which is reproduced hereunder:

“Labour Payable Account

<i>Apr. 2010</i>	<i>4256950</i>
<i>May. 2010</i>	<i>2504180</i>
<i>Jun. 2010</i>	<i>2266100</i>
<i>Jul. 2010</i>	<i>48270</i>
<i>Total</i>	<i>90,75,500</i>

On perusal of the above, it was noticed by the assessing officer that there was huge increase in the labour charges in the month of March 2010. As against labour charges of only Rs.41,67,885/- in the month of February 2010, it had increased nearly threefold. in March 2010, to Rs.1,12,06,265/-. The assessing officer further noticed that assessee had shown huge outstanding payment of labour expenses of Rs.90,75,500/-. In normal circumstances only one months' labour expenditure is shown to be outstanding and is carried forward to the subsequent month which in the assessee's case considering the labour payments shown in the months of January 2010 and February 2010 should. not exceed Rs.50,00,000/- which ought to be paid in the subsequent month. However, in the case of the assessee such payment is found to be spread over four months from April 2010 to July 2010, as noted in above table, which are totaling to Rs. 90,75,500/-. The assessing officer was of the view that no labourer would. await payment of his wages for three to four months as he simply cannot afford to do so.

5. Therefore, the assessing officer issued a show cause notice to the assessee to explain the same. The Assessee explained that the basic reason for increase in labour charges in the month of March was that the Firm was doing the sub contractual work of M/s. Megha Infra Project Pvt. Ltd. of Road work of R & B Panchayat Surat and Tapi District. Assessee further stated that most of the work was done and executed during the month of March 2010 therefore the labour expenses were higher in March 2010 as compared to other months.

6. However, the Assessing Officer rejected the contention of the assessee and held. that since no specific details regarding site wise claim of labour expenses nor any vouchers for proving genuineness of such claim were furnished by the assessee, therefore the claim of disproportionate increase in labour expenses for the month of March 2010 was not accepted by the assessing officer. Hence, the claim of expenses in the month of March was restricted by the assessing officer to the average claim of the months of January 2010 and February 2010, that is, $(50,42,420 + 41,67,885/2)$ at

Rs.46,05,152/- . The Balance claim of labour expenses of Rs.66,01,113/- (1,12,06,265 - 46,05,152) was disallowed and added back to the total income of the assessee.

7. On appeal, the Id. CIT(A) restricted the addition from Rs.66,01,113/- to Rs.35,65,140/-. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before us.

8. Shri Sapnesh Sheth, learned Counsel for the assessee, begins by pointing out that Id.. CIT(A) has taken Gross Profit Ratio at the rate of 12% on sales which is arbitrary and without any base. He submitted before the Bench the labour expenses ratio and Net Profit Ratio of the previous years and contended that these ratios should be taken as a base for addition, if any, to be made in the assessee's case under consideration, which are reproduced below:

“Labour expense ratio for March 2010:- [Page no. 4]

Particulars	Labour Expenses	Turnover / Contract income
March 20 10	Rs. 11 2.06 lacs	Rs. 368. 19 lacs
Total for the entire year	Rs. 360.22 lacs	Rs. 938. 06 lacs
Ratio for the month of March 2010(%)	31.11%	39.25%

Labour expense ratio for various years:- [Page no. 5]

Particulars	A.Y 2007-08	A.Y 2003-10	A.Y 2010-11
Labour Expenses (Rs.)	128.91 lacs	230.61 lacs	360.22 lacs
Turnover / Contract income (Rs.)	2 17.20 lacs	401. 47 lacs	938.06 lacs
Ratio	59.35%	57.44%	38.40%

N.P ratio for various years:- [Page no. 6]

Particulars	A.Y 2007-08	A.Y 2009-10	A.Y 2010-11
Turnover / Contract income (Rs.)	217.20 lacs	401 .47 lacs	938.06 facs
N.P(Rs.)	6.98 lacs	14.66 lacs	37.11 lacs
N.P %	3.21%	3.65%	3.96%

G.P	14.38 lacs	37.76 lacs	76.31 lacs
G.P ratio	6.62%	9.40%	8.20%

9. On the other hand, the learned Departmental Representative (DR) for the Revenue submitted that the total labour expenses debited in the Profit & Loss account are Rs.3,60,21,660/-. Out of the same, a sum of Rs.1,12,06,265/- had been debited in the month of March 2010. (i.e.31% of total labour expenses for the entire year have been debited in the last month of the financial year.) Out of the same, an amount of Rs.90,75,500/- (@ 81% of the total labour expenses incurred in the month of March 2010), have remained outstanding, which were paid in the subsequent months of April 2010 to July 2010.

With help of the above data and facts, she pointed out that no labourer would. await payment of his labour wages for three to four months therefore the assessee`s claim that 81% of labour expenses for the month of March 2010 have been paid, in the subsequent months of April 2010 to July 2010 is a highly abnormal pattern and not acceptable in practical scenario. Besides, the assessee did not file required documents and evidences pertaining to labour expenses during the assessment stage. The assessing officer asked the assessee, to furnish site-wise break-up of monthly labour charges, alongwith worker`s information in specified format, which had been reproduced on page nos. 4 and 5 of the assessment order, however, the assessee had failed to submit the same, therefore addition made by the assessing officer should. be sustained.

10. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. First contention of the learned counsel is that the Gross Profit percentage taken by the Id. CIT(A) at the rate of 12%, is arbitrary and taken by the Id. CIT(A) outside the books of accounts of the assessee, therefore it is not acceptable. In order to verify the veracity of the contention of the Id. Counsel, let us examine the order of Id. CIT(A), which is reproduced below (To the extent relevant for our analysis):

*“8.1 However, the total addition made by the assessing officer on the basis of average labour charges in the months of January and February come to 7% of the turnover of the appellant, which pushes - up the gross profit of the appellant from 8.2 % to 15.2 %. Therefore, the quantum of addition made the assessing officer is on the higher side. On the other hand, there is a fall @ 1.2 % in the gross profit and the appellant's books of account have been maintained in same fashion, in earlier years as well. Therefore, the gross profit ratio of immediately preceding year also cannot be taken as sacrosanct figure. In view of the same, the appellant's gross profit is estimated @ 12% of the gross receipts of Rs.9,38,06,065/-, which leads to estimated gross profit of Rs.1,12,56,728/-, by subtracting the gross profit shown Rs.76,91,588/-, it leads to an addition of Rs. 35,65,140/-. Therefore, the addition made by the assessing officer at Rs.66,01,113/- is reduced to Rs. 35,65,140/-. The disallowance confirmed is only 10 % of the total labour expenses claimed. Consequently, the ground no. 1 of the appeal is **partly allowed.**”*

Having gone through the order of Id. CIT(A) we noticed that Id. CIT(A) took the Gross Profit ratio of the assessee as per the books of accounts maintained by the assessee. We note that in the assessment year 2010-11, the Gross Profit (GP) rate declared by assessee was 8.2% which is also mentioned in the assessment order at page no.2.

However because of average labour charge in the months of January and February which came to 7% of the turnover of the assessee, which pushed up the Gross Profit (GP) of the assessee from 8.2% to 15.2%. Therefore, it cannot be said that the estimated Gross Profit at the rate of 12% taken by the Id. CIT(A) is not on the basis of books of accounts of the assessee. The Id. CIT(A) took the average of 8.2% and 15.2% to arrive at estimated gross profit rate at 12% which is based on the books of accounts of the assessee therefore we do not agree with the statement of the Id. Counsel to the effect that the Gross Profit percentage taken by the Id.. CIT(A) at the rate of 12%, is arbitrary and taken by the Id. CIT(A) outside the books of accounts of the assessee. We note that during the assessment stage assessing officer asked the assessee, to furnish evidences and details particularly site-wise break-up of monthly labour charges, alongwith worker's information in specified format, which had been reproduced on page nos. 4 and 5 of the assessment order, however, the assessee had failed to submit the same. Such evidences and details particularly site-wise break-up of monthly labour charges could. have helped the assessing officer to correlate the reasonableness of the quantum of labour expenses, incurred at each site with the quantum of work done at

each site in that month. Such data would. have helped assessing officer to examine whether the labour expenses incurred at each site are reasonable or not. The refusal of the assessee to furnish the said evidences is like pushing the assessing officer to wall and then challenging his estimation on the ground that assessing officer`s/CIT(A) estimation is arbitrary and without base. Thus, it is clear that the assessee is having a non-complaint and blatant attitude towards the revenue.

11. We note that Assessing Officer has not held that labour expenses so claimed by the assessee were not incurred by the assessee for the purpose of business. Apart from this, we note that assessee is engaged in labor oriented industry and Id. Counsel submitted before us labour expenses ratio to justify the assessee`s claim, therefore considering the nature of assessee`s business, we find some merit in the contentions of the Id. Counsel. Therefore, while the case of the assessee merits some relief, at the same time entire relief cannot be permitted to the assessee. In our opinion the end of justice would be met if the estimated profit rate of 10% [instead of 12% taken by Id. CIT(A)] is adopted since the same would take care of the bogus labour expenses and other discrepancies.

Therefore, we direct the Assessing Officer to apply the Gross Profit Ratio at the rate of 10% on the gross receipts of Rs.9,38,06,065/- which leads to estimate Gross Profit (GP) of Rs.93,80,606/- and by subtracting the Gross Profit shown by the assessee at Rs.76,91,588/-, [Rs.93,80,606 – Rs.76,91,588/-] which leads an addition of Rs.16,89,018/-. Therefore, the addition sustained by the Id. CIT(A) at Rs.35,65,140/- is reduced to Rs.16,89,018/-. Hence, Ground No.1 and 2 raised by the assessee are partly allowed.

12. Ground No.4 raised by the assessee relates to disallowance of expenditure of Rs.1,00,000/- under section 40(a)(ia) of the Act on account of non-deduction of TDS.

13. Brief facts *qua* the issue are that during the scrutiny proceedings the assessing officer examined the accounts of the assessee and noticed that assessee had shown expenditure of Rs.1,00,000/- under the head “account charges” paid to Shri Ghanshyambhai G. Vekariya, on which no TDS was deducted. The assessing officer issued a show cause notice dated 21.03.2013 as to why disallowance should not be

made u/s. 40(a)(ia) of the Act. In response, the assessee has stated that expenses were in the nature of Accountant's Salary. However, the assessing officer rejected the contention of the assessee and held that salary was not paid on a monthly basis, it was only a single payment in a year at Rs.1,00,000/- Hence, on account of non-deduction of TDS, the above claim of Rs.1,00,000/- was disallowed u/s.40(a)(ia) of the Act.

14. Aggrieved by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition of Assessing Officer. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before us.

15. Learned Counsel for the assessee submitted before us that the assessee had paid Rs.1,00,000/- towards salary expense, therefore no TDS is attracted and hence the addition made by the Assessing Officer may be deleted.

16. On the other hand, Ms. Anupama Singla, Learned Departmental Representative (DR) for the revenue submits before the Bench that assessee has not produced any evidence to establish the relationship of employer and employee, that is, master and servant relationship is absent between payer and payee. It is a lump sum payment of Rs.1,00,000/- which does not relate to salary expense. Therefore, addition made by the assessing officer should. be confirmed.

17. We have heard both the parties and perused the material available on record. We note that during the year under consideration, on verification of accounts assessing officer noticed that assessee has shown expenditure of Rs.1,00,000/- to Shri Ghanshyambhai Vekariya under the head "account charges" which was subsequently paid on 01.01.2011 but no TDS was deducted by assessee. Assessing officer issued a show cause notice dated 21.03.2013 as to why disallowance should not be made u/s 40(a)(ia) of the Act . In response, assessee stated that the expense was in the nature of accounting salary. However, assessing officer did not accept the contention of the assessee and he disallowed the above claim of Rs.1,00,000/- on account of non-deduction of TDS u/s 40(a)(ia) of the I.T Act, 1961. On appeal, Id. CIT(A) confirmed the addition.

Before us, ld. Counsel has failed to demonstrate the relationship between payer and payee as a master and servant. The ld. Counsel did not file any document/evidence, before the Bench which can show that said payment is on account of accountant's salary. We find merit in the submissions of Ms. Anupama Singla, ld. DR for the Revenue, as she pointed out before the Bench that in order to constitute salary expense, the ld. Counsel should. demonstrate master and servant relationship between payer (assessee) and payee. Considering this factual position, we confirm the addition sustained by the ld. CIT(A). Ground no. 4 of the assessee's appeal is dismissed.

18. In the result, the appeal filed by the assessee is partly allowed.

Order is pronounced on 06/11/2020, as per Rule 34 of Income Tax Appellate Tribunal, Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date:06/11/2020

Samanta, PS

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat