

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.- 1628 /Del/2016
(Assessment Year: 2011-12)**

Manoj Kumar,
Proprietor Balaji engineers
and consultants,
547/1, Bhim Palace,
near Union Bank of India, new
railway road,
Gurgaon.

Vs. ACIT
Circle-62(1),
New Delhi.

PAN No. AGQPK1786P

Appellant

Respondent

Assessee by Sh. Joginder Singh Kocher, CA
Revenue by MsRakhi Vimal, Sr. DR

Date of hearing: 11/2/2021
Pronouncement on 11/2/2021

ORDER

PER K. NARASIMHA CHARY, JM.

Aggrieved by the order dated 3/3/2016 in appeal No. 45/2014-15 passed by the learned Commissioner of Income Tax (Appeals)-20, New Delhi ("Ld. CIT(A)"), in the case of Sh. Manoj Kumar ("the assessee"), for the assessment year 2011-12 in sustaining the addition of

Rs.22,35,928/-on account of disallowance of 1% of the aggregate direct expenses (which, interalia, include expenditure on ESI, provident fund and labour welfare fund which are deposited with the convent authorities), on presumptive basis.

2. Brief facts of the case, as could be culled out from the record and the augments of the counsel on either side, or that the assessee is a labour contractor, who supplies manpower to various companies/contractors; that the wages and salaries are paid to the labourers by the assessee, who also makes contribution towards ESI, provident fund and labour welfare fund in accordance with the relevant statutes and deposited the same with the authorities; that the aggregate amount of salaries, wages, contribution to ESI, Provident Fund, Labour Welfare Fund and certain other labour related expenses like canteen expenses, uniform expenses, medical expenses etc are grew put together and referred to as the “direct expenses”, and are building to the companies/contractors to whom the labourers are supplied by the assessee along with the markup, which varies from company to company.

3. For the assessment year 2011-12, assessee filed the return of income on 28/9/2011 declaring an income of Rs. 23, 69, 280/-. Assessment under section 143(3) of the Income Tax Act, 1961 (for short “the Act”) was complete by order dated 7/3/2014 at Rs. 63, 89, 720/- by making certain additions, which, for the purpose of this appeal, include an addition of Rs. 22, 35, 98/-by disallowing 1% of total expenditure claimed on account of direct expenses. When the assessee preferred appeal, Ld. CIT(A) confirmed this addition while giving relief to the assessee on account of other additions. Hence the assessee is before us in this appeal.

4. It is the submission on behalf of the assessee that the books of accounts of the assessee were duly audited under section 44AB of the Act, the auditors did not deserve any qualification in respect of any of the direct expenses, learned Assessing Officer had examined the books of accounts, bills, vouchers, muster rolls etc and did not specify any discrepancy therein and in such an event, without rejecting the books of accounts for any specific reason, it is not open for the assessing officer to disallow any part of the expense. He further submitted that in the direct expenses there are certain statutory payments made to the government authorities and, therefore, disallowing the same does not arise. He further submitted that the disallowance appears to be solely on the ground that there is a drop in the GP rate of the assessee from the earlier year, namely, from 6.23% to 6.16%, which is natural when there is increase in the turnover from Rs. 18.60 crores to Rs. 23.83 crores. He placed reliance on the decisions reported in CIT vs. Winner Constructions Pvt. Ltd in ITA No. 796/2011 on the file of the Hon'ble Delhi High Court and CIT vs. Paradise Holidays (2010) 325 ITR 13 (Del).

5. By drawing our attention to paragraph No. 3.2 of the assessment order, Ld. DR submitted that is not because of the drop in the GP rate of the assessee alone the addition was made, but the assessee has not established any direct nexus between the increase in turnover and an increase in the labour cost by filing any supporting evidence, the payment sheets produced by the assessee show certain discrepancies like some containing the only the name of the labourer/staff employed and in some cases only father's name is mentioned. Further she submitted that on account of wages/salary expenses incurred by the assessee almost entirely

clean cash, which the assessee claims to have been making to labourers directly on account of being below the exempted income slab which does not require any tedious, the quantum of actual payment remains unverifiable. She further submitted that no muster roll or attendances sheet was produced and the assessee failed to produce the contract/project wise details of the deployment of the men, no copy of bid/tender document was produced and the assessee claimed a substantial amount of expenditure on account of reimbursement expenses under direct expenses. Lastly she submitted that in addition to these, the assessee claims to have incurred tea, uniform, medicines and canteen expenses which could not be recovered from the labour. She submitted that in view of this discrepancies the learned Assessing Officer was justified in disallowing the 1% of the direct expenses.

6. We have gone through the record in the light of the submissions made on either side. Insofar as the commission of the assessee is dealing with the supply of contract labourers remains undisputed. It is also not in dispute that the assessee produced the the books of accounts, bills, vouchers and muster rolls before the assessing officer and the assessing officer verified the same. Is also not in dispute that the Direct Expenses include the employer's contribution to PF, ESI and Labour Welfare Fund in respect of which the learned Assessing Officer did not find any discrepancy. Insofar as the cash payments made by the assessee are concerned, learned Assessing Officer himself recorded that the assessee explained that such amounts were paid to the labourers in cash because they fall in the exempted income slab and no tedious was required to be deducted. Payment of petty amounts to labourers cannot be expected to be

through banking channels. If on verification of the material produced by the assessee, the learned Assessing Officer still requires any further details, it is always open for the assessing officer to require the same to be produced. Is not so in this case.

7. It is, therefore, clear that neither the auditors who audited the accounts of the assessee under section 44 AB of the Act nor the learned Assessing Officer find out any specific discrepancy in respect of books of accounts and is only on the examination of the payment sheets and the muster rolls the learned Assessing Officer suspected that the actual payments may be in variance with the payments contained in the books. However, in such event also, the assessing officer should have considered the quantum involved in the payment of the employer's contribution to PF, ESI, and labour welfare fund to the government authorities and there should not have been any disallowance on ad hoc basis.

8. In *Paradise Holidays (supra)* the Hon'ble jurisdictional High Court held that the accounts which are regularly maintained in the course of business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect and unreliable, in which case the onus is upon the Revenue to show that either the books of accounts maintained by the assessee were incorrect or incomplete or method of accounting adopted by him was such that true profits of the assessee cannot be deduced there from.

9. On a careful consideration of all these facts we are of the considered opinion that without pointing out any serious discrepancy with

the books of accounts of the assessee which were audited under the provisions of Act, without rejecting the books of accounts, the assessing officer should not have resorted to ad hoc disallowance. We therefore, direct the learned Assessing Officer to impugned by the assessee in this appeal.

10. In the result appeal of the assessee is allowed.

Order pronounced in the open court immediately on conclusion of the hearing over virtual mode on this the 11th day of February, 2021.

Sd/-
(G.S. PANNU)
VICE PRESIDENT
Dated: 11/2/2021

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER