

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

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 173/Vns/2019  
Assessment Year: 2013-14

Shri Vipul Pratap Singh, Prop. Sarthak Filling Station, Bhaluahi, Badlapur, Jaunpur,U.P.	v.	Income Tax Officer-2, Jaunpur,U.P.
PAN:CEPPS 2146C		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri A.K. Singh, Sr. DR
Date of hearing:	24.08.2022
Date of pronouncement:	29.08.2022

**ORDER**

This appeal, filed by assessee, being ITA No.173/Vns/2019 for assessment year(ay) 2013-14, is directed against appellate order dated 09.05.2019 passed by learned Commissioner of Income Tax(Appeals)-1, Lucknow (hereinafter called "the. CIT(A)"),for assessment year(ay):2013-14 in Appeal No. CIT(A)-I/Lko/16-17/Fzb St.67/170, the appellate proceedings have arisen before ld. CIT(A) against assessment order dated 12.02.2016

passed by Id. Assessing Officer(hereinafter called “ the AO” ) u/s 143(3) of the Income-tax Act, 1961(herein after called “ the Act”) . This appeal was heard in Open court proceedings through physical hearing mode.

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

- “1. *Because order of the learned authorities below is bad law and without proper appreciation of facts of the case.*
2. *Because the assessee has maintained cash book, ledger. stock register, bank statement etc. in the regular course of business.*
3. *Because the expenses claimed by the assessee under the head cash transaction charges Rs.56226/-, Rent solar 66000/ Running expenses of generator Rs.222810/-, Salary 480000/-. Staff welfare 86400/-, Salary Driver 54000/-, Bank commission 26385/-, Electric 30830/- totaling Rs.1142848/-is verifiable from bank statement, reasonable and are fully explained. The learned CIT(A) was not justified in upholding the addition made by Id. Assessing Officer to the extent of 12 1/2% which is highly excessive and liable to be accepted/reduced.*
4. *Because the expenses i.e. accounting charges 24000/-, Advertisement 29400/-,Audit fee 10000/-. E-filing expenses 3600/-Fire-extinguisher 3420/-,Insurance vehicle 24840/-,Intt.BPC 3281/-, legal fee 3000/-, Misc.exp.9150/-,Mobile expenses 5400, Printing & stationery 5014/- Repair maintenance building 30447/-, Repair & maintenance Electric 10191/-, Repair maintenance Generator 17660/-, Repair maintenance Machine 2213/-, Repair Maintenance Driway 5200/-, Running exp. vehicle 37260/-, Shop expenses 36773/- , Travelling conveyance 38550/-, Uniform 8975/-, Vat audit 6615/-, Weight & measurement 12300/-, totaling 336774/- is reasonable as compared to last year and keeping in view of turnover of assessee. Total expenses claimed by the assessee 1479532/- .The learned A.O. disallowed 25% i.e. Rs.369888/-. The learned CIT(A) was not justified in upholding Rs.184941/-(12 ½ %) which is highly excessive and liable to be deleted/reduced.*
5. *Because the learned CIT(A)was not justified in restricting the addition for low withdrawal Rs..120000/- i.e. 10000/-per month as against 61000/-claimed by the assessee. Assessee is unmarried individual and lives in village. The addition sustained by Id. CIT(A) is excessive and liable to be deleted/reduced.”*

3. The brief facts of the case are that the assessee is proprietor of M/s Sarthak Filling Station and retailer of Bharat Petroleum Corp. Ltd. and deals in petrol, diesel etc. .The assessee filed its return of income in the status of individual declaring income of Rs.5,24,350/-. During the relevant assessment year. The assessee declared total sales of Rs.11,77,51,789/- and Gross Profit declared was at Rs.26,71,149/- i.e. 2.27% and Net Profit declared was at Rs.5,44,351/- i.e. 0.46%. The case was selected by Revenue for framing scrutiny assessment u/s. 143(3) read with Section 143(2) of the 1961 Act. The assessee was called upon by AO during assessment proceedings to produce various details and the books of account. The AO conducted test check of purchases made by the assessee, which were found by AO to be as per purchase bills. The assessee produced books of account only , but did not produce vouchers/bills for expenses for verification before the AO, except solar rent bill. The AO ask accountant of the assessee about the bills and vouchers for expenses , and as to how he makes entry in cash book. The accountant submitted that whatever owner says, he make entry in cash book , and he does not have any bills/vouchers for expenses and salary register. The assessee ultimately expressed its inability to produce any vouchers/bills for expenses before the AO. The assessee, however , submitted before the AO that the pump is situated in a very remote area so that the vouchers/bills for expense are generally not available. The assessee claimed that expenses incurred are otherwise of the daily carrying on of business and are genuine reasonable. The AO observed that despite several opportunities granted to the assessee to produce the

supporting documents such as bills/vouchers etc. relating to the expenses claimed to be incurred , the assessee failed to produce the same , which led AO to disallow 25% of the sale and administrative expenses of Rs.14,79,532/- claimed to be incurred by assessee, which led to disallowance of sale and administrative expenses to the tune of Rs.3,69,883/- by AO , vide assessment order dated 12.02.2016 passed by AO u/s 143(3) of the 1961 Act. .

3.2 Further, the Assessing Officer observed that assessee has claimed household withdrawals of only at Rs.61,000/-. The assessee was asked to give details of family members and adequacy of household withdrawals. The assessee failed to submit any reply. Keeping in view status of the assessee, the modern era and cost of inflation index , the AO estimated drawings of the assessee for household expenses at Rs.20,000/- per month i.e. Rs.2,40,000/- per annum. The Assessing Officer made additions to the income of the assessee to the tune of Rs.1,79,000/- , being difference between Rs.2,40,000/- household withdrawal estimated by AO and household drawings of Rs.61,000/- declared by the assessee, vide assessment order dated 12.02.2016 passed by AO u/s 143(3) of the 1961 Act.

4. Aggrieved by assessment framed by AO vide assessment order dated 12.02.216 u/s 143(3), the assessee filed first appeal before Id. CIT(A). The assessee contended before Id. CIT(A) that these expenses are reasonable which were incurred for business purposes. The Id. CIT(A) observed that assessee has filed copy of ledger accounts of these sales and administrative . The Id. CIT(A) also observed that assessee failed to

produce supporting bills/vouchers to substantiate these expenses . The ld. CIT(A) also observed that assessee has admitted that vouchers/ bills are not available , granted relief to the assessee and restricted disallowance to Rs.1,84,941/- as against disallowance of Rs.3,69,888/- made by the Assessing Officer, vide appellate order dated 09<sup>th</sup> May, 2019 passed by ld. CIT(A) .

4.2. So far as drawings for household expenses are concerned, the ld. CIT(A) observed that the additions made by AO are excessive. The ld. CIT(A) observed that the assessee is unmarried and stay in ancestral house at village , and thus ld. CIT(A) restricted the additions to the income towards drawings for household expenses to Rs.10,000/- per month, as against Rs.20,000/- per month estimated by the Assessing Officer, which led to the relief of Rs.1,20,000/- being granted by ld. CIT(A) to the assessee and additions to the tune of Rs.59,000/- towards drawings for household expenses was confirmed by ld. CIT(A) , vide appellate order dated 09<sup>th</sup> May, 2019 passed by ld. CIT(A) .

5. Still aggrieved , the assessee has filed second appeal before tribunal. The assessee did not entered appearance before the Bench(SMC) of tribunal whenever this appeal was called for hearing , despite several opportunities being granted by tribunal. The assessee did not enter appearance before Bench(SMC) on earlier occasions on 24.01.2022, 21.03.2022, 19.04.2022, 26.05.2022 , 06.07.2022, and finally on 24.08.2022 when this appeal was called for hearing before the Bench(SMC), the assessee did not appeared before the Bench(SMC) nor any adjournment application was filed. The Registry has sent notices to

the assessee and these notices were not received back by Registry, and hence there is a presumption that these notices were duly served upon the assessee. When, this appeal was called for hearing before the Bench(SMC), on 24.8.2022, again the assessee did not enter appearance before the Bench(SMC) nor any adjournment application was filed by assessee. The Bench(SMC) decided to adjudicate this appeal on merits after considering material on record and after hearing ld. Sr. DR .

6. Ld. Sr. DR submitted that the assessee case was selected for framing scrutiny assessment. The assessee produced books of account before the Assessing Officer but could not produce any bills/vouchers for substantiating the expenses incurred by the assessee. The assessee is proprietor of M/s Sarthak Filling Station and retailer of Bharat Petroleum Corp. Ltd. and deals in petrol, diesel etc. The total turnover was Rs.11.77 crores and the GP declared was only Rs.26.71 lacs and NP declared was only Rs. 5.44 lacs. It was submitted by ld. Sr. DR that the total expenses towards sale and administrative expenses claimed by assessee were to the tune of Rs.14.79 lacs , and the Assessing Officer disallowed 25% of the said expenses. The ld. CIT(A) granted part relief to the assessee and confirmed disallowance of aforesaid expenses to the tune of Rs.1,84,941/- which is 12 ½ % of total sale and administrative expenses . The ld. Sr. DR has relied upon decision of the Hon'ble Allahabad High Court in the case of Pr.CIT v. Rimjhim Ispat Ltd. [2016] 382 ITR 152 (Alld. HC) and submitted that since the assessee has not produced bills/vouchers for expenses, the authorities below were justified in

disallowing part of the expenses and prayer were made to confirm the appellate order passed by Id. CIT(A).

6.2 On the second issue, the Id. Sr. DR submitted that the assessee was having a turnover Rs.11.77 crores. The assessee is proprietor of M/s Sarthak Filling Station and retailer of Bharat Petroleum Corp. Ltd. which is engaged and deals in petrol, diesel etc. . Thus, keeping in view assessee's status , the Assessing Officer has estimated household expenses of Rs.20,000/- per month which is quite reasonable as against household drawing of Rs.61,000/- shown by the assessee . The Id. Sr. DR submitted that Id. CIT(A) has already granted substantial relief to the assessee . The Id. CIT(A) estimate household expenses of the assessee at Rs.10,000/- per month , keeping in view that the assessee lives in the ancestral household in village and is unmarried . The Id. Sr. DR made prayers to uphold the appellate order passed by Id. CIT(A).

7. I have considered the contentions of Id. Sr. DR and carefully perused the material available on record. I have observed that the assessee is an individual who is proprietor of M/s Sarthak Filling Station and retailer of Bharat Petroleum Corp. Ltd. and deals in petrol, diesel etc.. The assessee reported sale of Rs.11.77 crores during the year under consideration and has declared Gross Profit of Rs.26.77 lacs which is 2.27% of turnover and Net Profit of Rs. 5.44 lacs lacs which is 0.46% of turnover. The case of assessee was selected by Revenue for framing scrutiny assessment u/s 143(3) read with Section 143(2) of the 1961 Act. The assessee was asked by AO to produce purchase bills, vouchers/bills for expenses and books of accounts during the course of assessment

proceedings . The assessee duly produced books of accounts. The assessee also produced purchase bills which were test checked by AO and found to be correct. But, the assessee could not produce vouchers/bills for substantiating expenses incurred by the assessee wholly and exclusively for the purposes of business and to prove that expenses were incurred genuinely for business purposes. . The total sales and administrative expenses claimed to have been incurred by the assessee were to the tune of Rs.14,79,532/- and since the assessee did not produce any bills/vouchers for expenses, the authenticity and genuineness of these expenses being incurred wholly and exclusively for the purposes of business could not be substantiated. The Assessing Officer disallowed 25% of these expenses which led to disallowance of Rs. 3,69,883/-. I have observed that the assessee produced copies of ledger accounts of these expenses , but the assessee could not produce any bills/vouchers for these expenses to substantiate that these expenses were incurred genuinely by assessee wholly and exclusively for the purposes of the business of the assessee, however, ld. CIT(A) granted part relief to the assessee and restricted additions towards disallowance of expenses to the tune of Rs.1,84,941/- being 12 ½ of the sale and administrative expenses as against disallowance of 25% made by AO, thus substantial relief is already granted by ld. CIT(A). Before me none appeared on behalf of the assessee and I have carefully perused the material on record. It is the assessee who is claiming deduction of these expenses from income earned by the assessee, and hence the primary onus is on the assessee to prove that these expenses were incurred wholly and exclusively for the purposes of the business of the assessee.

That is the mandate of Section 37(1) of the 1961 Act. The assessee has not produced and bills/vouchers for expenses to substantiate that sale and administrative expenses to the tune of Rs. 14,79,532/- were incurred wholly and exclusively for purposes of business of the assessee. The only contention raised by assessee is that its pump/filing station for petrol, diesel etc. is in remote area and no bills /vouchers for expenses are available. Even , the accountant of the assessee has stated before AO that he makes entries for these expenses in cash books based upon instructions of the owner of the pump and no bills/vouchers for expenses are available with him. Similarly, he stated that no salary register is available. The sale of the assessee is Rs. 11.77 crores which could not be said to be small amount. The primary onus was on the assessee to produce vouchers/bills for these expenses to substantiate that these expenses were incurred wholly and exclusively for the purposes of business of the assessee, which the assessee failed to discharge. The department has rightly relied upon decision of Hon'ble Allahabad High Court in the case of Rimjhim Ispat Ltd. (supra). Under the aforesaid facts and circumstances, estimate of the disallowance has to be made which should be fair, reasonable and honest. Keeping in view entire material on record, I am of the considered view that since the assessee has completely failed to produce any bills/vouchers for sale and administrative expenses to substantiate that these sale and administrative expenses were incurred wholly and exclusively for the business of the assessee, and the Assessing Officer made disallowance to the tune of 25% of these expenses which is reduced by Id. CIT(A) to 12 ½% wherein substantial relief is already granted by Id. CIT(A). The

Revenue has not come in appeal against relief granted by Id. CIT(A), and thus, in my considered view , no interference is called for with the appellate order passed by Id. CIT(A) and the estimate of disallowance made by Id. CIT do not call for any interference by me , as there is no material on record which could justify further relief. I do not find any merit in the appeal filed by assessee before tribunal on this issue , which now stand dismissed. This disposes of ground number 2 to 4 raised by assessee, which stand dismissed. I order accordingly.

7.2 . On the second issue, I have observed that the assessee has claimed drawings for household expenses to the tune of Rs.61,000/- for the entire year under consideration. The assessee is owner of M/s Sarthak Filling Station and retailer of Bharat Petroleum Corp. Ltd. , and deals in petrol diesel etc. during the year under consideration . The assessee has substantial sale of Rs.11.77 crores. The total drawings for household expenses claimed by assessee were to the tune of meager amount of Rs.61,000/- for the whole year. The assessee did not produce before AO any details such as composition of family member and adequacy of drawings . The Assessing Officer estimated household drawing expenses of Rs.20,000/- per month. Keeping in view, that assessee lives in village in ancestral house and is unmarried, Id. CIT(A) gave part relief wherein drawings for household expenses were estimated by Id. CIT(A) to the tune of Rs. 10,000/- per month . The Revenue has not come in appeal before the tribunal against relief granted by Id. CIT(A). It could not be shown by any material/evidence that assessee is entitled for further relief . Keeping in view that we are

presently concerned with financial year 2012-13 , the drawings towards household expenses to the tune of Rs.10,000/- per month is quite justifiable and is reasonable , more-so keeping in view status of the assessee that he is retailer of Bharat Petroleum Corp. Ltd. and having a petrol filling station , of which the annual turnover was substantial to the tune of Rs.11.77 crores during the year under consideration and in my view , drawings for household expenses of Rs.10,000/- per month is quite reasonable . Thus , in nutshell, the assessee is not entitled for any further relief towards estimation of household expenses . This disposes ground number 5, which now stands dismissed. I order accordingly.

7.3 The ground number 1 is general in nature and does not require separate adjudication, which also stand dismissed. I order accordingly.

8. In the result, appeal filed by assessee in ITA no. 173/Vns/2019 for ay: 2013-14 stand dismissed.

Order pronounced on 29/08/2022 at Allahabad, , U.P. , in accordance with Rule 34(4) of the Income Tax(Appellate Tribunal) Rules, 1963.

**Sd/-**  
[RAMIT KOCHAR]  
ACCOUNTANT MEMBER

DATED: 29/08/2022  
Place: Allahabad, U.P.  
Aks/-

Copy forwarded to:

1. Appellant – Mr. Vipul Pratap Singh, Prop. Sarthak Filling Station, Bhaluahi, Badlapur, Jaunpur ,U.P.
2. Respondent –The Income Tax Officer-2, Jaunpur,U.P.

3. The CIT, Varanasi, U.P.
5. The CIT(A)-1, Lucknow, U.P.
6. The Sr. DR , ITAT, Varanasi, U.P.

Sr. P.S.

