

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 110/Vns/2019
Assessment Year:2014-15

Careernet Technologies Private Limited 200, CharanLalChowk Durga Bari Road, Gorakhpur-273001, U.P.	v.	The Assistant Commissioner of Income Tax, Range-2 Gorakhpur, U.P.
PAN: AABCC7128H		
(Appellant)		(Respondent)

Appellant by:	None (Written submissions, dated 08.04.2022, filed by the assessee with Registry on 12.04.2022, with a request to decide the appeal based on the aforesaid submissions)
Respondent by:	Shri A.K. Singh, Sr. DR
Date of hearing:	19.04.2022
Date of pronouncement:	20.04.2022

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No.110/Vns/2019, is directed against an appellate order dated 08.04.2019 in Appeal No.CIT(A)/GKP/8/51/2014-15 , passed by learned Commissioner of Income Tax (Appeals), Gorakhpur (hereinafter called "the CIT(A)") for assessment year 2014-15

partly allowing the appeal filed by the assessee, the appellate proceedings had arisen before Id. CIT(A) from the assessment order dated 28.12.2016 passed by Id. Assessing Officer(hereinafter called “the AO”) u/s. 143(3)(ii) of the Income-tax Act, 1961(hereinafter called “ the Act”). We have heard both the parties in Open Court through physical hearing mode.

2. The grounds of appeal raised by the assessee in memo of appeal filed with Income Tax Appellate Tribunal, Varanasi (hereinafter called “ the tribunal”) , reads as under :

- “1. *Because the “CIT(A)” has erred in law and on facts in sustaining a part of disallowance made by the Assessing Officer in spite of open facts and various judgments in favour of the appellant.*
2. *BECAUSE the ‘Authorities’ below have erred in law and on facts in making/sustaining adhoc disallowances aggregating Rs. 6,00,000/- , out of expenses claimed under various heads , as per break up given hereunder:-*

<i>S.No.</i>	<i>Head of Expenses</i>	<i>Amount Disallowed (Rs.)</i>
1.	<i>Conveyance</i>	<i>4,76,000/-</i>
2.	<i>Transportation</i>	<i>14,29,270/-</i>
3.	<i>Tour and Travelling Campus</i>	<i>55,50,360/-</i>
4.	<i>Tour and Travelling Card</i>	<i>36,74,758/-</i>
5.	<i>Tour and Travel Reimbursement</i>	<i>77,85,032/-</i>
6.	<i>Tour and Travelling Expenses</i>	<i>98,811/-</i>
	<i>Total</i>	<i>1,90,14,831/-</i>

3.*BECAUSE the “CIT(A) on a due consideration of the facts and circumstances of the case, particularly that*

- a) The appellant has kept and maintained books of accounts in regular course, wherein no infirmity or irregularity was found by the Assessing Officer;*
- b) expenses claimed under various heads stood fully recorded in such books of account, on day-to-day basis.*
- c) even after examination of books of account produced, lists and statement submitted by the appellant during the course of regular assessment proceedings, no item of disallowable nature and/or specific item lacking verifiability had been pointed out and specified by the Assessing Officer, and*

d) extensive written submissions made during the course of appellate proceedings should have deleted adhoc disallowance as aforesaid,

4. BECAUSE the order appealed against the contrary to the facts, law and principles of natural justice.”

3. The brief facts of the case are that the assessee is a Private Limited Company, engaged in the business of recruitment of Professional Manpower for other companies. The assessee filed its e-return of income, on 29.11.2014 , for ay: 2014-15, declaring income of Rs. 2,28,24,900/- . The case of the assessee was selected by Revenue for framing scrutiny assessment u/s 143(2) read with Section 143(3)of the 1961 Act, which culminated into an assessment order dated 28.12.2016 passed by the AO u/s 143(3)(ii) of the 1961 Act, wherein income of the assessee was assessed at Rs.2,39,32,320/- . The solitary issue in this appeal is with respect to disallowance of Rs. 10,00,000/- by the AO out of travelling and conveyance account, which was added to the income of the assessee by the AO , vide assessment order dated 28.12.2016 passed by AO u/s 143(3)(ii) of the 1961 Act, which disallowance stood reduced to Rs. 6,00,000/- by ld. CIT(A), vide appellate order dated 08th April, 2019. The assessee has declared receipt on account of sale of services of manpower placement at Rs. 23,46,19,529, other non operative income of Rs. 3,22,40,314/- and interest income on income tax refund of Rs. 13,63,053/-. The assessee has claimed travelling and conveyance expenses , to the tune of Rs. 1,90,14,831/- during the year under consideration, which stood debited to Profit and Loss Account. The AO observed that in the immediately preceding year, the assessee has debited an amount of Rs. 1,20,24,307/- in the Profit and Loss Account on account of travelling and conveyance only.

The AO observed that the assessee's sale of service in the sphere of man power placement service has increased by an amount of Rs. 1 crore only, whereas the expenses on account of traveling and expenses have increased manifold. The assessee was asked by the AO to file details of traveling expenses claimed in profit and loss account. The assessee filed before the AO, details of traveling and conveyance expenses claimed , as under:

<i>S.No.</i>	<i>Head of Expenses</i>	<i>Amount Disallowed (Rs.)</i>
1.	<i>Conveyance</i>	4,76,000/-
2.	<i>Transportation</i>	14,29,270/-
3.	<i>Tour and Travelling Campus</i>	55,50,360/-
4.	<i>Tour and Travelling Card</i>	36,74,758/-
5.	<i>Tour and Travel Reimbursement</i>	77,85,032/-
6.	<i>Tour and Travelling Expenses</i>	98,811/-
	<i>Total</i>	1,90,14,831/-

Since, the assessee has claimed expenses manifold in this year vis-à-vis the year under consideration, **the AO asked assessee to file complete details with justification of expenses.** The AO asked for the details of these expenses vide notice issued u/s 142(1) of the 1961 Act. **The AO observed that the assessee has reimbursed the tour and travel expenses incurred by Directors and other employees through credit card. The assessee was asked by the AO to file supporting evidences in respect of these expenses, but despite repeated opportunities granted by the AO , the assessee failed to file any supporting evidences except ledger account in respect of expenses incurred in these heads.** The AO vide note sheet entry

dated 23.12.2016 **show-caused assessee** as to why in absence of supporting evidences proportionately expenses should not be disallowed and added to the income of the assessee . The assessee's AR appeared before the AO , but in opinion of the AO, **the assessee failed to file any plausible answer in respect of these expenses. Thus, since the assessee has failed to file evidence of expenses incurred through credit card and reimbursed to Director and other employees of the assessee, the AO disallowed expenses to the tune of Rs. 10,00,000/-** which stood added to the income of the assessee by the AO, vide assessment order dated 28.12.2016 passed u/s 143(3) of the 1961 Act.

4. Aggrieved by assessment framed by the AO, the assessee filed first appeal with Id. CIT(A), wherein Id. CIT(A) was pleased to grant part relief to the assessee, wherein Id. CIT(A) upheld disallowance of tour and travel expenses to the tune of Rs. 6,00,000/- , wherein the said disallowance to the tune of Rs. 6,00,000/- stood added to the income of the assessee, vide appellate order dated 08.04.2019, by holding as under:-

" 5. Ground of appeal no. 3, 4,5&6

During the course of assessment proceedings the AO disallowed Rs.10,00,000/- out of the following expenses for the reason that the expenses were not made exclusively for business purpose and the personal use was not ruled out.

<i>i. Conveyance</i>	<i>Rs. 4,76,600/-</i>
<i>ii. Transportation</i>	<i>Rs. 14,29,270/-</i>
<i>iii. Tour and travelling campus</i>	<i>Rs.55,50,360/-</i>
<i>iv. Tour and Travelling card</i>	<i>Rs.36,74,758/-</i>
<i>v. Tour and travel reimbursement</i>	<i>Rs.77,85,032/-</i>
<i>vi. Tour and Travelling expenses</i>	<i>Rs. 98,811/-</i>

During the course of appellate proceedings it was submitted that complete books of account were maintained which was subject to audit. Neither the Auditor nor the AO has pointed out any defect in the same. The disallowance made by the AO is purely based on assumption.

I have examined the facts and circumstances of the case. In the present case it is not pin pointed as to which specific bills/vouchers of a specific head of expense were not produced, which specific expenses are not verifiable, which self-made vouchers are not verifiable and which specific bills and vouchers do not relate to business of appellant. The AO has not specified as to which expenses could not be verified on account of self-made vouchers. Not even as single bill/voucher has been identified by the AO in this regard.

The AO has not identified the specific bills/vouchers which could not be verified.

*It has been held to various judgments that the disallowance made purely on adhoc basis and without specifying any particular defect in the books of account is unwarranted. In the present case also the AO has disallowed expenses without pin pointing any specific defect in the bill/voucher produced.**However , looking at the fact and circumstances of the case and the facts that the AO has brought into light the fact that payment has been made by them by credit card and the appellant has not filed details regarding the same, I find the addition made by the AO on a higher side and total addition of Rs. 6,00,000/- would be fair and judicious in this case.** The addition made by the AO is upheld upto extent of Rs. 6,00,000/- . The appellant gets consequential relief.*

6. In the result the appeal is partly allowed."

5. Still aggrieved by the appellate order passed by Id. CIT(A), the assessee has filed second appeal with tribunal. This appeal was heard in Open Court through physical hearing mode. None appeared on behalf of the assessee, while written submissions dated 08th April, 2022 were filed by the assessee, which was received by Registry on 12.04.2022, which are placed on record in

file, and prayers are made to decide the appeal based on these written submissions. The gist and crux of written submissions filed by the assessee, are that the additions have been made on adhocbasis , without pointing any specific entry from ledger account submitted by assessee before authorities. It is stated in written submissions that regular books of accounts are maintained by the assessee , and no specific defect has been pointed out by the authorities below in the books of accounts etc. which were audited twice firstly under The Companies Act, 2013 and secondly under the 1961 Act. It is claimed that even auditors have not pointed out any defect in the books of accounts. It is claimed that expenses were incurred by Director and employees of the company, which stood reimbursed to them by the assessee. Thus, in nut-shell it is stated that no disallowance on adhoc basis is warranted . It is also claimed that the assessee turnover during the year was Rs. 26.85 crores (preceding year Rs. 23.30 crores), while net profit has increased from Rs. 1.33 crores to Rs. 2.13 crores in the year under consideration , while NP ratio improved from 5.75% to 7.97%. The assessee has also relied upon the following decisions:

- a) Mukesh Kumar Mahawar v. ITO, Sitapur (ITAT-Lucknow Bench) in ITA No. 615/Lko/2014
- b) Ganpati Enterprises v. ACIT , Circle-2, Muzaffarnagar(ITAT-Delhi Bench) ITA No. 404/Del/2007
- c) ACIT, circle-1, Faridabad v. Raj Kumar(ITAT-Delhi Bench) ITA No. 4165/Del/2009
- d) Shyam Oil Refinery Private Limited v. ACIT, Central Circle, Allahabad (ITAT-Allahabad Bench) ITA No. 57/Alld/2011
- e) ITO v. Dr. Mahendra Kumar Agarwal in ITA No. 460/Alld/2004 dated 13.07.2006

f) Hon'ble Gujarat High Court judgment and order in the case of Sayaji
Iron and Engg. Co. v. CIT reported in 253 ITR 749

5.2 The ld. Sr. DR drew attention of the Bench to the assessment order passed by the AO. The ld. Sr. DR also brought attention of the Bench to the appellate order passed by ld. CIT(A) . The ld. SR DR relied upon the judgment and order passed by Hon'ble Allahabad High Court in the case of Pr. CIT v. RimjhimIspat Limited reported in (2016) 382 ITR 0152(All. HC) and prayers were made to uphold the decision of ld. CIT(A).

6.We have considered rival contentions and perused the material on record. The brief facts of the case are that the assessee is engaged in the business of recruitment of Professional Manpower for other companies. The assessee filed its e-return of income, on 29.11.2014 , for ay: 2014-15, declaring income of Rs. 2,28,24,900/- . The case of the assessee was selected by Revenue for framing scrutiny assessment u/s 143(2) read with Section 143(3)of the 1961 Act, which culminated into an assessment order dated 28.12.2016 passed by the AO u/s 143(3)(ii) of the 1961 Act, wherein income of the assessee was assessed at Rs.2,39,32,320/- . The solitary issue in this appeal is with respect to the disallowance of traveling and conveyance expenses to the tune of Rs. 10,00,000/- by the AO, which disallowance was later reduced to Rs. 6,00,000/- by ld. CIT(A) in the first appellate proceedings. The assessee has claimed total travel and conveyance expenses to the tune of Rs. 1,90,14,831/- during the year under consideration , as against Rs. 1,20,24,307/- in the immediately preceding year, and such substantial increase in the travelling and conveyance expenses led AO to make further enquiries during the course of assessment proceedings. The assessee merely submitted ledger account of

traveling and conveyance expenses before the AO during the course of assessment proceedings, despite being asked by the AO to submit complete details and justification for the travel and conveyance expenses. The AO had observed that the assessee has reimbursed traveling and conveyance expenses incurred by Directors and employees incurred through credit card.No details were forthcoming from the assessee and merely ledger account was submitted by assessee before the AO during the course of assessment proceedings. It is the assessee who is claiming these expenses as deduction from the income , while computing income chargeable to tax under the provisions of the 1961 Act, and hence primary onus is on the assessee to bring on record complete details and justification for these expenses being incurred wholly and exclusively for the purposes of the business of the assessee. Reference is drawn to provision of Section 37(1) of the 1961 Act. Thus, the initial and primary onus is on the assessee to bring on record before the assessing authority complete details of the expenses and cogent evidences that these expenses were incurred wholly and exclusively for the purposes of the business of the assessee. Merely saying that books of accounts are audited under the TheCompanies Act and also under the provisions of 1961 Act is not sufficient. Merely supplying ledger account copy of the expenses is not sufficient. Once the primary and initial onus is discharged by the tax-payer, then the burden shifts to the assessing authority to bring on record cogent material to rebut the contentions of the tax-payer. In this case , there is a concurrent finding by both the authorities that the assessee did not filed any details and justification for spending these travelling expenses being reimbursement to Directors and employees, having been incurred wholly and exclusively for business purposes of the assessee. The assessee has merely

supplied copies of ledger accounts before the authorities below, as is emanating from records. Before us, none appeared for assessee and no factual paper book is filed containing submissions /details filed before authorities below on the merits of the issue. No other details are also filed before us substantiating these expenses and justifying that these expenses were incurred wholly and exclusively for the purposes of the business. The assessee is not able to rebut the concurrent finding of the both the authorities below. Thus, we hold that the assessee failed to discharge primary onus , as is cast under the provisions of the 1961 Act. The assessee has not filed any details before the AO except ledger account of these expenses. Thus, it cannot be said that these expenses were incurred wholly and exclusively for the purposes of business of the assessee , and incurring of these expenses for personal usage cannot be ruled out. Now, coming to the contentions of the assessee that no adhoc disallowance can be made, reference is drawn to the judgment and order of Hon'ble Allahabad High Court in the case of Pr. CIT v. RimjhimIspat Limited (supra), wherein the Hon'ble Allahabad High Court held as under:

“7. Having heard the learned counsel for the parties, we find that there is an express finding given by the Assessing Authority as well as by the Ist Appellate Authority with regard to non-production of bills and vouchers and for not maintaining the stock register. In the absence of non-production of bills and vouchers, the Assessing Officer was justified in disallowing certain expenditure by 10%, which was reduced by the Ist Appellate Authority to 5%. This aspect had not at all been considered by the Tribunal and the same had only been allowed on the ground that the turnover has increased by 5% and the expenditure has reduced. The Tribunal has lost sight of the fact that the expenditure claimed under the head manufacturing expenses, which forms part of the "profit and loss account", showing expenses made by the assessee are required to be proved by production of bills and vouchers. In the absence of production of bills and vouchers, an inference can be drawn by the Assessing Authority that such expenses shown under this head were inflated or were not supported by any bills, vouchers or any other documentary evidence, which would justify the Assessing Officer in disallowing certain portion of such expenses.

8. In the light of the aforesaid, we are of the opinion that the Tribunal committed an error in allowing the appeal of the assessee and by totally deleting the disallowance of 5%. We, accordingly, allow the Ist question of law as stated aforesaid, in favour of the appellant, i.e., the Department and against the assessee and set aside that part of the order of the Tribunal on this aspect and restore the order of the Ist Appellate Authority. In our opinion, the disallowance of 5% in the facts of the case is justified.”

Reference is also drawn to judgment and order of Hon’ble Supreme Court in the case of Kachwala gems v. JCIT, reported in (2007) 288 ITR 10(SC), wherein Hon’ble Supreme Court held as under:

“11. It is well-settled that in a best judgment assessment, there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts. In our opinion, there was no arbitrariness in the present case on the part of the income-tax authorities. Thus, there is no force in this appeal, and it is dismissed accordingly. No costs”

In this case before us, the assessee has not provided details of expenses and justification of having incurred those expenses wholly and exclusively for the purposes of business of the assessee, satisfying mandate of Section 37(1) of the 1961 Act, and in the absence thereof, the authorities were left with no alternative but to proceed to make disallowance towards personal usage for benefit of Directors /employees being claimed as business expenses, which obviously involves some guess work, and in our view more than fair and reasonable guess work was made by the authorities below, as merely Rs. 10 lac of expenses were disallowed by the AO out of total travel and conveyance expenses of Rs. 1.90 crores incurred by the assessee during the year under

consideration, as against total travelling and conveyance expenses of Rs. 1.20 crores incurred in the immediately preceding year also keeping in view increase in business receipts during the year under consideration , more so no details were forthcoming from the assessee to substantiate these travel and conveyance expenses and justify that these expenses were incurred wholly and exclusively for the purposes of business satisfying the mandate of Section 37(1) of the 1961 Act . The Id.CIT(A) has further given relief to the assessee by upholding disallowance to the tune of Rs. 6 lacs and giving partial relief . In our view , keeping in view entire factual matrix of the case, the appeal filed by the assessee lacks merit and is hereby dismissed. We order accordingly.

7. In the result, the appeal filed by the assessee in ITA no.110/Vns/2019 for assessment year 2014-15 is dismissed.

Order pronounced on 20.04.2022 at Varanasi, U.P.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 20/04/2022

Copy forwarded to:

1. Appellant –Careernet Technologies Private Limited , 200,
CharanLalChowk ,Durga Bari Road, Gorakhpur-273001, Uttar Pradesh
2. Respondent–ACIT, Range-2 AayakarBhawan, Gorakhpur -273001, U.P.
3. The Sr. DR, ITAT, Varanasi, U.P.
4. The CIT, Varanasi/Gorakhpur, U.P.

Sr. Private Secretary