

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD 'SMC' BENCH, ALLAHABAD**

**(THROUGH VIRTUAL COURT),**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.67/ALLD/2019  
Assessment Year: 2012-13**

<b>Rajendra Kumar Kesari, Bharatganj, Allahabad PAN-AHLPK4554D</b>	v.	<b>Income Tax Officer, Ward-1(4), Allahabad</b>
(Appellant)		(Respondent)

Appellant by:	Mr. Praveen Godbole, CA
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	17.12.2020
Date of pronouncement:	18.12.2020

**ORDER**

**PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:**

This appeal by the assessee is directed against the order dated 26.03.2019 of CIT(A) for the assessment year 2012-13. The assessee has raised the following grounds:-

- 1- *That in any view of the matter the assessment made u/s 147/143(3) of the IT Act by order dated 26.03.2016 on income of Rs. 7,17,510/- is bad both on the facts and in law.*
- 2 - *That in any view of the matter the Assessing Officer was wrong in making disallowance of Rs. 1,14,754/- out of expenses claimed under different heads in absence of any defects in books of accounts hence the addition made by Assessing officer and confirmed by CIT(A) is highly unjustified.*
- 3- *That in any view of the matter disallowance of Rs. 19,620/- out of advertisement expenses, Rs. 7,358/- out of miscellaneous expenses, Rs. 21,787/- out of shop expenses, Rs. 22,943/- out of repairs and maintenance expenses, Rs. 10,592/- out*

*of special discount, Rs. 5,054/- out of telephone expenses, Rs. 27,400/- out of running vehicle expenses, totaling Rs. 1,14,754/- as made by the Assessing Officer and confirmed by CIT(A) is highly unjustified.*

- 4- *That in any view of the matter the interest charged under different section is highly unjustified.*
- 5- *That in any view of the matter the appellant reserves his right to take fresh grounds of appeal before hearing of appeal.*

2. The only issue arises in the appeal of the assessee is regarding the adhoc disallowances @20% made by the AO in respect of some expenses for want of proper bills and vouchers as well as the telephone and vehicle expenses on the ground of personal use.

3. The learned AR of the assessee has submitted that the Assessing Officer has made adhoc disallowances in respect of certain expenses without pointing out any specific defect or the profit declared by the assessee is less than the past history. He has further submitted that the AO has disallowed 20% of various expenses which is excessive and arbitrary. The CIT(A) has confirmed the disallowance made by the AO by passing the *ex parte* order. He has contended that when the all the expenses are incurred wholly and excessively for business purpose then the question of personal use does not arise and hence the disallowance is uncalled for. In support of his contention he has relied upon the decision of this Tribunal in case of Algu Singh in ITA No. 91/2018 as well as the decision of Hon'ble Supreme Court in case of J.J. Enterprises vs. CIT 254 ITR 216. Hence the learned AR has pleaded that an adhoc disallowances made by the AO and confirmed by the CIT(A) may be deleted.

4. On the other hand, learned DR has submitted that the AO has verified the record and noted certain specific expenses were not supported by the proper bills and vouchers and the same were also incurred in cash. Therefore, the AO made a disallowance of 20% of such expenses which were not supported by the proper bills and vouchers. Further in the absence of proper record, the AO has also disallowed the

telephone and vehicle running expenses for personal use. He has relied upon the orders of the authorities below as well as decision of Hon'ble jurisdictional High Court in case of Pr. CIT vs. Rimjhim Ispat Limited 382 ITR 152 and submitted that the Hon'ble High Court has held that the expenditure claimed and shown in the profit & loss account were required to be proved by the production of bills and vouchers. In the absence of bills and vouchers, the AO was justified in disallowing a certain portion of such expenses.

5. I have considered the rival submissions as well as relevant material on record. The Assessing Officer has made an adhoc disallowance of 20% of certain expenses as under:-

*"The assessee is dealer of gold and silver ornaments. Assessee failed to produce vouchers/ bills in respect of expenses debited in P/L Account, without expenditure the business cannot be run but the assessee should produce vouchers. In this regard vide order sheet entry dated 19.03.2015 the assessee was asked why 20% of expenses debited in P/L Account in respect of advertisement, misc. expenses, repair and maintenance shop expenses, special discount may not be disallowed @ 20% and telephone and vehicle running expenses @20% may not be disallowed for personal purposes. The assessee vide his reply dated 20.03.2015 submitted that the expenditure as claimed in P/L Account are regular business expenses and incurred on regular course of business similar, expenses have been claimed in earlier year also. The submission of the assessee is not acceptable because he has not produced a single voucher before undersigned. Therefore, expenditure under the head Advertisement @ 20% of Rs. 98,100/- i.e. Rs. 19,620/- Misc. expenses @ 20% of Rs. 36,791/-i.e. Rs. 7,358/-, Shop Expenses @ 20% of Rs. 1,08,636/-i.e. Rs 21,787/-, Repair & maintenance @ 20% of Rs. 114715/-i.e. Rs. 22,943/-, Special discount @ 20% of Rs. 52,961/- i.e. Rs. 10,592/-, Telephone Expenses @ 20% of Rs. 25,271/- i.e. Rs. 5,054/-, Vehicle Running Expenses @20% of Rs. 1,36,999/- i.e. Rs. 27,400/-."*

6. Thus it is clear that so far as the expenditure in respect of advertisement, miscellaneous expenses, repair and maintenance of shop expenses special discount, the same are disallowed by the AO for want of bills and vouchers. The expenditure on account of telephone and vehicle running are also disallowed to the extent of 20% for

personal purpose. The assessee has not disputed the fact that the proper bills and vouchers were not produced by the assessee for verification therefore to that extent the assessee has failed to prove that all the expenses were incurred wholly and excessively for business purpose. The onus to prove the claim of expenditure incurred wholly and excessively for business purpose lies on the assessee. Accordingly, there is a default on the part of the assessee to substantiate the claim of the expenditure. However, the disallowance of 20% made by the AO is arbitrary and excessive. The Hon'ble jurisdictional High Court in the case of Pr. CIT vs. Rimjhim Ispat Limited (Supra) as relied upon by the learned DR has held in para 7 and 8 as under:-

*"7. Having heard the learned counsel for the parties, we find that there is an express finding given by the assessing authority as well as by the first appellate authority with regard to non-production of bills and vouchers and for not maintaining the stock register. In the absence of non-production of bills and vouchers, the Assessing Officer was justified in disallowing certain expenditure by 10 per cent., which was reduced by the first appellate authority to 5 per cent. This aspect had not at all been considered by the Tribunal and the same had only been allowed on the ground that the turnover has increased by 5 per cent, and the expenditure has reduced. The Tribunal has lost sight of the fact that the expenditure claimed under the head manufacturing expenses, which forms part of the "profit and loss account", showing expenses made by the assessee are required to be proved by production of bills and vouchers. In the absence of production of bills and vouchers, an inference can be drawn by the assessing authority that such expenses shown under this head were inflated or were not supported by any bills, vouchers or any other documentary evidence, which would justify the Assessing Officer in disallowing certain portion of such expenses.*

*8. In the light of the aforesaid, we are of the opinion that the Tribunal committed an error in allowing the appeal of the assessee and by totally deleting the disallowance of 5 per cent. We, accordingly, allow the first question of law as stated aforesaid, in favour of the appellant, i.e., the Department and against the assessee and set aside that part of the order of the Tribunal on this aspect and restore the order of the first appellate authority. In our opinion, the disallowance of 5 per cent, in the facts of the case is justified."*

7. Accordingly, in the facts and circumstances of the case and following the decision of Hon'ble jurisdictional High Court, the adhoc disallowance made by the AO @ 20% is restricted to 5%. The AO is directed to re-compute the disallowance by applying 5%. The appeal is partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 18.12.2020 through video conferencing.

*Sd/-*  
[VIJAY PAL RAO]  
JUDICIAL MEMBER

DATED: 18/12/2020

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Copy forwarded to:

1. Appellant – Rajendra Kumar Kesari
2. Respondent – ITO, Ward-1(4), Allahabad
3. CIT(A) , Allahabad
4. CIT
5. DR -

By order  
Assistant Registrar