



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI P.M.JAGTAP, VICE PRESIDENT
AND C.M. GARG, JUDICIAL MEMBER**

ITA No.278/CTK/2018

Assessment Year : 2014-15

JCIT (OSD), Circle-1(1), Sambalpur	Vs.	M/s. Sainik Movers, Qr. No.1, Municipal Building Complex, Modipara, Sambalpur
PAN/GIR No.		
(Appellant)	..	(Respondent)

C.O.No.18/CTK/2019

(in ITA No.278/CTK/2018)

Assessment Year : 2014-15

M/s. Sainik Movers, Qr. No.1, Municipal Building Complex, Modipara, Sambalpur	Vs.	JCIT (OSD), Circle-1(1), Sambalpur
PAN/GIR No.		
(Cross objector)	..	(Appellant)

Assessee by : Shri P.K.Mishra, AR
Revenue by : Shri M.K.Gautam, CIT, DR

**Date of Hearing : 21 /1/ 2021
Date of Pronouncement : 28 /1/2021**

ORDER

Per Bench

This is an appeal filed by the revenue against the order of the CIT(A), Sambalpur dated 24.4.2018 for the assessment year 2014-15. The assessee has also filed cross objection.

2. Ground No.1 of revenue is as under:

" On the facts and in the circumstances of the case and in law, the Id CIT(A) is not justified in reducing the addition of Rs.1,66,05,751/- (20% of the total expenses) made by the AO under the head " hire charges paid to trucks" to Rs.16,50,575/- (2% of the total expenses) without giving any cogent reason in support, even though the assessee had failed to produce books & vouchers in support of the claimed expenditure either before the AO during the course of assessment proceedings or before the Id CIT(A) during the appellate proceedings."

3. Facts, as emerged from the impugned order, are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed total expenses of Rs.8,25,28,757/- under the head " hire charges paid to trucks". The Assessing Officer required the assessee to furnish ledger copy of accounts in respect of such expenses and also related bills and vouchers. Although the AR of the assessee filed ledger copy of accounts earlier, but as required by the AO, the assessee failed to bills any bills and vouchers and other required details. Therefore, the AO was of the view that the genuineness of the expenses is unsubstantiated. Accordingly, he disallowed 20% of the total expenses of Rs.8,25,28,757/-, which comes to Rs.1,64,05,751/- and added the same to the total income of the assessee.

4. During first appellate proceedings before the Id CIT(A), the assessee challenged the addition and submitted following written submissions:

"3. That, while completing assessment, the AO has disallowed 20% of hire charges paid to trucks on the ground that the hire charges expenses

claimed to the tune of Rs.8,25,28,757 appears to be abnormally high, being biased with this opinion, he called for production of connected evidence. Though the assessee produced detail ledger account copies of hire charges paid which was *maintained Truck wise and on daily payment basis*. Further when it was categorically explained that during the year, Assessee Firm was engaged in lifting and transporting of Ash from Bhusan Plant site to its Ash pond site. Therefore, a single trip cost never exceeds Rs.20,000.00. That apart, the Assessee had to pay hire charges to trucks on the spot after unloading Ash at Ash pond. These payments were received by Drivers after putting their signature on hand made Vouchers maintained at the work site. The learned A.O. without having any contrary evidence in hand, should not have disbelieved it and should not have asked the Assessee to produced printed Bills and Vouchers. It may be further submitted here that, it is not the fact that the Assessee Firm has not maintained any bills or vouchers, rather all payments were made to Truck drivers at the spot after obtaining their signature on cash voucher where, the details of trips and total expenses vehicle wise were mentioned. Since, it were handmade vouchers, the learned A. O. did not accept it, for which he came to a conclusion that, the Assessee could not produce bills and vouchers. Further, during the year under consideration, the total turnover of the Assessee was of Rs.10,63,17,938.00, if the gross transportation receipts is compared with the hire charges expenses of Rs.8,25,28,757.00, then it will be found that, the impugned expenditure was of only 77.62% which is too low in comparison with the hire charges expenses claimed by any other Assessee. That apart, before holding that, the impugned expenditure is abnormally high, 'the learned A.O. should have brought on record other comparable cases, where any other Assessee has claimed less transportation expenses in comparison to the Assessee, but in the instant case, without having any contrary evidence and any comparable cases, the learned A.O. framed an opinion that, the impugned expenditure is abnormally high, therefore, the impugned findings being baseless and being not backed by either I of any evidence or of any logic, has no legs to stand, as such needs to be rejected in the interest of justice. Further, after being highly influenced with this finding, calling for production of Books of Account is of no meaning at all as before examining the Books of Account, the learned A.O. has already pre-fixed his mind. Therefore, the impugned disallowance of Rs.1,65,05,751.00 is not sustainable in the eye of law, hence needs to be deleted in the interest of justice."

5. On appeal, Id CIT(A) restricted the disallowance to 2% as against 20% made by the AO by observing as under:

"2.2 I have considered the matter and perused the facts on record. It is clear from the assessment order that at the time of assessment

proceeding the assessee failed to produce the books of account and the bills & vouchers in support of the impugned expenses which constitutes the major part of the expenses of the assessee. In the absence of books of account and bills & vouchers, the AO is fully justified to question the genuineness of the expenses. Hence, the action of the AO to consider part disallowance of the expenses cannot be found fault with. The same is fully justified on principle. The only point to be considered is whether the disallowance made @20% of the claim is reasonable and not high and excessive. The AO has not given any reasons as to why he considered disallowance of 20% as reasonable. Keeping in view the nature of the business of the assessee, the nature and the quantum of the expenses claimed and the claim of expenses under the same head in earlier years, I am of the view that the disallowance of 2% of the expenses would be quite reasonable and would serve the ends of justice. Hence, the disallowance is reduced to Rs.16,50,575/-. The assessee gets a relief of Rs.1,48,55,176/-."

6. At the time of hearing, Id DR supporting the assessment order, submitted that the Id CIT(A) is not justified in restricting the disallowance without giving any reasons. He submitted that the assessee has failed to furnish the books and account and bills and vouchers in support of the claim of expenditure. Hence, the AO was correct in making the disallowance.

7. Replying to above, Id AR supported the order of the Id CIT(A) and reiterated the submissions made before the Id CIT(A) (supra). He also submitted that the Id CIT(A) considering the nature and quantum of business vis-à-vis expenses of the earlier years, restricted the disallowance to 2% which is correct and justified. He submitted that the assessee's total turnover was Rs.10,63,17,938/- and the claim of expenditure was Rs.8,25,28,757/- which is too low in comparison to other similar business operators. That apart, before holding that, the impugned expenditure is

abnormally high, the learned A.O. should have brought on record other comparable cases, where any other Assessee has claimed less transportation expenses in comparison to the assessee, but in the instant case, without having any contrary evidence and any comparable cases, the learned A.O. framed an opinion that, the impugned expenditure is abnormally high, therefore, the impugned findings being baseless and being not backed by either of any evidence or of any logic, has no legs to stand, as such needs to be rejected in the interest of justice. Further, after being highly influenced with this finding, calling for production of Books of Account is of no meaning at all as before examining the Books of Account, the learned A.O. has already pre-fixed his [mind](#).

8. Further, Id A.R. of the assessee furnished a chart showing year wise gross transportation receipts and hiring charges paid to truck alongwith net profit with profit percentage, for preceding assessment years, assessment year under consideration and also succeeding assessment year, which is as under:

A.Y.	Gross trnas.receipts	Hiring charges paid to truck	Trnsport. Expenses	Net profit	Profit %	Assessment
12-13	9,11,12,339	6,50,67,133	71.41	35,44,942.82	3.89	143(3)
13-14	9,71,23,857	7,12,17,133	73.33	35,83,752.55	3.08	143(3)

14-15	10,63,17,938	8,25,28,757.21	77.62	39,86,922.58	3.75	
15-16	5,18,70,900	4,44,61,193.62	85.72	75,55,159	2.99	u/s.143(1)

9. He submitted that the net profit shown by the assessee in the year under consideration is higher than the net profit shown in the succeeding assessment year as well as the immediately preceding assessment year. These facts have not been controverted by Id CIT D.R. before us.

10. We have heard the rival submissions and perused the material on record. In the present case, the assessee is in the business of transport works. During the year under consideration, the assessee has claimed total expenses of Rs.8,25,28,757/- under the head "hire charges paid to trucks". From a careful reading of the assessment order, it is evident that the AO has not disallowed 100% expenditure and he had considered the maximum expenditure as genuine and having been incurred for the purpose of business, which means that the expenditure claimed by the assessee has been considered as excessive. Nowhere in the order of the AO, there is a whisper as to how the expenditure is excessive and how the expenditure is not incurred for the purpose of transport business or there is personal expenditure. No working or factual basis has been stated in the assessment order to substantiate disallowance @ 20% of the work. The Id CIT(A) rightly considered the sole issue as to whether the disallowance made by

the AO @ 20% of total expenses claimed is very high or excessive. First of all, we also agree with the action of the AO that in absence of books of account and bills and vouchers, he was right and quite justified in making part disallowance of hire charges expenses. At the same time, we also find that the disallowance of 20% of total claim that too without basis is also not justified and reasonable. The Id CIT(A) keeping in view the nature of business of assessee, nature and quantum of the expenses claimed and quantum of expenses claimed under the same head during earlier year drew a right conclusion that disallowance of 2% of hire charges expenses is sufficient and quite reasonable. We are unable to see any valid reason to interfere with the same. Thus, we uphold the same. Consequently, we decline to agree with the contention of Id D.R. that there was no basis before the CIT(A) for reducing the addition from 20% to 2% of hire charges expenses.

11. Ld counsel has also placed vehement reliance on the order of ITAT Cuttack in the case of Odisha Builder and Engg. Construction Co vs ITO in ITA Nos.243 & 244/CTK/2010 for the assessment years 2005-06 and 2006-07 order dated 14.3.2011 and submitted that in various order of Hon'ble High Courts and Co-ordinate Bench of the Tribunal has categorically held that in the case of transporter, the net profit @ 3% is to be determined which is sufficient to cover all possible leakage of the revenue. On being asked by the Bench, Id CIT DR could not controvert this preposition

rendered by ITAT Cuttack Bench in the said order. At thus juncture, we may also find it appropriate to consider percentage of transport expenses paid as hire charges by the assessee in comparison to gross transport receipts. As per table noted above in para 8, we clearly find that during assessment year 2012-13 and 2013-14, the percentage of transportation expenses was 71.41% and 73.33% on gross transportation receipts earned by the assessee wherein, during present assessment year i.e. 2014-15, this percentage has substantially enhanced to 77.62% . Therefore, this allegation cannot be accepted that the claim of the assessee is partly bogus or not allowable. We may also point out that the expenditure claimed by the assessee during immediately previous two assessment years and succeeding assessment year has been accepted by the department without any dispute and the profit percentage, which comes to 2.75% of total turnover after considering the part addition confirmed by the CIT(A) is sufficient to cover all possible leakage of revenue. Therefore, in absence of any substantial and acceptable submission of the Id CIT DR, we do not find any valid reason to interfere with the findings of Id CIT(A).

12. We find that the Hon'ble Supreme Court in the case of Radhasoami Satsang vs CIT (1991) 193 ITR 321 (SC) held that the principle of resjudicata is not applicable in the Income tax matter. But findings of earlier years on the same matter are relevant where all fundamental facts permitting through different assessment years have been found as a fact

one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. We find that in the instant case also, in assessment year 2013-14, the assessee has shown net profit @ 3.08%, which was assessed u/s.143(3) of the Act. Further, in assessment year 2015-16, the profit was shown @ 2.99%, and accepted u/s./143(1) of the Act by the department, which is less than the net profit shown by the assessee in the present year under consideration i.e. 3.75%. Therefore, in view of the foregoing discussion and considering the totality of the facts and circumstances of the case, we find that the Id CIT(A) is justified in restricting the disallowance to 2% of the total expenses claimed by the assessee considering the quantum and nature of expenses and also the claim of earlier years. We uphold the same. This ground is dismissed.

13. Ground No.2 is as under:

" On the facts and in the circumstances of the case and in law, the Id CIT(A) is not justified in reducing the addition of Rs.37,31,483/- (20% of the total expenses) made by the AO under the head " staff salary" "travelling & conveyance" and "power and fuel" to Rs. 3,73,148/- (2% of the total expenses) without giving any cogent reason in support, even though the assessee had failed to produce books & vouchers in support of the claimed expenditure either before the AO during the course of assessment proceedings or before the Id CIT(A) during the appellate proceedings."

14. We have heard the rival submissions and perused the record of the case. The AO has estimated the disallowance @ 20% of the total expenses on the following heads on the ground that assessee could

not produce bills and vouchers and books of account in support of the expenditure:

i)	Staff salary	:	Rs. 32,25,570/-
ii)	Travelling & conveyance:		Rs. 12,25,890/-
iii)	Power & fuel	:	<u>Rs.1,42,05,856/-</u>
	Total:		Rs.1,86,57,416/-

15. On appeal, the Id CIT(A) restricted the disallowance to 2% as against 20% made by the AO considering the nature of business conducted by the assessee and also the expenses of earlier years. While dealing with Ground No.1 of assessee in para 7 above, we have upheld the findings of the Id CIT(A). On the same reasoning, we also confirm the findings on this issue and reject the ground of the revenue.

16. Apropos Ground No.3 raised by the revenue; we observe that Ground No.1 & 2 of the revenue have been dismissed upholding the findings of the Id CIT(A) reducing the disallowance from 20% to 2% keeping in view the net profit shown by the assessee @ 3.75% for the year under consideration. The prayer of the assessee before the Id CIT(A) that the assessee could not produce books of account and related bills and vouchers in connection with the expenses claimed in the profit and loss account is accepted, then the best recourse available in the hands of the AO was to reject the book result and to estimate net profit at a reasonable percentage is concerned, when the AO has not rejected books of account and book results of the assessee and when Id CIT(A) also did not accede to the prayer of the assessee then how this can be taken by the Tribunal at this

stage especially when we have upheld the findings of the Id CIT(A), wherein, he has granted part relief to the assessee confirming the part disallowance. Therefore, Ground No.3 of the revenue being devoid of merits, is also dismissed.

17. In the cross objection, the assessee has raised mainly two issues (i) the Joint CIT being not the authorized person to file the appeal and, therefore, not maintainable and (ii) the Id CIT(A) is justified in restricting the disallowance to 2% as against 20% made by the AO.

18. Since, we have dismissed the appeal of the revenue, the cross objection filed by the assessee has become infructuous and same is dismissed.

19. In the result, the appeal of the revenue is dismissed and C.O. is dismissed.

Order pronounced on 28 /1/2021.

Sd/-
(P. M. Jagtap)
VICE PRESIDENT

sd/-
(C . M. Garg)
JUDICIAL MEMBER

Cuttack; Dated 28/1/2021

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : JCIT (OSD), Circle-1(1), Sambalpur
2. The Respondent. M/s. Sainik Movers, Or. No.1, Municipal Building Complex, Modipara, Sambalpur
3. The CIT(A)-, Sambalpur
4. Pr.CIT- , Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack