

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.674/Del/2018

[Assessment Year : 2014-15]

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| Modinagar Rolls Pvt.Ltd., Major Asha Ram Tyagi Road Modinagar, Ghaziabad, Uttar Pradesh. PAN-AABCM0137C | vs | DCIT, Circle-1, Ghaziabad. |
| APPELLANT | | RESPONDENT |
| Appellant by | Shri V. Rajakumar, Adv. | |
| Respondent by | Shri Om Parkash, Sr.DR | |
| Date of Hearing | 11.08.2022 | |
| Date of Pronouncement | 31.08.2022 | |

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2014-15 is directed against the order of Ld. CIT(A), Ghaziabad dated 27.10.2017.

2. The assessee has raised following ground of appeal:-

1. *"That the ld. Commissioner of Income Tax (Appeals), Ghaziabad has erred in sustaining the disallowance of Rs.10,00,000/- out of various expenses debited in profit and loss account. The said disallowance has been made by AO under the cover of possible leakages of revenue in accounts, although books of accounts were produced which were test checked and no specific defect has been pointed out by her and even the alleged short coming was never confronted to the assessee."*

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that the assessee filed its return of income through electronic mode on 12.09.2014, declaring total income of Rs.20,58,653/- and claimed set off of Rs.20,58,653/- resulting into NIL income. The case of the assessee was selected for scrutiny assessment through CASS. In

response to the statutory notices, Ld. Counsel for the assessee attended the proceedings. The assessee is a company engaged in an engineering unit specializing of manufacturing rolls for various industries. During the course of year under consideration, the assessee company declared gross profit of Rs.6,20,70,808/- @ 23.70% and net profit of Rs.37,00,090/- @ 1.41% against total turnover of Rs.26,19,48,595/-. The AO issued show cause notices to the assessee. It is recorded by the Assessing Officer ["AO"] that the Ld. Addl. CIT, Range-1, Ghaziabad directed that the books of accounts should not be rejected. The AO therefore, made an adhoc addition of Rs.10,00,000/-. It is recorded by the AO that the Ld.AR of the assessee aggrieved to this addition.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A). Before Ld.CIT(A), it was stated that the assessee had never agreed for such. However, Ld.CIT(A) rejected this explanation of the assessee and dismissed the appeal, without giving any finding on merit of addition.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee argued that the Ld.CIT(A) failed to appreciate the facts that the assessee has never agreed for such adhoc disallowance. He further contended that impugned addition deserves to be deleted, being arbitrary, unjustified and against the settled principles of law.

7. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. I have heard Ld. Authorized representatives of the parties and perused the material available on records and gone through the orders of the authorities

below. There is no dispute with regard to the fact that the impugned addition was made by the assessing authority on the adhoc basis and to plug the leakage of Revenue which is evident from the finding of the AO. The relevant finding of the AO is reproduced as under:-

5. *“During the course of assessment proceedings, books of accounts alongwith Bills and Vouchers were produced to explain the other expenses which were examined on test check basis. It was seen that proof of all expenses are not fully furnished. Thus, an ad-hoc addition of Rs. 10,00,000/- is being made to plug leakage of revenue and the same is being added back to the income returned by the assessee for which the AR of the assessee agreed vide order sheet entity dated 09.12.2016. The penalty proceedings U/s 271(1)(c) are initiated separately.”*

(Addition of Rs. 10,00,000/-)

9. Further, on appeal Ld.CIT(A) sustained the addition by observing as under:-

- 5.2. *“Ground no. 1: The appellant has challenged the addition of Rs. 10,00,000/- made by the AO estimated on account of non verifiability of certain expenses. Examination of fact reveals that appellant vide order sheet entry dt 09.12.2016 before the AO agreed for the said addition. The copy of acceptance by AR of appellant before AO is scanned as under:*

9/12/16. AR, Sh. Rajiv Singh appears and the case is discussed in light of directions vide 144A received. The ld. Add CIT, R-1, decided that basis of the assessee cannot be ignored that year by the AO. Hence in light of the directions and the very fact that proof of all expenses are not fully furnished, an adhoc addition of 10,00,000 is being made. Case discussed | 8

Date: 09/12/16

5.2.1. *No appeal lies against the agreed addition unless appellant proves coercion and mala fide. In the present case no evidence of coercion or mala fide has been brought on record. Reliance is placed on the decision of Sterling Machine Tools (1980) 123 ITR 181 (All) in this regard. The AR has valid power of attorney agreed before AO admitting and accepting the addition proposed by the AO. Thus the same is binding on appellant. Reliance is placed on the decision of Turner Morrison & Co.Ltd. vs Hungerford Investment Trust Ltd. (SC) 85 ITR 607. Keeping in the above facts this ground of appeal is not maintainable, hence dismissed.”*

10. From the above finding of Ld.CIT(A), it is clear that the appeal is dismissed on the ground that appellant vide order sheet entry dated 09.12.2016 which is reproduced by Ld.CIT(A), agreed for the impugned addition. However, a bare perusal of the same, there is no such offer of acceptance by the assessee. Moreover, there is no specific finding by the AO regarding any expenditure that was not vouched by the assessee. Merely a sweeping statement is not sufficient for making addition. Therefore, the action of the Assessing Authority cannot be sustained under the facts and circumstances of the present case, the impugned addition is therefore, deleted. Thus, ground raised by the assessee is allowed.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 31st August, 2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI