

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA  
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

**ITA No.224/Pat/2018  
Assessment Year: 2012-13**

<b>Smt. Roma Ranjan, Prop. Satyam Service Station, Sarai, Vaishali (PAN: AEAPR3774A)</b>	<b>Vs.</b>	<b>Income-tax Officer, Ward- Vaishali, At Hajipur</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Present for:

Appellant by : N o n e

Respondent by : Shri Rupesh Agrawal, Sr. DR

Date of Hearing : 20.07.2022

Date of Pronouncement : 30.08.2022

**ORDER**

**PER SONJOY SARMA, JUDICIAL MEMBER:**

This appeal by the assessee is directed against the order of Id. CIT(A)-1, Dak Bunglow Chowk, Patna vide Appeal No. 273/CIT(A)-1/2014-15 dated 30.05.2018 for A.Y. 2012-13 passed against the assessment order u/s 143(3)/144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by ITO, Ward-Vaishali, Hajipur dated 18.02.2015.

2. Registry has informed that the appeal of assessee is time barred by 11 days. In connection with the delay a condonation application has been filed by the assessee. We after perusing the same find force in the contention therein and are satisfied that assessee was prevented by reasonable cause in filing the instant appeal delayed by 11 days. We, therefore, condone the delay and admit the appeal for adjudication.

3. None appeared on behalf of the assessee. Shri Rupesh Agrawal, Ld. Sr. DR appeared for the revenue.

4. The assessee in appeal before the Tribunal raising the following grounds of appeal:

*“1) For that the order passed u/s. 250(6) dated 30-05-2018 is bad both in law and in facts.*

*2) For that the CIT(A) erred in sustaining the addition made of Rs.5,00,000 by the A.O. on a/c. of unexplained capital.*

*3) For that the CIT(A) erred in sustaining an addition of Rs.1,50,000 on a/c of tanker.*

*4) For that the CIT(A) erred in sustaining an addition of Rs.52,685 on a/c VAT payable.*

*5) For that the CIT(A) erred in sustaining an addition of Rs.2,00,000 on a/c of security deposit.*

*6) For that the CIT(A) erred in sustaining an addition of Rs.2,50,343 on a/c unexplained purchases.*

*7) For that the CIT(A) erred in sustaining the addition of Rs.3,34,947 being 30% of expenses claimed of Rs.11,16,490 under the head fuel & repairs.*

*8. For that the CIT(A) erred in sustaining an addition of Rs.1,09,600 out of expenses claimed under the head bonus of Rs.4,02,600.*

*9) For that the CIT(A) erred in sustaining an addition of Rs.4,36,215 out of the expenses claimed of Rs. 8,72,430 under the head sales promotion.*

*10) For that the CIT(A) erred in sustaining an addition of Rs.2,28,622 under the head travelling & conveyance.*

*11) For that the CIT(A) erred in sustaining an addition of Rs.1,48,884 under the head staff welfare.*

*12) For that the CIT(A) erred in sustaining an addition of Rs.1,09,017 being 20% of the expenses claimed of Rs. 5,45,085 under the head Misc. & general expenses.*

*13) For that the CIT(A) erred in sustaining an addition of Rs.1,04,442 being 15% of expenses claimed of Rs. 6,96,283 under the head office expenses and printing & stationery.*

*14) For that any other ground at the time of hearing of the appeal.”*

5. When the case was called for hearing none appeared on behalf of the assessee. On perusal of records, it shows that number of opportunities have been given to the assessee but there is no compliance. It seems that assessee is not interested to pursue the appeal and, therefore, we decide to adjudicate the appeal with the able assistance of Ld. Sr. DR and material available on records. Ld. Sr. DR vehemently argued supporting the orders of the lower authorities.

6. We have heard Ld. Sr. DR and perused the record placed before us. Brief facts of the case are that the assessee filed return of income declaring an amount of Rs.6,90,460/- on 30.09.2012. The return was selected for scrutiny under CASS. The AO completed the assessment u/s. 143(3) of the Act on total income of Rs.33,36,107/- vide order dated 18.02.2015 making an addition of Rs.26,45,647/- under the following heads:

“1. Unexplained investment by way of capital introduction	5,00,000
2. Value of tankers considered as an unexplained investment	1,50,000
3. VAT payable remained unpaid disallowed u/s 43B	52,685
4. Security deposit treated as unexplained investment u/s 69 of the Act	2,00,000
5. Unaccounted purchases 2,45,290 plus profit earned thereon 5053	2,50,343
6. Disallowance of expenses @ 30% of the expenses claimed on a/c of fuel of Rs. 6,18,240 and repairs of Rs. 4,98,250 (11,16,490)	3,34,947
7. Disallowance under the head bonus	1,09,600
8. 50% disallowance of expenses claimed of Rs. 8,72,430 under the head sales promotion	4,36,215
9. Out of travelling & conveyance 30% of expenses claimed of Rs. 7,62,075	2,28,622
10. 30% of expenses claimed of Rs.4,96,280 under the head staff welfare	1,48,884
11. Out of Misc. expenses & general expenses 20% of expenses claimed of Rs. 5,45,085	1,09,017
12. Out of office expenses & stationery expenses 15% of expenses claimed of Rs. 6,96,283	1,04,442
13. Disallowance u/s. 80C	80,892
Total	26,45,647/-

7. Dissatisfied with the above order, the assessee preferred an appeal before the Ld. CIT(A). However, the appeal of the assessee was dismissed by the Ld. CIT(A). Dissatisfied with the above order passed by the Ld. CIT(A), the assessee preferred an appeal before this Tribunal.

8. While going through the grounds of appeal raised by the assessee before this Tribunal there are almost 14 grounds raised by the

assessee. The ground no. 1 raised by the assessee is general in nature, therefore, need not to be adjudicated.

9. Ground no. 2 raised by the assessee stating that Ld. CIT(A) erred in sustaining the addition made Rs.5,00,000/- by the AO on account of unexplained cash introduced as capital. While deciding this issue, the Ld. AO while framing the assessment observed as under:

*“On going through the balance sheet of the assessee, it transpired that she has introduced capital of Rs.5.00 lakhs during the year in her business. She vide questionnaire dated 11.07.2014 was asked to file the evidences of genuineness of capital introduced. But she never complied the queries which has been discussed at length in above para. She however inspite of several non compliance was specifically asked to file her submission on or before 19.01.2014 in respect of points that "you have introduced a fresh capital of Rs.5.00 lakhs. An evidence of genuineness in this regard has been called for from you. No evidences has been filed so far. Therefore why the introduction of capital should not be treated as your unexplained investment in capital." The assessee neither complied nor filed any evidences regarding genuineness of such introduction of capital till the date of order. The regular and deliberate non compliance without any reasonable cause, shows that she does not have any evidences to file regarding genuineness of transaction and thus has introduced her unexplained money into her business. Considering the above Rs.5,00,000/- introduced in capital is treated as her Unexplained investment u/s. 69 of the I. T. Act and same is added back to her total income.”*

9.1. Aggrieved against the action of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), who while deciding the issue made the following observations:

*“4.1 In the course of the assessment proceedings of the case, it has been found out by the AO that the appellant had introduced capital of Rs. 5 lakhs during the previous year relevant to the assessment year under appeal. In spite of the specific query made in this regard to submit explanation in respect of sources of the funds used for the purposes of such capital introduction, no explanation whatsoever was offered at the time of the assessment, the case. At the time of the present proceeding, it has been contended by the appellant that a sum of Rs. 8 lakh was withdrawn from the capital account by the appellant towards some intended expenses on 15/04/2011 and part of such withdrawal amounting to Rs. 5 lakhs was re-deposited to the capital account. This contention of the appellant is too tenuous to be given any credence as if the statement of the appellant is taken on its value, it would mean that there would be shortfall of Rs. 3 lakhs in the capital account of the appellant, even after crediting the net profit for the year under appeal. On the contrary, on the verification of the capital account of the appellant, it was found that there was net addition of Rs. 5 lakhs along with net profit for the year. Since, the appellant has not produced any credible evidence whatsoever in this regard, therefore, I am constrained to*

*confirm the action of AO in invoking the provisions of section 69 of the Act and accordingly, the addition made on this account is being upheld.”*

9.2. We have heard at length the Ld. Sr. DR and note that the Ld. CIT(A) has passed a speaking order in respect of addition of Rs. 5 lakh as unexplained capital, in respect of this issue, the AO had put questionnaire dated 11.07.2014 and was asked to file the assessee regarding genuineness of capital introduced. But, the assessee had not complied in response to notice issued by the AO, no documentary evidences regarding genuineness of such introduction of capital before AO. Therefore, the AO had no other option but Rs. 5,00,000/- introduced capital was treated as unexplained capital investment u/s 69 of the Act and added back to her total income. Subsequently, at the time of hearing before the ld. CIT(A) also the assessee contended that a sum of Rs. 8,00,000/- was withdrawn from assessee's capital towards intended expenses on 15.04.2011 and part of such withdrawal amounting to Rs. 5,00,000/- was re-deposited to the capital account. However, assessee's submission was not admitted by ld. CIT(A) as because it would be shortfall of Rs. 3,00,000/- in assessee's capital account even after crediting the net profit for the assessment year in question and the ld. CIT(A) sustained the addition made by the ld. AO, even before us appellant also did not appear and cannot proved any contrary findings of the lower authorities below and accordingly we do not find any infirmity in the impugned order, therefore, we uphold the same. Accordingly, this issue raised by the assessee is dismissed.

10. Ground no. 3 raised by the assessee that Ld. CIT(A) has erred in sustaining the addition of Rs.1,50,000/- on account of tanker. While deciding the issue the Ld. AO has observed as under:

*“The profit and loss a/c attached with the audit report reflects that an income from transportation has been credited. However the details of fixed assets attached with the balance sheet shows that the value of tanker as asset is found missing. The details in this regard was called for from the assessee. But*

*during the entire assessment proceedings, she never complied nor filed any details. She vide this office letter dated 12.01.20 is was asked that "as the transportation income has been shown credited in profit and loss a/c whereas no tanker lorry is shown as asset in balance sheet. PI. file your justification in this regard and why not proportionate cost of lorry should be added as your unexplained investment." No reply/submission ever filed by the assessee. Therefore the investment in tanker is treated as her unaccounted. The copy of agreement called for from the IOC shows that the petrol pump of the assessee in the name & style of "Satyam Service Station" was started in 30th March,2007. Therefore the assessee started her business in F.Y.2007-08 relevant to A.Y.2008-09. As the assessee neither appeared nor filed any papers in support of the value of tanker, hence the value of tanker for the relevant A.Y. after comparing the same with other petrol pump is estimated at Rs.1,50,000/- and the same is added back to the total income of the assessee as her unexplained investment."*

10.1. Aggrieved against the action of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), who while deciding the issue made the following observations:

*"In the course of the assessment proceedings of the case, it has been found that the appellant had shown income from transportation but, on verification of the balance sheet of the appellant, no tanker/lorry was found to be disclosed. Further, no evidence has been brought on record as to whether this transportation business was carried by taking the tanker or lorry on hire. However, the AO was very considered to bring to tax and an amount of RS.1.50 lakhs towards unexplained investment into tanker/lorry used for the purposes of the transportation business of appellant for tax which being very reasonable, is, being upheld and this ground of appeal is, therefore, dismissed."*

10.2. We have heard at length the Ld. Sr. DR and note that the Ld. CIT(A) has passed a speaking order in respect of addition of Rs. 1,50,000 on account of tanker, while ld. AO deciding the instant issue, the AO noticed that an income of transportation has been credited. However, the value of asset was found missing, subsequently the details in this regard was called for from the assessee. But the assessee never complied to such notices nor file any details during entire assessment proceeding and ultimately the AO had no other option but to estimated at Rs. 1,50,000/- value of tanker for relevant assessment year and added back to the total income of the assessee. Before the ld. CIT(A) also, the assessee did not produce any supported documents to prove the fact contrary and the ld. CIT(a) upheld the order passed by the AO.

Even before this Tribunal also, the assessee did not appear and submit any additional evidence or document to prove the fact that the addition was not sustainable. Therefore, we do not find any infirmity in the findings of ld. CIT(A) and accordingly confirmed the findings made by ld. CIT(A). Accordingly, this issue raised by the assessee is also dismissed.

11. Ground no. 4 raised by the assessee that Ld. CIT(A) has erred in sustaining the addition of Rs.52,685/- on account of VAT liability. While deciding the issue the Ld. AO has observed as under:

*“On perusal of the balance sheet attached with audited copy of a/c it was gathered that VAT amounting to Rs.52,685/- was shown payable. The assessee in this regard was asked to submit the copy of challan evidencing the actual payment. But she never complied nor filed any details. As per section 43B any sum payable by the assessee by way of tax, duty, cess or fee shall be allowed only in computing the income which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub section (1) of section 139. In the instant case the due date for filing return of income was 30.09.2012. Therefore it is clear that the payable amount should have been paid on or before 30.09.2012. The audit report dated 29.09.2012 of the assessee also in col. 21(B) (a) shows VAT amount Rs.52,685/- as payable. Hence it is quite clear that the amount of V A T have has not been paid by the assessee till filing her return of income. Therefore, the amount of Rs.52,685/- is not allowed and is added back to the total income of the assessee.”*

11.1. Aggrieved against the action of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), who while deciding the issue made the following observations:

*“It has been also found in the course of the assessment proceedings of the case that the appellant had not paid a sum of Rs. 52,685/- shown to be an outstanding amount for VAT, thus hit by the mischief of section 43B of the Act. No explanation whatsoever either in the course of the assessment proceedings of the case or in the course of the appellate proceedings of the case had been produced that such outstanding VAT payment had been made on or before the date of the filing of the return of income. In absence of such details, I'm inclined to confirm the action of AO on this account, and therefore, this ground of appeal is dismissed.”*

11.2. We have heard at length the Ld. Sr. DR and note that the Ld. CIT(A) has passed a speaking order in respect of addition of Rs. 52,685 on account of VAT liability while we are going through the findings and

material available on record in respect of sustaining the addition of Rs. 52,685/- on account of VAT liability, the AO on perusal of audited account, it was noticed by the AO that VAT amounting to Rs. 52,685/- was shown as payable. However, the AO was asked the assessee to submit the copy of challan to support the actual payment of VAT was discharged and accordingly the AO had added back the amount of Rs. 52,685/- to the total income of the assessee and the assessee while raising this issue before the Id. CIT(A) and the assessee completely failed to show that payment of VAT was discharged and the Id. CIT(A) accordingly confirmed the action taken by the AO in respect of addition of Rs. 52,685/- made by the AO. While we going through the findings of both the lower authority perusing the orders passed by the authorities below. We do not find any contrary view in respect of the order passed by the authorities below and while deciding this issue and we confirmed the view taken by the Id. CIT(A) in respect of deciding this issue and accordingly this issue raised by the assessee is dismissed. Accordingly, this issue raised by the assessee is dismissed.

12. Ground no. 5 raised by the assessee that Ld. CIT(A) has erred in sustaining the addition of Rs.2,00,000/- on account of security deposit. While deciding the issue the Ld. AO has observed as under:

*"The following details was called for from the company i.e. IOC vide this office letter no.601 dt.12.12.2014.*

- 1.) Copy of agreement made between the assessee and the company.*
- 2.) Details of sale made by the company to the assessee*
- 3.) Details of payments made by the company during the year for tank lorry fare.*
- 4.) Copy of a/c for F.Y.11-12 with details of payments like discount, rebate, incentives etc.*

*The reply was received by the company which are placed on record. The annexure attached with the copy of agreement dt. reveals that there is a security deposit of Rs.2,00,000/- vide DD no. 808775 dt.27.02.2004 and says that the-said amount shall be at the disposal of the co. as security deposit. The balance sheet of the assessee was perused and the current asset shows as stock in trade of Rs.1,33,53,756/-, VAT receivable of Rs.13,37,833/- and IOC*

*as debtor of Rs. 4,94,108.39/-only. For further verification the copy of accounts of the assessee as appearing in the books of the company which was also called for, reflects with the closing balance of Rs.(-) 4,94,108.39. Thus the amount appearing in balance sheet is a trade debtor and does not include investment made as security with the co. As the assessee never complied and filed any of submission by availing the several opportunities given to her during the course of hearing, the amount of security deposit of Rs.2,00,000 is treated as her unexplained investment u/s 69 of the I.T. act and the same is added back to her total income.”*

12.1. Aggrieved against the action of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), who while deciding the issue made the following observations:

*“At the time of assessment proceeding of the case, it has been found out by the AO that there was a security deposit of Rs.2 lakhs made by DD No.808775 dated 17/02/2004 made in favour of IOC. But, said security deposit was not found to be disclosed in the balance sheet of the appellant and no explanation for not disclosing the said security deposit in its account was offered leading AO to invoke the provisions of section 69 of the Act and bringing the amount to tax in the hands of the appellant. In the course of the appellate proceedings of the case, once again, no explanation whatsoever was offered in this regard, accordingly, I have no option but to agree with the action of the AO in invoking the provisions of section 69 of the Act which is being upheld.”*

12.2. We have heard at length the Ld. Sr. DR and note that the Ld. CIT(A) has passed a speaking order in respect of addition of Rs. 2,00,000/-on account of security deposit. While we considering the instant issue raised by the assessee, the AO sustaining the addition of Rs. 2,00,000/- on account of security deposit. However, the AO found that the investment made made as security with LOC never appeared in balance sheet of assessee, further the assessee did not comply and filed any submission to prove the fact contrary to the findings of AO, accordingly the AO treated the deposit of Rs. 2,00,000/- as unexplained income of the assessee u/s 69 of the Act and added to the income of the assessee and even before the ld. CIT(A), the assessee did not able to show any submission and documents to prove the fact that the AO was taken contrary view, ultimately, the ld. CIT(A) affirmed the addition made by the ld. AO. We after going through the findings of the authorities below and material available on record, we do not find any

infirmary in the order passed by the ld. CIT(A) while deciding this issue, therefore, we confirmed the view taken by the ld. CIT(A). Accordingly, this issue raised by the assessee is dismissed.

13. Ground no. 6 raised by the assessee stating that Ld. CIT(A) has erred in sustaining the addition of Rs.2,50,343/- on account of unexplained purchase. While deciding the issue the Ld. AO has observed as under:

*“The details of sale made by the company to the assessee was called for from the company i.e. IOC vide this office letter no.601 dt..12.12.2014.*

*The reply was received by the company which are placed on record. The details shows that the company has made sale of Rs.39,36,73,206/- to the assessee whereas the assessee in her return of income has shown purchases as Rs.39,34,27,916/-.The assessee vide this office letter dt.12.01.2015 was requested to file the reason of such differences on or before 19.01.2015. But the assessee did not file any reconciliation/reply till date or ever. Therefore it is believed that the difference amount of purchase i.e. Rs.2,45,290/- is her unexplained purchases. On perusal of the copy of a/c of the assessee with the company it is gathered that single amount of purchase always exceeds the amount of difference found. Hence it is said that the amount of Rs.2,45,290/- was invested in unexplained purchase on a single day. Therefore the entire amount of Rs.2,45,290/- is treated as her unexplained investment and added back to her total income. Further, as the unaccounted purchase has not been taken into closing stock, it is evident that the assessee must have sold it and had earned profit on it. The assessee has shown GP @ of 2.06 of turnover in her return of income for the A.Y 2012-13. Therefore, this rate of OP is applied on the above unaccounted purchase of Rs. 2,45,290/- and accordingly an amount of Rs. 5,053/- is added as extra profit earned by the assessee on sale of the petroleum products purchased out of books (as discussed above).”*

13.1 Aggrieved against the action of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), who while deciding the issue made the following observations:

*“In the course of the assessment proceedings of the case, it has been found out by the AO that on comparison of purchases and sales of the appellant, there was difference of Rs.2,45,290/-. No explanation whatsoever in respect of the same was offered at the time of assessment proceeding the case, neither any explanation was put forth at the time of the appellate proceeding of the case. Since, the said difference was found to be not more than purchases made by the appellant on a daily basis, it was concluded by the AO that not only the appellant had made unexplained investment in the purchases to this amount but has also concealed profit on the sale of the same which was computed at the rate of 2.06%, as declared in the returns of income for the A. Y 2012-13. At the time of the appellate proceeding of the case, the appellant merely reiterated*

*the submissions made at the time of assessment proceeding of the case. In absence of any verifiable evidence lest documentary evidence, I have no option but to confirm the action of AO on this score, and accordingly, this ground of appeal is, therefore, dismissed.”*

13.2. We have heard at length the Ld. Sr. DR and note that the Ld. CIT(A) has passed a speaking order in respect of addition of Rs. 2,50,343/- on account of security deposit. The AO made the addition of Rs. 2,50,343/- on account of unexplained purchase. The AO while doing the assessment he called for details from the IOC who had sold goods to assessee was Rs. 39,36,73,206/- whereas the assessee had shown purchases from IOC Rs. 39,34,27,916/- and therefore, it was believed by the AO that the difference amount of purchase i.e. Rs. 2,45,290/- was unexplained purchase in the hands of assessee and Rs. 5,053/- was added as extra profit earned by the assessee and before the ld. CIT(A), assessee could not demonstrated any verifiable evidence, the ld. CIT(A) confirmed the action of AO. At the time of hearing before this Tribunal, assessee did not appear and submit any evidence or documents to prove the fact contrary, therefore, we do not find any infirmity in the action of ld. CIT(A) while confirming the addition made by the AO. Accordingly, this issue raised by the assessee is dismissed.

14. In ground nos. 7 to 13, the assessee raised objections to the disallowance of Rs.3,34,947/- being 30% of expenses claim of Rs.11,16,419/- under the head fuel and repairs, addition of Rs.1,09,610/- on account of bonus and addition of Rs.4,36,215/- on account of sales promotion , Rs.2,28,622/- on account of travelling conveyance, Rs.1,48,884/- under the head staff welfare, Rs.1,09,017/- on account of Misc. and general expenses and addition of Rs.1,04,442/- on account of office expenses and printing and stationery are without any basis made by the lower authorities. While deciding the issue the Ld. AO has observed as under:

*“The assessee besides gross profit of Rs.83,12,192/- has credited the profit & loss a/c with following income:*

- 1.) *Discount received :- Rs. 4,38,540/-*
- 2.) *Transportation income :- Rs. 11,44,847/-*
- 3.) *Credit Note :- Rs. 4,52,100/-*

*Out of the above, income of Rs. 4,52,109/- through credit note is on account of compensation claim of Xtra care. On perusal of the profit & loss a/c it was found that the assessee against all these income of Rs.98,95,579/- has claimed expenses under twenty two different heads of Rs.95,57,699/- and showing net profit of Rs.7,89,980/- only from all ventures which includes the compensation claim. Therefore factually the assessee has shown net profit of Rs.3,37,880/- only against the total sale of Rs.40.10 crores i.e. 0.08% . Hence the expenses claimed by the assessee appears very excessive, unreasonable and on a very higher side which is also strengthened from the enquiry report of the ITI who on physical verification did not get any supportive bills and vouchers of claimed expenses.*

*The assessee has claimed expenses under the head fuel of Rs.6,18,240/- repair & maintenance of Rs.4,98,250/- against the transportation come of Rs.11,44,847/- which has been credited to the profit & loss a/c. The expenditure under the head of insurance might have also been claimed against transport vehicle. Thus the assessee has claimed the entire amount of income as expenses under these heads. It is important to mention here that when compared to other petrol pump of this area namely M/s Ram Niwas Ram Ballabh, Hajipur, it was found that the assessee has claimed expenses to the extent of 70% of its transportation income and balance amount has been credited as income. Whereas in the instant case the entire amount has been claimed as expenses. The assessee vide this office questionnaire dated 11.07.2014 was requested to file the bifurcated profit and loss a/c of transportation income and petrol pump but no details could filed ever. Neither any expenses vouchers were produced ever during the assessment proceedings nor any books of a/c. The assessee repeatedly requested to file the details. But she never appeared nor filed any her submission. All this show that she do not have any evidence/documents which could substantiate the claim of the assessee. Therefore, 30% of expenses claimed, i.e. Rs.11,16,4901-(618240+498250) which comes to Rs. 3,34,947/- is disallowed and added back to the total income considering it unreasonable & excessive.”*

*“The assessee has claimed expenses under the head bonus of Rs.4,02,600/- which is about 23% of salary expense. Hence the expense under this head appears excessive and unreasonable. As the assessee never complied and did not file any proof of expenses, the ITI was deputed to make a enquiry to ascertain the genuineness of expenses claimed by her. The ITI in his report has submitted that "all the staffs of the petrol pump get bonus twice in a year, in Holi and in Durga Puja which is equivalent to one month salary of the staff." He during the course of enquiry has obtained copy of attendance register for the month of Dec. 2014 which reveals that there are 48 staffs and they have been paid salary of Rs.2.93 lakhs p.m. Therefore, considering that the same amount would have been paid as salary in the year 2011-12, ignoring the appreciation, the amount of bonus in excess of one month salary of Rs. 1,09,600/- is disallowed and added back to the total income of the assessee considering it unreasonable and excessive.”*

*"The profit & loss a/c further transpired that the assessee has claimed expenses of Rs.8,72,430/- as sale promotion. In spite of repeated opportunities, the assessee neither produced her books of a/c nor filed a single evidences of such huge expenses. The claim of such huge expense under the head on sale promotion appears very unrealistic when compared to other petrol pumps of this area. The ITI, who was directed to enquire about the genuineness of expense has submitted in his enquiry report that "it was told that to increase the sale such expenses are made. The customers are given different items like Lungi, Baniyan, Tooth Paste, Glass Spoon etc. A palm plate showing schemes of gifts on purchase of certain item of petrol and diesel has been obtained. But there was no stock of any items which are given as gifts nor get any bills and vouchers of such expense. The staff goes to different cities and states to mobilise the truck owners to get the fuel from her pump. But did not submit any evidences of the same."*

*The claim as made by the assessee do not have any evidences like bills vouchers and copy of agreement if any made between the assessee or the truck owners. One important thing is to be mention here that the sale of the assessee has decreased in the year under consideration when compared to previous A.Y. i.e. 2011-12 by about Rs.4 crores. Further on perusal of the profit and loss a/c, it is gathered that the assessee has not shown a single Rs. as closing stock of items which she claimed of giving as gifts to increase her sale. Hence such claim is factually incorrect. Further the palm plate obtained by the ITI during the course of enquiry shows that there are fifteen items of gifts mentioned against the purchase of diesel starting from 150 lit. to 30000 lit. It is important to mention here that at a time one can buy diesel maximum of his fuel tank capacity which may be not more than 300 lit. and as per scheme here is gift of towel ( Gamcha) on purchase of 300 lit. of diesel. Besides the scheme was also launched on 01.12.2011 which means that scheme was only for four months of the F.Y. Therefore, considering the above facts and in absence of any evidences of Rs.4,36,215/- purchases of gift items, the expenses claimed is unrealistic to a great extent. Therefore, in the light of above facts, the nature of expenditure which lack the proper supporting evidences, payments made against the expenses are not verifiable in the manner of quantum, authenticity and the purpose. Hence the 50% of such expenses i.e. Rs.4,36,215/- is disallowed and added back to the total income."*

*"As discussed in earlier paras that the assessee has claimed huge expenses under twenty two different heads without any evidences, the expense under the head of staff welfare is one of them which is Rs.4,96,280/-. The assessee did not file any bills and vouchers evidencing the genuineness of such huge expenses. The ITI deputed for enquiry submitted his report stating that it was told by Sri Rajiv Ranjan Singh, H/o of the assessee present at that time on the premises that staffs are given dress twice in a year, medical facility, facility of mess." The claim of the assessee was not found to be accepted. It is a fact that the company pay the uniform subsidy and during the year Rs.73,500/- has been paid to the assessee on this head which is revealed from the company's statement. Besides the report of the ITI suggests that the mess is only for 10-15 employees who get the meal only after paying the minimum amount. No medical facility was found like any first aid at the business premises of the assessee. Besides all, the most important thing is to mention here that she was unable to give any supportive evidences. Hence the genuineness of expenses is doubtful. It is further pertinent to mention here that in addition to the above expenses of*

*Rs.4,96,280/- under the head staff welfare, the assessee has claimed an expo of Rs.3,19,768/- under the head office exp also. Hence in absence of any supportive evidences, there is no doubt that the assessee has deliberately and without any basis has claimed excessive exp. to lower down her income. Therefore, the nature of expenditure and the lack of proper supporting evidences, payments made against the expenses are not fully verifiable in the manner of quantum, authenticity and the purpose. Further it also cannot be ascertained that entire expenditure is attributable to his business activities. Hence considering the above facts 30% of Rs.4,96,280/- i.e. Rs.1,48,884/- is disallowed and added back to the total income of the assessee treating it as excessive and unreasonable.”*

*“The profit and loss a/c of the assessee further transpired that the assessee in addition of claiming exp. under all relevant heads, has claimed exp. under the heads like misc. exp & gen exp. of Rs.2,88,615/- & 2,56,470/- respectively. No bifurcated details of expo with any evidences could be filed by the assessee. No books ever produced by her. Hence the genuineness of expo remained unverified. Therefore, the nature of expenditure and the lack of proper supporting evidences, payments made against the expenses are not fully verifiable in the manner of quantum, authenticity and the purpose. Further it also can not be ascertained that entire expenditure is attributable to his business activities. Hence considering the above facts 20% of Rs.5,45,085/- i.e. Rs.1,09,017/- is disallowed and added back to the total income of the assessee treating it as excessive and unreasonable. “*

*“The assessee has also claimed expo under the head Festival exp. of Rs.1,32,650/-. As the assessee never complied nor filed any details, an enquiry regarding the genuineness of such expo was made by deputing the ITI who has submitted that the assessee has claimed to have made exp under this head to celebrate Vishwakarma Puja, Holi, Durgapuja, National holidays, first day of the year. But the local enquiry suggests regarding celebration of vishwakarma Puja only and distribution of "Prasad". Hence the expo under this head appears to have been exaggerated which lacks any evidences.*

*The assessee has claimed expo of Rs.3,19,768/- under the head of office expo She has also claimed expo of Rs.2,43,865/- under the head Printing & Stationary. No evidences either filed by the assessee or produced any books which could suggest the genuineness. Therefore, the nature of expenditure and the lack of proper supporting evidences, payments made against the expenses are not fully verifiable in the manner of quantum, authenticity and the purpose. Further it also can not be ascertained that entire expenditure is attributable to his business activities. Hence considering the above facts 15% of Rs.6,96,283/- i.e. Rs.1,04,442/- is disallowed and added back to the total income of the assessee treating it as excessive and unreasonable.”*

14.1. Aggrieved against the action of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), who while deciding the issue made the following observations:

*“Ground no. 8 to 16 – The appellant has raised objection to the disallowance of Rs.3,34,947/- under the head Fuel, Repair & transportation income, Rs.1,09,600/- on account of Bonus, Rs.4,36,215/- on account of sales promotion, Rs.2,28,622/- on account of travelling & conveyance , Rs.1,48,884/-*

on account of staff welfare, Rs.1,09,017/- under the head Misc. & General, Rs.1,04,442/- on account of office expenses and printing & stationary are without any basis and quite fit to be deleted.

9.1. In the course of assessment proceedings of the case, the AO had found out that appellant had incurred expenditure against discount received, transportation income, credit note, sales promotion, travelling and conveyance, miscellaneous in general expenses, festival expenses, head office expenses etc. the appellant was especially requested to justify these expenses being wholly and exclusively laid out for the purposes of the business as mandated under section 37(1) of the Act. But, the appellant could not offer any verifiable explanation in this regard, rather, it was found by the AO that there was no proper bills and vouchers for having incurred these expenditure. In this regard, it would be relevant to look into the provisions of section 37 (1 ) the act which is extracted as under:-

*General.*

37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

*Explanation 1.-For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be-made in respect of such expenditure,*

*Explanation 2.-For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.*

From the plain reading of the section 37 (1) of the act it is abundantly clear that only those expenses which has been incurred wholly and exclusively for the purposes of business and not being personal in capital in nature are to be allowed as deduction in computing the income of the assessee concerned. The onus is on the person who makes the claim that expenditure has been so incurred for the purposes of business. Such person has to lead evidence in this regard failing which the AO is entitled to disallow the expenses or restrict the claim of expenses based on the facts and circumstances of the case concerned.

9.2 The hon'ble ITAT Chennai Bench 'A' in the case of *Metalcity Constructions Kovai (P.) Ltd. v. Income-tax Officer IT Appeal No. 697 (Mds.) of 2012* in respect of allowability of Labour expenses of the civil contractor had upheld the proposition that since assessee could not produce its books of account to verify genuineness of transaction nor assessee could produce confirmation letters from any labour, ad hoc disallowance of labour charges can be made. In this case, the appellant could not produce any document to show genuineness of the labourers. No confirmation letters from any of the labourers engaged by the

*assessee were placed on record. The appellant could not produce books of account as the same were alleged to have been lost/not traceable.*

*9.3. The hon'ble High Court of Delhi in the case of National Industrial Corporation Ltd. 258 ITR 575 held that erroneous or disallowed in expenditure or part of it, it is essential to record in finding that such expenditure or part thereof was for non-business purposes.*

*9.4 In view of this and also respectfully following the judgments of the honourable courts supra, action of the AO in this regard is being upheld.*

*10. I have gone through the assessment order and submissions made by the appellant in the course of the appellate proceeding as evident from the Statement of Facts enclosed with the Form 35 forming part of the Appeal Memo. It is found that appellant had claimed expenses under the head bonus amounting to Rs. 4,02,600/- . It has been contended by the appellant that staff at the petrol pumps had been paid bonus on 2 occasions during the year i.e. on Holi and Diwali. The payment of bonus had been claimed to be one month salary of the staff. However, on verification of the salary payment, it was found that the staff of the appellant was being paid salary of RS.2.93 lakhs per month whereas bonus of Rs.4,02,600/- had been made which was not commensurate with the one-month salary of the staff. Therefore, the excess payment made on the account of bonus of Rs.1,09,600/- was disallowed. No explanation whatsoever was offered in the course of the appellate proceedings of the case, accordingly, action of the AO in this regard is being exclusively based on the facts is, therefore, upheld.”*

14.2. While we are going to decide ground no. 7 to 13 together as raised by the assessee in this appeal are disallowance of Rs. 3,34,947/- under the fuel, repair & transportation income, Rs. 1,09,600/- on account of bonus, Rs. 4,36,215/- on account of sales promotion, Rs. 2,28,622/- on account of travelling & conveyance, Rs. 1,48,884/- on account of staff welfare, Rs. 1,09,017/- under the head misc. & general, Rs. 1,04,442/- on account of office expenses and printing & stationary while deciding the issues above, AO had found that assessee had incurred expenditure under various heads however no proper bills and vouchers for having incurred such expenses, assessee could not produce before the AO and even before the Id. CIT(A) assessee could not able to produce any supported bills, vouchers for such expenses and the Id. CIT(A) confirmed the order passed by the AO in this regard to the above issues. We, after, perusing the record and going through the material available on record and examining the order passed by the authorities below. We

also do not find any infirmity in the impugned orders passed by the Id. CIT(A) while deciding the issues raised by the assessee. Accordingly, the issues raised by the assessee are dismissed.

15. In the result, the appeal of the assessee is dismissed.

Order is pronounced in the open court on 30<sup>th</sup> August, 2022

Sd/-

Sd/-

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

Kolkata, Dated: 30.08.2022  
JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. CIT(A)-1, Patna
4. CIT
5. The DR, ITAT, Patna Bench, Patna

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches