

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"G" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.3625/Mum./2019**  
**(Assessment Year : 2014-15)**

Dy. Commissioner of Income Tax  
Circle-15(3)(2), Mumbai

..... Appellant

v/s

M/s. Siddhivinayak Infrsystems Pvt. Ltd.  
Unit no.202, Sagar Industrial Premises  
Plot no.D-265, Near S.K. Wheel  
Thane Belapur Road, Navi Mumbai 400 705  
PAN - AANCS7656Q

..... Respondent

Assessee by : None

Revenue by : Shri Hoshang B. Irani

Date of Hearing - 09.03.2022

Date of Order - 11/05/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 22.02.2019, passed by the learned Commissioner of Income Tax (Appeals)-24, Mumbai [*learned CIT(A)*], under section 250 of the Income Tax Act, 1961 (*the Act*) for the assessment year 2014-15.

2. When the appeal was called for hearing, no one appeared on behalf of the assessee to represent its case. There is no application for

adjournment either. Considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative ("*learned DR*") and on the basis of material available on record.

3. In this appeal, the Revenue has raised following grounds:-

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 40,46,553/-, without appreciating the fact that the assessee had failed to explain and justify the source of the cash deposits. The amount in question represents cash sales of the assessee company and not the disclosed amount of any individual Director and the said cash sales is nothing but out of Books Sales i.e Suppression of Sales made by the assessee company which never reflects in regular books of account.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the difference of Rs. 30,30,377/- in comparison to trade payables shown in balance sheet and as per ledger provided during assessment proceedings by accepting the details submitted by the assessee of Sundry Creditors for expense of Rs. 30,30,452/- without referring the new documents to the AO for verification by way of remand report.*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance of expenditure to the tune of 3% as against 50% disallowed of the expenditure of Rs. 88,11,154/- estimated by the Ld. AO, without considering that the tax authorities are entitled to look into the surrounding circumstances to find out the reality of such recital and also that the assessee has not substantiate the fact that the expenses for wholly and exclusively expended for the purpose of the business of the appellant.*

*4. The appellant prays that the order of CIT(A),Mumbai on the above directions be set -aside and that of the Assessing Officer be restored."*

4. The assessee is a company engaged in the business as contractor. For the year under consideration, the assessee filed its return of income on 04/12/2014 declaring total income of Rs. 45,22,729. The proceeding under

section 147 of the Act was initiated after recording the reasons on the basis of information received from the competent authority.

5. The issue arising in ground No. 1, raised in Revenue's appeal is with regard to deletion of disallowance of Rs. 40,46,553.

6. The brief facts of the case pertaining to this issue, as emanating from the record are: The information was received from the Assessing Officer of Shri Ketan Ramesh Khaire, Director of the assessee company that the Director had deposited cash in his various saving bank accounts totalling to Rs. 80,68,900. The Director during the course of his assessment proceedings stated that the said cash deposited belongs to the assessee company being in the nature of cash sales made to the customers. During the course of assessment proceedings in the case of assessee, the authorised representative of the assessee was asked to submit details in respect of cash deposits made in Director's saving account, complete details of cash sales made by the assessee company for the year under consideration with all ledgers, invoices raised, cash receipts given, bank account statements where cash has been deposited and also sales ledger highlighting the cash sales and reasons why the assessee's sales receipts were deposited in Director's personal bank accounts. In reply, the authorised representative submitted the Ledgers of machinery hire charges, business development expenses, labour charges in assessee's books of accounts. The authorised representative also submitted that the cash receipts have already been considered while filing the return of

income of the assessee for the relevant assessment year. The authorised representative also pointed out that the said cash deposited in personal bank accounts of the Director are added to his income under section 68 of the Act vide assessment order dated 26/12/2016 passed in his case under section 143 (3) of the Act.

7. The Assessing Officer vide order dated 29/12/2017 passed under section 143 (3) read with section 147 of the Act held that the assessee failed to file any document in respect of cash sales made to the customers. The Assessing Officer further held that the cash sales is nothing but out of books sales i.e suppression of sales made by the assessee company which never reflects in regular books of account. Accordingly the Assessing Officer made a disallowance of 50.15% of the 80,68,900, which comes to Rs. 40,46,553.

8. After noting that the cash deposit in the bank account of the Director has already been taxed in the hands of the Director and the disallowance of entire amount of Rs. 80,68,900 as unexplained income under section 68 of the Act has been made in the case of Director, the learned CIT(A) vide impugned order dated 22/02/2019 deleted the addition made in the hands of assessee. Being aggrieved, the Revenue is in appeal before us

9. During the course of hearing, learned DR vehemently relied upon the order passed by the Assessing Officer.

10. We have considered the submissions and perused the material available on record. In the present case, it has not been disputed that the sales consideration received in cash amounting to Rs. 80,60,900 has been deposited in the saving accounts of the Director of assessee company and the said amount has already been disallowed under section 68 of the Act and added to the total income of the Director. Further, it is also not in dispute that the same cash sales is sought to be taxed in the hands of both the Director as well as the assessee company. As the said amount has already been added as income of the Director at the time of his assessment proceedings, the said amount cannot again be taxed in the hands of assessee company. Thus, the learned CIT(A) as rightly deleted the double addition made by the Assessing Officer. Accordingly, we do not find any infirmity in the order passed by the learned CIT(A) on this issue. As a result, ground No. 1 raised in Revenue's appeal is dismissed.

11. The issue arising on ground No. 2, raised in Revenue's appeal is with regard to deletion of disallowance of Rs. 30,30,377.

12. The brief facts of the case pertaining to this issue, as emanating from the record are: During the course of assessment proceedings, it was observed from the balance sheet, for the year under consideration, that an amount of Rs. 5,86,79,036 is shown as trade payables. However, as per the Ledger of trade payable submitted by the authorised representative, trade payables are shown at Rs. 5,56,48,659. As there was difference of Rs. 30,30,377 in comparison of trade payables shown in the balance sheet

and as per Ledger provided during the assessment proceedings, the Assessing Officer vide order dated 29/12/2017 disallowed the said difference of Rs. 30,30,377 and added the same to the total income of the assessee due to absence of clarification/justification for the said difference.

13. During the appellate proceedings before the learned CIT(A), the assessee provided the breakup of sundry creditors of Rs. 5,86,79,036 as per the audited annual accounts. The assessee submitted that out of this trade payables, Rs. 5,17,01,551 are on account of material purchases; Rs. 39,47,032 is related to contractor payable and the amount of Rs. 30,30,377 is on account of sundry creditors. The assessee also submitted the list of creditors before the learned CIT(A). After perusing the details filed by the assessee, the learned CIT(A) vide impugned order dated 22/02/2019 deleted the addition made by the Assessing Officer. Being aggrieved, the Revenue is in appeal before us.

14. During the course of hearing, the learned DR vehemently relied upon the order passed by the Assessing Officer.

15. We have considered the submissions and perused the material available on record. The impugned disallowance was made by the Assessing Officer merely on account of difference in trade payables as per the balance sheet and as per the Ledger of trade payable in assessee's books of account. However, the learned CIT(A) deleted the said disallowance after verification of details submitted by the assessee of

sundry creditors for expenses of Rs. 30,30,377. Thus, in view of the above, we do not find any infirmity in the order passed by the learned CIT(A) on this issue. As a result, ground No. 2 raised in Revenue's appeal is dismissed.

16. The issue arising in ground No. 3, raised in Revenue's appeal is with regard to restricting the disallowance of expenditure to an extent of 3% as against 50% disallowed by the Assessing Officer.

17. The brief facts of the case pertaining to this issue, as emanating from the record are: During the course of assessment proceedings, upon perusal of profit and loss account of the assessee company it was observed that assessee has debited the following major expenses to its profit and loss account under various heads:

i.	Labour charges	Rs. 1,06,34,358
ii.	Business development expenses	Rs. 10,92,341
iii.	Machinery hire charges	Rs. 22,12,531
iv.	Testing charges	Rs. 24,50,000
v.	Transportation and octroi	Rs. 9,50,182
vi.	Site expenses	Rs. 2,82,895
		Rs. 1,76,22,307

As no supporting documentary evidence was furnished by the assessee, the Assessing Officer vide order dated 29/12/2017 disallowed 50% of the above expenses, which comes to Rs. 88,11,154 and added the same to the total income of the assessee.

18. In appeal before the learned CIT(A), assessee submitted that it is in the business of Facade Contractor and as per the audited annual accounts,

the net profit ratio was 2.75%. However, the Assessing Officer has treated 50% net profit by disallowing the expenditure claimed. The assessee further submitted that all the expenses were related to business and the books of accounts of assessee were audited. The learned CIT(A) vide impugned order dated 22/02/2019 restricted the disallowance to 3% as against 50% estimated by the Assessing Officer. Being aggrieved, the Revenue is in appeal before us.

19. During the course of hearing, the learned DR vehemently relied upon the order passed by the Assessing Officer.

20. We have considered the submissions and perused the material available on record. From the perusal of the details of expenditure as mentioned supra, it is evident that these are some basic expenditure that any contractor would incur to carry on its business. The learned CIT(A) restricted the disallowance to 3% as some of these expenditures were incurred in cash and it was not possible to verify whether the amount was actually spend for the purpose of business. In view of the above, we are of the considered opinion that disallowance of 3% of the aforesaid expenditure is justified and reasonable in the facts of the present case considering the business need and exigencies of the assessee. Thus, we do not find any infirmity in the order passed by the learned CIT(A) on this issue. As a result, ground No. 3 raised in Revenue's appeal is dismissed.

21. Ground No. 4 raised in Revenue's appeal is general in nature and is also dismissed in view of our aforesaid findings.

22. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open court on 11/05/2022

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 11/05/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai