

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A" BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT BEENA PILLAI, JUDICIAL MEMBER**

ITA. No. 2212/Bang/2019

Assessment Year: 2015-16

The Deputy Commissioner of Income Tax, Circle 2(1)(1), Bangalore.	vs.	M/s. Creation Shelters Pvt. Ltd., No. 110, 1 st Main, Koramangala 7 th Block, Bangalore – 560095. PAN: AADCC9338D
(Appellant)		(Respondent)

Assessee by	:	Shri Deepesh Wagle, CA
Revenue by	:	Shri Sankarganesh, JCIT (DR)

Date of Hearing :	20.10.2021
Date of Pronouncement :	03.11.2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by revenue against order dated 15/07/2019 passed by the Ld.CIT(A)-2, Bangalore for assessment year 2015-16 on following grounds of appeal:

“1. The Ld.CIT(A) has erred on facts and law in allowing the claim of development expenses of Rs. 5,09,41,049/- of the assessee, despite the fact that the evidence for incurring the development expenditure was not submitted by the assessee either during the assessment proceedings or during the appellate proceedings.

2. The Ld.CIT(A) has erred on facts and law in stating that the AO has not given any finding regarding the nature of the development

expenditure despite the fact that the AO has given a reason for the development expenses being excessive.

3. The Ld.CIT(A) has erred in relying on the case laws which are based on facts different from the facts in the case of the assessee.”

Brief facts of the case are as under:

2. The assessee is a company and the assessment relates to AY 2015-16. The assessee is engaged in the business of development of layout and sites. Assessee filed the return of income on 24.09.2015. The assessee's case was selected for limited scrutiny and notice u/s. 143(2) was issued on 17.03.2016, to verify the following:

1. High Closing Stock
2. Mismatch in Sales Turnover in Audit Report and Income Tax Return
3. Mismatch in amount paid to related Party u/s 40A(2)(b) reported in Audit Report and ITR.
4. Purchase of Property in Form 26QB.

2.1 The Ld.AO disallowed 25% of the direct expenses incurred by the assessee during the period under consideration and completed the assessment.

Aggrieved by the order of Ld.AO, assessee preferred appeal before Ld.CIT(A).

2.2 The Ld.CIT(A) deleted the addition by observing as under.

“1. The appellant is in the same line of business since its inception. All the prior assessments and subsequent assessment have been completed accepting the returned income of the appellant. The Assessing officer cannot have a change of opinion and disallow on adhoc basis direct expenses without quantifying the each and every disallowance to be made.

2. The appellant's books of accounts are audited by a chartered accountant. The Assessing officer has accepted the books of account and passed the impugned order u/s 143(3) of the IT Act,1961 disallowing the 25% of total direct expenditure claimed on ad-hoc

basis. Without rejecting the books of account u/s 145(3) and passing the order u/s 144 of the income tax act, 1961 the AO cannot resort to ad-hoc disallowance of expenditure (CIT v. Anil Kumar & Co. (2016) Karn-HC).

The view that I am thus taking find support from the following decisions.

In the case of Sayaji Iron and Engg. Co. Vs CIT(2002) 253 ITR 749 (Gug-HC) it was held that the assessee had submitted bills/vouchers as were maintained by it in regular course of business. If AO was not satisfied with any particular items of expenses, he could have pointed it out to assessee for inviting its response. There should not be a practice of making ad hoc disallowance on the ground of personal expenditure in case of a company. Therefore, ad hoc disallowance made by AO was deleted.

In the case of ACIT Vs Modi Rubber Ltd.(2018) 162 TR(A) 189(Del-Trib) it was held that Ad hoc disallowance without pointing out specific instance of any non business related expenditure was not sustainable. AO disallowed 30% of conveyance and travelling expenses holding the same to be excessive. Assessee contended that nowhere in the order of same to be excessive. Assessee contended that nowhere in the order of AO there was a whisper as to how the expenses not having been incurred for the purpose of business under section 37(1).

In the case consideration the AO neither pointed out any instances of inflation in expenditure claimed by the appellant nor had given any finding regarding claimed as bogus and therefore, I am of the view that Ad hoc disallowance made by the AO of 25% of the direct expenses incurred during the period under consideration is not justified. Therefore the grounds are allowed.”

Aggrieved by the order of Ld.CIT(A), revenue is in appeal before us.

3. Ld.Sr.DR relied on order of Ld.AO and Ld.AR relied on order of Ld.CIT(A).

3.1 We have perused the submissions by both sides based on records placed before us. We note that Ld.CIT(A) analysed the entire issue by observing as under:-

“6.1 I have considered the AO's observations/findings and the assessee's submissions, the legal position in the peculiar factual matrix of the present case. The appellant has assailed mainly the scope of limited scrutiny in its grounds of appeal. The purpose of this scrutiny either limited or unlimited has to be looked before adjudicating the grounds and therefore a remand report was called for from the AO to find out the reasons for selecting the case for scrutiny vide this office letter dated: 30/01/2019. Accordingly the AO

in his report has stated that during the assessment proceedings, the assessee had failed to produce the cost of the land w.r.t. sales of the plots that have been made. Hence the disallowance of Rs. 5,09,41,049/- of the total direct expenses were well within the purview of the "High Closing Stock". The AO has stated that the assessee company failed to prove the genuineness of purchase cost incurred during the year and failed to submit any of the required details in support of its claim and hence a disallowance of 25% of the total direct expenses was made during the assessment proceedings. Further in rejoinder to the above comments of the AO the appellant has filed vide its letter dated: 27/03/2019 that the scope is limited for the scrutiny assessment in the case of your appellant and does not empower the learned assessing officer to go beyond the scope until and unless a proposal is given to the assessee for converting a limited scrutiny to complete scrutiny. The case of your appellant I was limited scrutiny assessment which is confirmed by the learned assessing officer vide its remand report dated 14.03.2019. Also an approval is to be received from the Principal CIT to convert the limited scrutiny into complete scrutiny. However, the learned assessing officer has acted beyond the scope and has taken a vague assumption and disallowed 25 percent of the direct expenses incurred by the assessee during the period under consideration. In limited scrutiny cases there are specific parameters to verify the direct expenses and indirect expenses. In the absence of specific parameters to verify direct and indirect expenses the learned assessing officer cannot question admissibility of expenses claimed by your appellant. I have considered the remand report and rejoinder filed by the appellant and it is seen that scope of limited scrutiny, no doubt is limited to the reasons for which it was selected and the reason was found that to verify the direct expenses the case was selected for scrutiny and since the AO has rightly examined those direct expenses the scrutiny of the case was within the purview of limited scrutiny. Therefore the grounds taken on this issue are hereby dismissed.

6.2 Now the question will arise as to whether the AO is justified in making adhoc disallowance of 25% of total direct expenses claimed without rejecting the books of account by merely stating that the assessee could not prove the genuineness of purchase cost incurred and failed to submit any of the required details in support of its claim. The appellant has assailed the action of the AO submitting that the parameter for selecting the case for limited scrutiny was only to verify the valuation of Closing Stock. It is pertinent to note that the valuation of the closing stock is governed by the Indian Accounting Standard-2 and appellant has valued the closing stock as per the principles of applicable Indian accounting standard. In this regards, the appellant had given a submission dated 15.12.2017 giving the details of expenses incurred during the period under consideration and which forms the part of closing stock. The AO assessing officer has not put any effort to verify the valuation of the closing stock made by the appellant. However the assessing officer resorted to an adhoc

disallowance of the direct expenses claimed by and made an impugned addition of Rs. 5,09,41,049/-.The appellant has submitted that the disallowance of the expenditure of the assessee was done u/s 37 of the income tax act,1961 which is not valid as per the law of the land. The expenses claimed are direct expenses related to the business and the same has been confirmed by the assessing officer. The deduction of the direct expenses is governed by section 28 of the income tax act, 1961. Section 37 of the income tax act, 1961 is a residuary section and covers all the indirect expenses related to the business. Hence the disallowance u/s 37 of the income tax act, 1961 made is incorrect and invalid as per the law of the land. Also, the assessment for the AY 2015-16 was not an e-assessment. As stated in the remand report, an email was sent on 23.12.2017 posting for 26.12.2017 and the order was passed on 29.12.2017. As per the principles of natural justice the show cause notice should be served on the assessee and should state the amount proposed to be disallowed with proper reasoning. A vague email, simply threatening to disallow expenses defeats the purpose of show cause notice as per the prescribed Income tax rules. Further the appellant relied on the jurisdictional Hon'ble High Courts order in the case of CIT v. Anil Kumar & Co. (2016) 386 ITR 0702 (Karn-HC) wherein it was held that where the books of account of the assessee had not been rejected by the income-tax authorities and the assessment had not been framed U/s 144, AO could not resort to an estimation of income. Further submitted that the books of account of the appellant is duly audited by a chartered accountant and does not contain any qualification regarding any claim of expenditure. The assessing officer has not rejected the audited accounts of account it means that the expenditure are genuine and are business expenditures. The assessing officer if is claiming t expenses to be bogus expenditure then why only 25 percent of the expenditure was taken I disallowance. If the expenses was bogus in nature then 100 percent expenditure should be taken f disallowance. A perusal of the order of assessment shows that the Assessing officer has not made a reference to any of the factors referred to in section 145(3) of the Act. Law is well settled that AO is n entitled to resort to adhoc disallowance without rejecting the book results of the assessee. For rejecti the book results of the assessee, the AO has to make out a case that the conditions laid down in section 145(3) are satisfied. In the present case, the order of the assessing officer is silent on these aspects. such circumstances, we are of the view that the primary condition for resorting to an estimation of income by the AO is not sustainable.”

Nothing has been brought before us to establish the expenses to be bogus. Further, the expenses forms part of the closing stock and nothing has been placed before us to disbelieve the valuation

of closing stock. We therefore, do not find any infirmity in the above view taken and the same is upheld.

Accordingly grounds raised by revenue stands dismissed.

In the result, the appeal filed by revenue is dismissed.

Order pronounced in open court on 03rd November, 2021.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Dated: 03rd November, 2021.
/MS/

Copy to

1. The Appellant
2. The Respondent
3. CIT(A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore