

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'B', LUCKNOW  
(THROUGH VIRTUAL HEARING)**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.696/Lkw/2017  
Assessment Year:2013-14

Shri D. D. Ahuja, Partner of M/s D.D. Ahuja and Bros, 120/500-B, Lajpat Nagar, Kanpur. PAN:AABFD6383N (Appellant)	Vs.	A.C.I.T.-II, Kanpur.  (Respondent)
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Appellant by	Shri Ashish Jaiswal, Advocate
Respondent by	Shri Harish Gidwani, D.R.
Date of hearing	07/10/2021
Date of pronouncement	28/12/2021

**ORDER**

**PER T. S. KAPOOR, A.M.**

This is an appeal filed by the assessee against the order of learned CIT(A)-I, Kanpur dated 14/08/2017 pertaining to assessment year 2013-2014. In this appeal the assessee has raised the following grounds of appeal:

- "1. Because on facts and in circumstances of the case, ld. CIT(A) has erred in confirming addition of Rs.24,70,976.*
- 2. That the ld. CIT(A) has erred in taking ground no. 1 of the ground of appeal in form 35 as not pressed.*

3. *That without prejudice to ground no. 1 of this appeal, the ld. AO has erred in making disallowance of Rs.24,70,976/- out of labour and wages expenses.*

4. *That without prejudice to ground no. 2 of this appeal, the ld. AO has erred in making disallowance of Rs.9,075/- out of telephone expenses.*

5. *That without prejudice to ground no. 3 of this appeal, the ld. AO has erred in making disallowance of Rs.25,269/- out of depreciation on motor car.*

6. *Because on facts and in circumstances of the case, the assessment order as well as observations of ld. AO as well as ld. CIT(A) are arbitrary and bad in law, assessee was eligible for claims which were disallowed by the ld. Assessing Officer.*

7. *That the additions/disallowances made in assessment order as well as CIT(A) order are bad in law as well as on facts and appropriate relief deserves to be allowed.*

8. *That the appellant's ground of appeal in form 35 may also be considered as part of ground of appeal in the present appeal."*

2. Learned A.R., at the very outset, submitted that the assessee is a contractor and is engaged in construction activities and during the year under consideration the assessment was completed u/s 143(3) of the Act and Assessing Officer, out of labour and wages expenses, has made a disallowance equivalent to 10% of the expenses and similar disallowance, equivalent to 10% of the expenses, have been made out of telephone expenses and depreciation on car. Learned counsel for the assessee submitted that the assessee is not an individual and is a partnership firm and all the expenses have been incurred for the purpose of business and making disallowance, without pointing out any discrepancy and without rejection of books of account, is not as per law. It was submitted that the Assessing Officer has disallowed the expenses without pointing out any specific expenditure which was not verifiable. It was submitted that the

entire expenditure was purely in the nature of business expenses and simply because certain transactions were incurred in cash and there were self-made vouchers, ad hoc disallowance is not permissible. It was submitted that assessee being contractor, wherein intensive labour is required and being petty labourers, the payment was required to be made in cash only. Learned counsel for the assessee submitted that without rejection of books of account, ad hoc disallowance was not warranted. In this respect the reliance was placed on the following case laws:

- (i) Order of Lucknow Bench of the Tribunal in I.T.A. No.562 & 563/Lkw/2017 in the case of Basti Wine Co., order dated 07/12/2018.
- (ii) Order of Lucknow Bench of the Tribunal in I.T.A. No.722/Lkw/2017 dated 19/09/2018 in the case of Bajaj Auto Centre, order dated 19/09/2018
- (iii) Order of Lucknow Bench of the Tribunal in I.T.A. No.525/Lkw/2016 in the case of Vijayant Jaiswal, order dated 27/07/2017

3. Learned D. R., on the other hand, submitted that assessee had not maintained any wage or salary register or muster roll and moreover, the bills and vouchers were hand-made and therefore, the disallowance was justified and regarding disallowance out of telephone expenses & depreciation on car, Learned D. R. submitted that to weed out the element of personal use, the Assessing Officer has rightly made the addition. It was further submitted that the learned CIT(A) had given opportunity to the assessee to produce before him the books of account & vouchers for arriving on the quantification of disallowance but the assessee did not produce the same and therefore, the learned CIT(A) has rightly confirmed the disallowance.

4. We have heard the rival parties and have gone through the material placed on record. We find that the assessee is a contractor and during the

year the Assessing Officer made disallowance out of labour expenses, telephone expenses and depreciation on car. The Assessing Officer held that assessee had not maintained any wage register, salary register or muster roll and payment has been made in cash and therefore, he made disallowance equivalent to 10% of the expenses. Similarly, out of telephone expenses and depreciation on car, the Assessing Officer made a disallowance equivalent to 10% for personal use of vehicle and telephone. The assessee filed appeal before the learned CIT(A) who wanted the assessee to produce vouchers and books of account before him but the assessee filed only copy of ledger expenses and did not produce vouchers and therefore, he held that the genuineness of expenses cannot be verified and therefore, he upheld the addition. Before us, Learned counsel for the assessee has taken a specific ground that since the Assessing Officer did not reject the books of account before making ad hoc disallowance and therefore, the disallowance sustained by learned CIT(A) is bad in law. In this respect, we find that before the Assessing Officer and CIT(A), the assessee did not file complete books of account and vouchers. The learned CIT(A) even wanted the assessee to file the necessary details but it did not file the same and therefore, the learned CIT(A) upheld the disallowance. The assessee even did not file the comparative statement of expenses incurred by it in earlier years or succeeding years or comparative chart of expenses of other assessee engaged in similar activities. Therefore, the action of the lower authorities is justified to some extent. One of the arguments, taken by Learned counsel for the assessee, is that the authorities below have not specified discrepancy in the vouchers. In this respect we find that when vouchers were not produced before the authorities, the authorities cannot point out the discrepancy. It is also an established law that without rejecting the books of account, the disallowance cannot be made as has been held by various Tribunals and

High Courts, but here is the case where the assessee did not co-operate with the authorities below in making available to them the copy of bills/vouchers of expenses. Therefore, to give a fair play to both the parties, we deem it appropriate to remit the issue back to the Assessing Officer who should readjudicate the issue after giving an opportunity to the assessee of being heard. The assessee is also directed to file all the evidences for the expenses in support of the genuineness of the expenses. The assessee can also file any other evidence in support of its claim that the expenses were genuinely incurred for the purpose of the business.

5. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 28/12/2021)

**Sd/.**  
**( A. D. JAIN )**  
**Vice President**

**Sd/.**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated:28/12/2021  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar