

IN THE INCOME TAX APPELLATE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

(THROUGH VIRTUAL COURT)

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA Nos. 388/ALLD/2014

Assessment Year: 2009-10

Shiv Ram Pandey, Vindhyapuri Colony, Mirzapur, Uttar Pradesh	v.	Income Tax Officer, Range-3(4), Mirzapur, Uttar Pradesh
PAN: AJDPP8315R		
(Appellant)		(Respondent)

Appellant by:	Mr. Praveen Godbole, CA
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	09.12.2020
Date of pronouncement:	.12. 2020

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 388/ALLD/2014, is directed against appellate order dated 21.03.2014 in Appeal No. 30/ITO/R-III(4)/MZP/11-12 passed by the learned Commissioner of Income Tax (Appeals), Allahabad (hereinafter called "the CIT(A)"), for assessment year (ay) 2009-10, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 21.12.2012 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2009-10. We have heard both the parties through video conferencing mode through virtual court.

2. The grounds of appeals raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad (hereinafter called "the tribunal") reads as under:-

"1. That in any view of the matter the assessment order dated 21.12.2011 passed under section 143(3) of the income tax Act by the assessing officer and his action as partly maintained by the Commissioner of Income Tax (Appeals) is bad both on the facts and in law in the facts and circumstances of the case.

2. That in any view of the matter no notice u/s 143(2) of the income tax Act was served on the assessee within statutory period therefore actions of the two lower authorities in framing and confirming the assessment are illegal, invalid and without jurisdiction, hence the assessment is liable to be declared invalid.

3. That in any view of the matter the addition of Rs. 92,902.00 under the head secured loan made by the assessing officer and confirmed by the Commissioner of Income Tax (Appeals) is highly unjustified and illegal in the facts and circumstances of the case.

4. That in any view of the matter out of the addition of Rs. 14,38,925.00 an addition of Rs. 7,01,400.00 maintained by Commissioner of Income Tax (Appeals) as per his observations at page 19 of his order is highly unjustified and incorrect in the facts and circumstances of the case.

5. That in any view of the matter out of the addition of Rs. 14,38,925.00 an addition of Rs. 3,26,762.00 maintained by the Commissioner of Income Tax (Appeals) as per his observations at page 20 of his order is highly unjustified and illegal in the facts and circumstances of the case.

6. That in any view of the matter out of the addition of Rs. 14,38,925.00 an addition of Rs. 84,000.00 maintained by the Commissioner of Income Tax (Appeals) as per his observations at page 16 of his order is incorrect and unwarranted in the facts and circumstances of the case.

7. That in any view of the matter out of the addition of Rs. 37,82,588.00 by alleging undisclosed investment in purchase of coal made by the assessing officer and his actions as confirmed by the Commissioner of Income Tax (Appeals) is incorrect, unwarranted and illegal in the facts and circumstances of the case.

8. That in any view of the matter out of the addition of Rs. 28,297.00 by saying extra profit in respect of coal business made by the assessing officer and

maintained by the Commissioner of Income Tax (Appeals) is unjustified and unwarranted in the facts and circumstances of the case.

9. *That in any view of the matter the observations and findings of the two lower authorities for making and maintaining the additions in their orders are quite general, incorrect and contrary to the actual facts of the case warranting deletion of the same additions.*

10. *That in any view of the matter the interest charged under different sections of the income tax act is highly unjustified and incorrect in the facts and circumstances of the case."*

3. At the outset learned counsel for the assessee submitted before the Bench that the assessee is not pressing ground nos. 1, 2, 3, 6 and 8 to 11 raised by assessee in memo of appeal filed with tribunal, and prayers were made to dismiss the aforesaid grounds as not being pressed. The Learned DR raised no objection to dismissal of the ground nos. 1, 2, 3, 6 and 8, to 11 raised by assessee in memo of appeal filed by assessee with the tribunal. After hearing both the parties , We dismiss ground(s) nos. 1, 2, 3, 6 and 8 to 11 raised by assessee in memo of appeal filed with tribunal , as not being pressed. We order accordingly . This left us with ground no(s). 4, 5 & 7 raised by assessee in memo of appeal filed with the tribunal, which are pressed by assessee before the tribunal and shall require adjudication by us.

4. The brief facts of the case are that the assessee is in the business of Coal, liquor and truck plying. During the year under consideration, the assessee has purchased a new truck bearing no. U.P 63 J 9746 which was financed by TATA Motors Finance Limited . It is the contention of the assessee that total invoice value of the truck was Rs. 15,90,000/- and down payment was made by assessee to the tune of only Rs. 40,000/- , and balance amount of Rs. 15,50,000/- was raised by assessee as loan for financing the aforesaid truck from Tata Motors Finance Limited . Thus, it is the contention of the assessee that entire sources for purchase of truck stood explained. However, it was observed by authorities below that the contracted price of the truck

as adopted by Tata Motor Finance Limited was to the tune of Rs. 22,51,400 and the assessee could not explain the source of payment of Rs. 7,01,400/- , which as per authorities below was spent by assessee out of books from his undisclosed sources/ income, and which led to the additions to the income being made by the AO in the hand of the assessee by invoking provisions of Section 69B of the 1961 Act, which stood later confirmed by learned CIT(A). It is stated by learned counsel for the assessee before the Bench that as per scheme of finance offered by Tata Motors Finance Limited, the finance charges to the tune of Rs. 6,01,400/- were upfront charges for the entire duration of loan , and further insurance charges to the tune of Rs. 1,00,000/- were added to the contract value by the financier while granting loan for purchase of aforesaid truck and computation of EMI. It is stated by learned counsel for the assessee that no such payment to the tune of RS.7,01,400/- was made by assessee and these amounts were merely added by financier to compute contract value for the purpose of computing EMI , and even the insurance of truck was paid by the financier The ld. counsel for the assessee drew our attention to statement of Tata Motors Finance Limited dated 08.03.2010(PB/Page 14-17) related to contract no. 5000365063 dated 12.03.2009 wherein the figure of Rs. 6,01,400 is shown as finance charges and Insurance Provision of Rs. 1,00,000/- is shown. . The disbursal date is 18.03.2009 while maturity date is 11.12.2012 , in the aforesaid statement . The invoice amount is shown to be Rs. 15,90,000/- and initial Hire is Rs. 40000/- . The total contract amount is Rs. 22,51,400/- . The vehicle number in this document is UP 63 J 9746 . The invoice number is 0809-01747. It was also submitted by learned counsel for the assessee that similar issue arose before the tribunal in the case of relative of the assessee namely Mr. Yogesh Kumar Pandey in which the tribunal vide order dated 26.11.2020 in Mr. Yogesh Kumar Pandey v. ITO , in ITA No. 99/ALLD/2014 for assessment year 2009-10 had restored the similar issue back to the file of the AO for fresh adjudication. The prayers were made that this issue in the case of assessee may also be restored to the file of the AO with similar directions . It

was submitted that the assessee will co-operate in the denovo proceedings before the AO and duly explain with evidences that no such payments were made by the assessee and addition to the income was totally unjustified. The learned DR on the other hand fairly submitted before us that this issue is left to the decision of the Bench , as similar issue has already been adjudicated by Tribunal in ITA No. 99/ALLD/2014 for ay: 2009-10 in the case of relative of the assessee namely Mr. Yogesh Kumar Pandey v. ITO, vide appellate orders dated 26.11.2020 passed by tribunal . After hearing both the parties and perusing the material on record, we have observed that the assessee has purchased truck number UP63J9746 during the year under consideration . The said truck was financed by Tata Motors Finance Limited. The assessee is consistently claiming before the authorities below that the total invoice amount of the truck was Rs. 15,90,000/- and the assessee has only paid Rs. 40,000/- for purchasing the truck , while Tata Motor Finance Limited has granted loan of Rs. 15,50,000/-. The assessee is claiming that contract value of the truck was determined by Tata Motors Finance Limited , to the tune of Rs. 22,51,400/- which included an amount of Rs. 6,01,400/- being upfront finance charges which was added by financier to the finance amount to compute EMI , and Rs. 1 lacs was insurance amount on truck which was paid by Tata Motor Finance Limited on behalf of the assessee and which were added by the financier only for the purposes of determining the EMI amount payable by the assessee , and no such cash outflow of Rs. 7,01,400/- was made by the assessee on both these heads. We have observed that the assessee has filed copy of statement of Tata Motors Finance Limited dated 08.03.2010(PB/Page 14-17) in which details are there as to invoice amount, finance amount, contract amount, finance charges , insurance charges , the details of which are extracted above . We find merit in the contentions of the assessee but the authenticity of these documents/details require verification by authorities below. We have also observed that similar issue was decided by tribunal in which both of us were the parties to the DB who pronounced the order on 26.11.2020, in case of relative of the assessee Mr.

Yogesh Kumar Pandey v. ITO in ITA No. 99/ALLD/2014 for assessment year 2009-10
vide order dated 26.11.2020 , in which the tribunal has held as under:-

“6. Now we proceed to adjudicate Ground No.3 and 4 raised by assessee in memo of appeal filed with the tribunal. The brief facts of the case are that the assessee is engaged in the business of coal, liquor and truck business, but however the income from truck business was not disclosed by the assessee in the return of income filed by the assessee with the Revenue. The AO on its part while framing assessment u/s 143(3) read with Section 143(2) of the 1961 Act has assessed income from truck business to the tune of Rs. 1,61,000/- under presumptive regime by invoking provisions of Section u/s 44AE of the 1961 Act. The assessee has during the year under consideration purchased truck no.UP63H9654 on 09.06.2008. As per AO the purchase price of the truck was Rs.14,34,222/- and finance amount availed by the assessee from finance company was to the tune of Rs.11,00,000/- , and the assessee has invested a sum of Rs.3,34,222/- in the purchase of truck out of his own sources. As per AO since no explanation was made by the assessee towards the said investments in the truck made by the assessee as his contribution towards purchase of truck, an addition of Rs.3,34,222/- towards income of the assessee was made by the AO by invoking provisions of Section 69 of the 1961 Act , while framing assessment u/s 143(3) read with Section 143(2) of the 1961 Act. Being aggrieved by an assessment framed by the AO, the assessee filed first appeal with Ld. CIT(A) and the assessee made submissions before learned CIT(A) that out of the above amount , an amount of Rs. 2,44,222/- was on account of advance finance charges on loan granted by financier for purchase of truck which were collected in advance and added to the cost of truck for the purposes of funding by the financier and further an amount of Rs. 90,000/- were insurance being paid by the finance company on behalf of the assessee for acquisition of the truck which has been added to the cost of the truck for the purposes of granting/funding loan . It was further submitted that Rs. 71,199/- was paid by the assessee on 18.03.2008 which was accepted by the Revenue. The learned CIT(A) did not accepted the explanation filed by the assessee with respect to aforesaid amount of Rs. 2,44,222/- and Rs. 90,000/- towards advance finance charges and for insurance charges respectively . Before us also the similar contention were made but however no third party evidences has been brought on record by assessee to justify/substantiate the same except self-serving statement. The ld. DR supported the appellate order passed by learned CIT(A) has vehemently argued that the addition were to be confirmed. After hearing both the parties and perusing the material on record, in our considered view one more opportunity need to be granted to the assessee to produce relevant evidences to substantiate contentions

as are made with respect to advance finance charges collected by financier which is added to loan amount as well insurance of Rs. 90000/- paid by financier on behalf of the assessee to insure the truck purchased by the assessee. Thus, we are remitting the matter back to the file of the AO for fresh adjudication of the matter denovo. The assessee is directed to produce relevant documentary evidences before the AO to justify his stand. The AO shall admit evidences filed by the assessee which shall be adjudicated on merits in accordance with law. Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice. The ground number 3 filed by assessee in memo of appeal is allowed for statistical purposes. We order accordingly."

After hearing both the parties and perusing the entire material on record including aforesaid order dated 26.11.2020 passed by tribunal in the case of relative of the assessee as detailed above , in our considered view one more opportunity need to be granted to the assessee to produce relevant evidences to substantiate contentions as are made with respect to advance finance charges collected by financier which is added to loan amount as well insurance of Rs. 1,00,000/- paid by financier on behalf of the assessee to insure the truck purchased by the assessee. Thus, we are remitting the matter back to the file of the AO for fresh adjudication of the matter denovo on merits in accordance with law. The assessee is directed to produce relevant documentary evidences before the AO to justify his stand. The AO shall admit evidences filed by the assessee which shall be adjudicated on merits in accordance with law. Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice. In case the assessee do not co-operate before the AO in submission of details/evidences called for by the AO, then the AO shall be free to decide the matter on merits in accordance with law. The ground number 4 filed by assessee in memo of appeal is allowed for statistical purposes. We order accordingly.

5. The next ground concern itself with an addition being made on account of non explanation by assessee of sources of income for making payment of installment of

Rs. 3,26,762/- . Thus, the additions have been sustained by learned CIT(A) by holding that the assessee could not explain the sources from where payment of principal amount of repayment of loan vide installments paid during the year to the tune of Rs. 3,26,762/- was made by the assessee . Before us, the statement is made by learned counsel for the assessee that all the payments towards instalments of loan to Tata Motors Finance Limited was paid by assessee by banking channel. It is stated by ld counsel for the assessee that the said bank account was disclosed to department and hence no addition is warranted. The assessee has produced before us bank book and bank statements of Axis Bank, in the paper book filed with tribunal. The learned DR on the other hand relied upon the orders of learned CIT(A). After hearing both the parties and perusing the material on record, we are of the considered view that the contentions of the assessee require verification by authorities below. Thus, it is considered fit to restore the matter to the file of the AO for fresh adjudication of the issue on merits in accordance with law. The assessee is directed to produce all the relevant evidences before the AO to justify its stand that the repayment of installments to Tata Motor Finance Limited was made from known sources and out of the declared income. The AO is directed to verify from the evidences submitted by assessee before him as to whether the payments were made by assessee out of the known and declared sources and accordingly adjudicate the matter on merits in accordance with law. Thus, we are remitting the matter back to the file of the AO for fresh adjudication of the matter denovo on merits in accordance with law. The assessee is directed to produce relevant documentary evidences before the AO to justify his stand. The AO shall admit evidences filed by the assessee which shall be adjudicated on merits in accordance with law. Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice. In case the assessee do not co-operate before the AO in submission of details/evidences called for by the AO, then the AO shall be free to

decide the matter on merits in accordance with law. The ground number 5 filed by assessee in memo of appeal is allowed for statistical purposes. We order accordingly.

6. The next addition which is challenged by the assessee vide ground number 7 raised in memo of appeal filed with tribunal, is with regard to an undisclosed investment in purchase of coal to the tune of Rs. 37,82,588/-, which addition as was made by the AO was later confirmed by learned CIT(A). The learned counsel for the assessee stated before us that there was wrong filing of the purchase amount in quarter four of the return of VAT filed with Sales Tax Authority, wherein third quarter amount of purchase to the tune of Rs. 37,82,572/- was added once again by mistake into the fourth quarter purchases while filing VAT returns, and hence fourth quarter purchases were shown at Rs. 48,94,322/- against the fourth quarter actual purchases of Rs. 11,11,750/- which ought to have been shown in the fourth quarter VAT return. It was stated by ld. Counsel for the assessee that total purchases for the year were to the tune of Rs. 62,31,340/- as against purchases of Rs. 1,00,13,912/- as shown in VAT return. The assessee has filed the details in page 28-72 of the paper book, which included details of actual purchases (quarter wise) vis-à-vis detail of purchases shown in VAT returns (quarter wise), copies of VAT returns filed with Sales Tax Authorities, audit reports etc.. Thus, in nut-shell the learned counsel for the assessee has made statement before us that there is no investment of Rs. 37,82,572/- made by the assessee towards purchases, out of books. The ld DR stated that the assessee be directed to file books of accounts to verify its contention apart from evidences filed by it. These evidences filed before us, along with books of accounts requires verification by the authorities below. Thus, we are remitting the matter back to the file of the AO for fresh adjudication of the matter denovo on merits in accordance with law. The assessee is directed to produce relevant evidences along with the books of accounts before the AO to evidence that the purchases as per books of accounts are to the tune of Rs. 62,31,340/- and not an amount of Rs. 1,00,13,912/- as claimed to be

shown in VAT return as purchases for the year under consideration , and an amount of Rs. 37,82,572/- was error in filing of the VAT return. The assessee is directed to produce relevant documentary evidences /books of account before the AO to justify his stand. The AO shall admit evidences filed by the assessee which shall be adjudicated on merits in accordance with law. Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice. In case the assessee do not co-operate before the AO in submission of details/evidences / books of accounts, called for by the AO, then the AO shall be free to decide the matter on merits in accordance with law. The ground number 7 filed by assessee in memo of appeal is allowed for statistical purposes. We order accordingly.

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

Order pronounced on 11/12/2020 at Allahabad.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 12/12/2020

sh

Copy forwarded to:

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

By order
Assistant Registrar