

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.45/PUN/2019
निर्धारण वर्ष / Assessment Year: 2015-16

Sheth And Sura Engineers Pvt. Ltd., 263/1, Aqua House, Sinhagad Road, Near Parvati Overbridge, Pune- 411026. PAN : AAEC1737P	Vs.	ACIT, Circle-6, Pune.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Piyush Kumar Singh Yadav

Date of hearing : 12.01.2022
Date of pronouncement : 13.01.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 4, Pune ['CIT(A)' for short] dated 16.10.2018 for the assessment year 2015-16.

2. The appellant raised the following grounds of appeal :-

"The following grounds are taken without prejudice to each other - On facts and in law,

1) *The learned CIT (A) has erred in confirming the disallowance made by the learned A.O. from payment of Labour Charges. The disallowance of labour charges were made merely on ad*

hoc/estimated basis to the tune of Rs. 14,95,431/- ignoring the facts submitted and assigning any specific reason. This amount was worked out being 5% of the total Labour Charges of Rs.2,99,05,616/-.

- 2) *The learned CIT (A) erred in not following the ratio of the Pune ITAT decision in the case of the appellant company for preceding previous years.*
- 3) *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal and/or to lay the additional evidences at the time of hearing.”*

3. Briefly, the facts of the case are as under :

The appellant is a company incorporated under the provisions of the Companies Act, 1956. The return of income for the assessment year 2015-16 was filed on 27.11.2015 declaring total income of Rs.6,55,49,020/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Circle-6, Pune ('the Assessing Officer') vide order dated 26.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.6,70,44,451/- after making an addition of Rs.14,95,431/- being 5% of total labour charges of Rs.2,99,05,616/- by holding that the vouchers are self-made vouchers.

4. Being aggrieved by the above disallowance, an appeal was filed before the Id. CIT(A), who vide impugned order confirmed the addition as made by the Assessing Officer.

5. Being aggrieved by the above decision of the Id. CIT(A), the appellant is before us in the present appeal.
6. When the appeal was called on, none appeared on behalf of the assessee despite due service of notice of hearing, therefore, we proceed to dispose of the appeal after hearing the Id. Sr. DR.
7. The issue in the present appeal relates to the disallowance of labour charges on ad-hoc basis. During the course of assessment proceedings, the Assessing Officer noticed that the vouchers in support of the labour charges are self-made and unverifiable. Accordingly, the Assessing Officer disallowed a sum of Rs.14,95,431/- being 5% of the total labour charges of Rs.2,99,05,616/-. The Assessing Officer also extracted the scanned images of vouchers in the assessment order. Even on appeal before the Id. CIT(A), the findings of the Assessing Officer are confirmed. We have carefully gone through the orders of the lower authorities and the scanned images of the vouchers as extracted by the Assessing Officer in the assessment order, it is evident that the vouchers are duly signed by the payees. It is a trade practice in the line of business of civil constructions, the vouchers in respect of labour charges are always self-made. The identical issue dealt by the Co-ordinate Bench of this Tribunal by the same combination in

the case of B.C. Biyani Project Pvt. Ltd. vs. JCIT, Range-1, Jalgaon in ITA No.773/PUN/2015 for the assessment year 2010-11 and others vide order dated 14.12.2021 by observing as under :-

“22. From the perusal of the order of the ld. CIT(A), it is clear that the ld. CIT(A) had accepted factum of incurring the expenditure by observing that the works could not have been completed without engagement of the labourers. Thus, the genuineness of the expenditure is beyond the doubt but what is doubted by the ld. CIT(A) is the reasonableness of its expenditure having regard to the fact that the vouchers are self-made. The approach of the ld. CIT(A) cannot be sustained for the reason that having regard to the trade business practices, the vouchers in respect of the labour payments are clearly self-made by acknowledgement of receipt from the labourers or his gang leaders, which is not in doubt in present case. There is no doubt on cash entries made in the books of accounts, no material was brought on record by the ld. CIT(A) casting doubts on the genuineness of the labour payments. Recently, the Hon’ble Karnataka High Court in the context of payment of speed money to port workers, the approach of the lower authorities making ad-hoc disallowance was not accepted in the case of Sri Ganesh Shipping Agency vs. ACIT, 435 ITR 143 following its earlier decisions in the case of (i) CIT vs. Clifford D’Souza (IT Appeal No. 22 of 2011, dated 24-2-2015) and (ii) CIT vs. Konkan Marine Agencies, 313 ITR 308 (Kar.). Similarly, the Hon’ble Rajasthan High Court in the case of CIT vs. Consulting Engineering Group Ltd., 365 ITR 284 held that in the absence of evidence of bogus payment, the disallowance of part of payment on estimate basis was held to be unjustified. Further, the jurisdiction of the ld. CIT(A) is only confined to deciding the reality of the expenditure which means the ld. CIT(A) has to render a finding as to whether the amount claimed as deduction was actually expended or laid out wholly or exclusively for the purpose of business. The reasonableness of the expenditure should be gone into only for the purpose of determining whether the amount was paid.

23. In the present case, nothing is discernable from the perusal of the order of the ld. CIT(A) that the ld. CIT(A) had made an attempt to test the reality of the expenditure. Nor can be it said that he doubted the reality of the expenditure, it cannot be also said that the total labour charges incurred is excessive or unreasonable having regard to the fact that tender documents computed 30% of the contract value as a labour component and the actual charges only 33% of the contract value which is merely 10% excess. Thus, in any event, it cannot be said that the labour charges incurred are excessive or unreasonable. Therefore, the decision of the ld. CIT(A) making the ad-hoc

disallowance of labour charges at 30% cannot be sustained in the eyes of law. Accordingly, this ground of appeal no.6 stands allowed.”

8. Even in the present case also, no material was brought by the Assessing Officer suggesting that the expenditure incurred on labour charges is bogus. The Assessing Officer merely disallowed payment of labour charges on the presumption and surmises. It is settled position of law that no addition can be made merely on the basis of presumption, surmises and conjectures. Hence, we do not find any justification to disallow 5% of labour charges on ad-hoc basis. Thus, the issue raised in the grounds of appeal stands allowed.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 13th day of January, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 13th January, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.