

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.3546/Del./2017
Assessment Year: 2012-13

Shri Manoj Kumar, Prop. Balaji Engineers & Consultants, 547/1, Bhim Palace, Near Union Bank of India, New Railway Road, Gurgaon	Vs.	ACIT, Circle-62(1), New Delhi
PAN :AGQPK1786P		
(Appellant)		(Respondent)

Appellant by	Shri J.S. Kochar, Adv.
Respondent by	Ms. Rinku Singh, Sr.DR

Date of hearing	02.03.2021
Date of pronouncement	12.03.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 14/03/2017 passed by the Learned CIT(Appeals)-20, New Delhi [in short 'the Learned CIT(A)'] for assessment year 2012-13 raising sole ground as follows:

1. *That the learned CIT(A) erred in partly sustaining the addition of Rs.12,65,641/- to the extent of 0.5% of the aggregate Direct Expenses (which, inter alia, included expenditure on salaries, wages, ESI, Provident Fund and Labour Welfare Fund) on a*

presumptive basis, without finding any specific payment to be non genuine or not for the purpose of business of the assessee.

2. Briefly stated facts of the case are that the assessee was engaged in the business of supply of manpower to various companies under the name of his proprietary concern M/s Balaji Engineers and Consultant. For the year under consideration, the assessee filed return of income on 29/09/2012, declaring total income of ₹ 27,48,190/-. The return of income filed by the assessee was selected for scrutiny and various disallowances were made in assessment order passed on 11/03/2015 under section 143(3) of the Income-tax Act, 1961 (in short 'the Act'). On further appeal, the Ld. CIT(A) allowed part relief to the assessee. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the parties appeared through Video Conferencing facility.

4. At the outset, the learned Counsel of the assessee submitted that identical issue of sustaining 0.5% of direct expenses by the Ld. CIT(A) against disallowance of 1% of the direct expenses by the Assessing Officer has been adjudicated by the Tribunal in assessment year 2014-15 in the case of the assessee himself and deleted the addition being on the ad-hoc basis without pointing out specific defect of bills or vouchers.

5. The Learned DR, on the other hand, relied on the order of the lower authorities.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find

that the Learned Assessing Officer in para 3.1 to 3.3 of the assessment order has made the addition of ₹ 25,31,282/- being 1% of the direct expenses on the ground of disproportionate increase in expenses as compared to earlier year without pointing out any specific defects. The finding of the Assessing Officer in para 3.3 to 3.4 is reproduced as under:

“3.3 Undisputedly there is sudden rise in % of total direct expenses (on account of labour charges and related expenses) as proportion of the turnover for the year as compared to the results for the earlier period and no justifiable reason or supporting evidence has been furnished in support of the contentions of the assessee. In view of the unverifiable nature of records maintained by the assessee in respect of wages payments and the lack of identities of the labourers, the genuineness of expenditure on account of total direct expenses cannot be accepted completely. Besides, the other contractors in the similar business of manpower and labour supply are showing a net profit of 3-5%. When the labour, material cost are universal for all the contractors claim of the assessee is not acceptable.

3.4 Considering all the above discrepancies 1% of the total direct expenses claimed by the assessee amounting to Rs. 25,31,282/- is being disallowed.”

6.1 On further appeal, the Ld. CIT(A), however, reduced the disallowance from 1% to 0.5 percent and sustained disallowance of ₹ 12,65,641/- observing as under:

{6} Decision: -

There is only one effective ground of appeal in this case in ground no. 2 regarding disallowance of Rs. 2531282/- that is 1% of the total direct expenses. The AO has made this addition on the basis of the fact that there is no direct nexus between increase in the turnover and vis-a-vis in expenses under the head Salary & Wages. The chart given by the AO in Para 3.1 of the assessment order mentioned (supra) in Para 4 makes it clear that there is a fall in GP from 6.23% in A.Y. 2010-11 and 6.16% in A.Y. 2011-12 to 5.04% in A.Y. 2012-13. The reason of this fall is apparent due to the increase of wages & salary to the turn over which has increased from 93.7% in A.Y. 2010-11 and 93.84% in A.Y. 2011-12 to 94.94% in A.Y. 2012-13. The AO has mentioned many defects in the payment-sheet and

muster-roll in para 3.2 of the assessment order and also observed that from F.Y. 2009-10 to F.Y. 2011-12 no proof of any revision of wages rate has been furnished by the appellant and copy of contract agreement could not be produced. Hence, as the rise in the expenses under these heads could not be substantiated addition of 1% of the total direct expenses of Rs.25,31,282/- was made by the AO.

During the course of appellate proceedings, the appellant has claimed that the reasoning given by AO for disallowance is not correct and point-wise reply was given which is reproduced in para 5 supra. On the ground of increase in wages and salary expenses the appellant explained that the service charges which is in the normal basis varies from the range of 5% to 7% but for over-time it is in the range of 2.77% to 4%. However, no calculation that what is the amount of wage charges relating to over-time could be produced by the appellant Further, it is difficult to believe that over-time charges has any substantial impact on the expenses as it is done usually in very few cases and it is true for all the years and not only for this year. Hence, this explanation is without any supporting calculation and has no basis, and is mere a statement.

Further, as the appellant has also claimed that the hike in wages expenses is due to the wage revision, the appellant was asked to produce the relevant circulars regarding this. In response, the appellant has furnished the letter no. 28647-474 dated 05.09.2011 where the wages were raised by Labour Commissioner, Haryana w.e.f 01.07.2011 and further vide letter no. 8273-397 dated 02.02.2012 by which minimum wages have again been increased w.e.f 01.01.2012. However, the appellant has not produced any calculation what is the impact of this wage hike on the total labour cost as the appellant has shown salary and wages under the same head.

Similar addition has been made by the AO in A.Y. 2011-12 on identical grounds where the AO has added 1% of the total direct expenses claimed by the appellant amounting to Rs.22,35,928/-. The Ld. Predecessor CIT(A) has confirmed this addition in appeal no.45/2014-15 dated 03.03.2016 and observed in para 5.3 as under:

"I have considered the submission of the appellant and the assessment order. Even without going into the comparison of the expenses as compared to preceding years, there is no doubt that in order to claim any expenditure, the initial burden lies on the assessee to prove the genuineness of such expenditure and what the expenditure must be incurred wholly and exclusively for the purpose of business/profession. In the present case the AO has

mentioned categorically as reproduced in para (5.1) above that the appellant has not been able to provide adequate evidences in support of his claims. Considering that fact that most of such expenses were incurred in cash, appellant's onus to prove the genuineness has become even more pertinent. In view of the facts and circumstances of the case, and taking the overall facts as mentioned in para (5.1) above, it is my considered view that the AO is reasonable in disallowing 1% of direct expenses (on account of labour charges and related expenses) amounting to Rs. 22,35,928/- Accordingly, appellant's ground of appeal on this issue is dismissed.

The appellant has mentioned that this order has been challenged by him before Hon'ble ITAT which is pending. Considering the fact that there are many discrepancies pointed out by the AO regarding the genuineness of expenses which is common in this year as well as in A.Y. 2011-12 and Ld. CIT(A) in A.Y. 2011-12 confirmed this addition and the fact that no plausible explanation could be given by the appellant for such hike in expenses the AO is justified in making addition under this head. However, considering the fact that in this year the wages are revised in the state of Haryana from 01.07.2011 which factor was absent in A.Y. 2011-12, the appellant deserves a credit of such hike in the expenses claimed under labour cost. During the course of hearing the appellant could not do any quantification what is the exact amount of hike in the expenses on this account of wage revision, as this expense is inclusive of salary as well. Further, the case law's relied upon by the appellant are different on the facts and circumstances of the case as in the case of the appellant the Assessing Officer has proved that there is no nexus of the expenses under labour and salary head vis-a-vis turnover. On the basis of the above, the disallowance of Rs.25,31,282/- @1% of the total direct expenditure of Rs.25,31,28,276/- is restricted to 0.5% which comes to Rs.12,65,641/- and the appellant will get relief accordingly.”

6.2 We find that identical ground has been adjudicated by the Tribunal in assessment year 2014-15 in ITA No. 978/Del./2018, (Order dated: 02.03.2021) observing that no ad-hoc addition can be made without pointing out the specific defects of bills or vouchers. The finding of the Tribunal (supra) is reproduced as under:

“4.4 *We have heard rival submission of the parties on the issue in dispute and perused the relevant material on*

record. We find that the Hon'ble Delhi High Court in the case of **Friends Clearing Agency (P) Ltd.** (supra) has held as under:

“10. Having perused the reasoning of the CIT (Appeals) as extracted above and that of ITAT, we are of the view that the said reasoning cannot be sustained. There is no basis for an ad-hoc dis-allowance of Rs.50,000/-. Either it was case that evidence was produced or the evidence was not produced. The basis for deduction of Rs.50,000/- out of a total sum claimed amounting to Rs.1,48,782/- is not clear. Mr.Sabharwal has fairly pointed out the decision in the assessee's case by the ITAT for the assessment year 1989-1990 wherein, the ITAT has allowed similar expenses in totality. As a matter of fact, the ITAT has accepted the case of the assessee that for minor amounts relating to conveyance etc. and other business expenses, it is impractical to have vouchers and that internal vouchers of the staff/employees of an organization will suffice. For the said assessment year, the amount claimed towards expenses was under the similar heads, that is, cartage, labour and sealing expenses.”

4.5 Further, the Tribunal the case of **Ganpati Enterprises Ltd.** (supra) has as under:

“7. We have heard rival submissions and have gone through the relevant material available on record. As the facts emerge, AO in his order has merely referred to excessiveness of expenditure; self made vouchers and without assigning any reasons ad hoc disallowances have been made, which in A.Y. 2003-04 have been upheld by CIT(A) and in A.Y. 2005-06 & 2006-07 have been partly confirmed. In our view, if the books of assessee are properly maintained and produced before AO, the disallowance shall proceed on items of expenditure, which are not proved by the assessee. Ad hoc disallowance in every year without assigning any reasons is not justifiable. In view thereof, we are inclined to delete the ad hoc disallowance as upheld by CIT(A). Assessee's grounds in this behalf are allowed.”

4.6 We find that the Learned CIT(A) herself has accepted that there is increase in profit during the year as compared to preceding year and also the Assessing Officer has not pointed out any specific instance of the defect. She also taken note of the decisions cited by the authorized representative of the assessee. In such circumstances,

when no specific defect in bills or voucher has been pointed of by the Assessing Officer, no addition on ad-hoc basis can be sustained in view of the decisions above. Accordingly, we delete the addition of ₹ 5 lakh, which was sustained by the Learned CIT(A). The ground No. 1 of the appeal of the assessee is accordingly allowed.”

6.3 Respectfully, following the finding of the Tribunal, the addition-in-dispute in the year under consideration is also deleted. The sole ground of the appeal of the assessee is accordingly allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 12th March, 2021

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 12th March, 2021.

RK/-(DIDS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi