

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

**BEFORE SH. C.M. GARG, JUDICIAL MEMBER
AND
SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.4694/Del/2018

Assessment Year: 2013-14

Kanhaiya Lal, S/o Sh. Moti Ram, 419/14, Khatik Mohalla, Gohana, Sonipat PAN No.ACXPL9168P	Vs	ITO Ward-2 Sonapat
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Lalit Mohan, Advocate
Respondent by	Sh. Yogers Nayyar, Sr. DR

Date of hearing:	20/04/2022
Date of Pronouncement:	20/04/2022

ORDER

PER PRADIP KUMAR KEDIA AM :

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals), Rohtak ('CIT(A)' in short), dated 07.06.2018 concerning AY 2014-15.

2. The assessee is a civil contractor and filed return of income for A.Y.2014-15 in question declaring total income at Rs.48,06,480/- . The case was selected for scrutiny assessment. The AO while passing the assessment order noted that the

assessee has not complied with the notices issued u/s.143 (2) and 142 (1) and did not file any information to support the return. The AO accordingly invoked the provisions u/s. 144 of the Act and estimated net profit @ 8% from the turnover declared by the assessee accordingly an addition of Rs.94,85,840/- was added to the returned income.

3. In the first appeal, the CIT(A) modified the order of the AO after taking into account the observations made by the AO in the remand report. The CIT(A) ultimately disallowed 50% of certain expenses tabulated here under :-

Sr. No.	Head of expenses	Amount (Rs.)
1.	Staff welfare expenses	72,178
2.	Business promotion expenses	76,150
3.	Entertainment expenses	62,990
4.	Packing charges	51,690
5.	Repair & maintenance expenses	82,550
6.	Labour charges	5,49,490
	Total	8,95,048

4. Aggrieved further, the assessee preferred an appeal before Tribunal on account of sustaining the disallowance to the extent of 50% of Rs.8,95,048/-.

5. When the matter was called for hearing, the Ld. Counsel for the assessee submitted that the ad-hoc disallowance is not

justified where books of accounts have not been rejected. On further enquiry towards the observation of the CIT(A) in para – 6.2.2. that the assessee has fail to discharge its onus towards supporting evidences in respect of claim of such expenses, the assessee drew blank. The Ld. Counsel thereafter submitted that the disallowance of 50% is highly excessive and should be moderated in tune with the totality of circumstances such as turnover etc.

6. We have carefully considered the rival submissions and perused the assessment order and first appellate authority. It is a matter of record that the assessee has failed to comply with the statutory notices before the AO and has remained totality non-compliant. Certain information have been received from the AO by the CIT(A) in remand proceedings. At this juncture, it may be pertinent to note that the remand proceedings cannot be equated with full fledged assessment proceedings *per se*. In the remand proceedings, the discretion available to the AO in the matter of enquiry and verification are narrower and confined to the scope defined by the CIT(A). This apart, the assessee has not explained satisfactorily as to why it has continued to be defiant to the statutory notices in the original proceedings. The CIT(A) has recorded the version of the AO that the assessee has failed to discharge onus lay upon him to support the expenses claimed. However, the CIT(A) had restricted the disallowance to the extent of 50% of the claim made.

7. The assessee has admittedly failed to corroborate the expenses incurred completely. Some estimates is thus warranted. However, keeping in view the turnover and the business volume, we give utmost consideration to the plea of the assessee for modification and scaling down of disallowance of expenses to meet the ends of justice and fair play. The disallowance is thus restricted to 25% of the expenses in question aggregating to Rs.8,95,048/- instead of 50% thereon confirmed by the CIT(A) on estimation basis.

8. In the result, the appeal of the assessee is partly allowed.

9. Decision announced in the open court in the presence of both the parties on 20.04.2022

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

NEHA

Date:-20.04.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	20.04.2022
Date on which the typed draft is placed before the dictating Member	20.04.2022
Date on which the typed draft is placed before the Other member	20.04.2022
Date on which the approved draft comes to the Sr.PS/PS	20.04.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	20.04.2022
Date on which the fair order comes back to the Sr. PS/ PS	20.04.2022
Date on which the final order is uploaded on the website of ITAT	20.04.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	