

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**VIRTUAL COURT**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 297/Asr/2018**  
Assessment Year: 2013-14

M/s Kashmir Motors,  
Lal Chowk, Srinagar,  
Kashmir

[PAN: AAFFK 3102Q]  
**(Appellant)**

Vs. Income Tax Officer,  
Ward 3(2), Raj Bagh,  
Srinagar, Kashmir

**(Respondent)**

**I.T.A. Nos. 298 & 299/Asr/2018**  
Assessment Year:2012-13 & 2013-14

M/s J. K. Stationers,  
Lal Chowk, Srinagar,  
Kashmir

[PAN: AAEFJ 9957F]  
**(Appellant)**

Vs. Income Tax Officer,  
Ward 3(1), Raj Bagh,  
Srinagar, Kashmir

**(Respondent)**

Appellant by : None (Written submission)  
Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 22.08.2022  
Date of Pronouncement: 01.09.2022

**ORDER****Per Dr. M. L. Meena, A.M.:**

These three appeals have been filed by the assessee against the impugned order even dated 28.02.2018 passed by the Ld. Commissioner of Income Tax (Appeals)-2, Jalandhar (Camp office at Srinagar), in respect of the Assessment Year 2012-13 & 2013-14.

2. The assessee has raised the following grounds of appeal in ITA No. 297/Asr/2018:-

- "1. On circumstances and facts of the case, the worthy CIT(A) has erred in sustaining a part of the addition to the extent of Rs. 2,00,000/- out of Rs. 3,82,190/- made by Ld. ITO on the ground of non-availability of vouchers etc. in support of expenses claimed in books of account.*
- 2. The worthy CIT(A) has erred in partly upholding the action of Ld. ITO as stated in (1) above without appreciating the fact that Ld. ITO has not specifically pointed to any particular voucher or documentary evidence not made available to him.*
- 3. On circumstances and facts of the case, the worthy CIT (A) has erred in not appreciating the fact that the additions made by Ld. ITO were made in a routine & perfunctory manner without application of mind & deserved to be deleted in toto and not in part.*
- 4. The worthy CIT (A) has also erred in referring to cases decided by Hon'ble ITAT Amritsar Bench in support of his judgment without quoting such cases in detail, the issues & nature of expenses involved in such cases. He has also erred to appreciate that most of the expenses targeted by Ld. ITO like Freight, After sales service, Repairs & Renovation, printing & stationary, Running & maintenance do not contain*

*any personal element and cannot be subject to any disallowance on % basis.*

5. *The appellant craves leave to add, alter, modify or modify the grounds of appeal.”*

3. The assessee has raised the following grounds of appeal in ITA No. 298/Asr/2018:-

- “1. *On circumstances and facts of the case, the worthy CIT(A) has erred in sustaining a part of the addition to the extent of Rs. 1,50,000/- out of Rs. 2,72,225/- made by Ld. ITO on the ground of non-availability of vouchers etc. in support of expenses claimed in books of account.*
2. *The worthy CIT(A) has erred in partly upholding the action of Ld. ITO as stated in (1) above without appreciating the fact that Ld. ITO has not specifically pointed to any particular voucher or documentary evidence not made available to him.*
3. *On circumstances and facts of the case, the worthy CIT (A) has erred in not appreciating the fact that the additions made by Ld. ITO were made in a routine & perfunctory manner without application of mind & deserved to be deleted in toto and not in part.*
4. *The worthy CIT (A) has also erred in referring to cases decided by Hon’ble ITAT Amritsar Bench in support of his judgment without quoting such cases in detail, the issues & nature of expenses involved in such cases. He has also erred to appreciate that most of the expenses targeted by Ld. ITO like Freight, After sales service, Repairs & Renovation, printing & stationary, Running & maintenance do not contain any personal element and cannot be subject to any disallowance on % basis.*
5. *The appellant craves leave to add, alter, modify or modify the grounds of appeal.”*

4. The assessee has raised the following grounds of appeal in ITA No. 299/Asr/2018:-

- “1. On circumstances and facts of the case, the worthy CIT(A) has erred in sustaining a part of the addition to the extent of Rs. 2,00,000/- out of Rs. 3,35,669/- made by Ld. ITO on the ground of non-availability of vouchers etc. in support of expenses claimed in books of account.
2. The worthy CIT(A) has erred in partly upholding the action of Ld. ITO as stated in (1) above without appreciating the fact that Ld. ITO has not specifically pointed to any particular voucher or documentary evidence not made available to him.
3. On circumstances and facts of the case, the worthy CIT (A) has erred in not appreciating the fact that the additions made by Ld. ITO were made in a routine & perfunctory manner without application of mind & deserved to be deleted in toto and not in part.
4. The worthy CIT (A) has also erred in referring to cases decided by Hon'ble ITAT Amritsar Bench in support of his judgment without quoting such cases in detail, the issues & nature of expenses involved in such cases. He has also erred to appreciate that most of the expenses targeted by Ld. ITO like Freight, After sales service, Repairs & Renovation, printing & stationary, Running & maintenance do not contain any personal element and cannot be subject to any disallowance on % basis.
5. The appellant craves leave to add, alter, modify or modify the grounds of appeal.”

5. There is a sole and common issue, regarding the upholding of adhoc disallowances @ 10% out of expenses claimed by the appellants, on account of Freight, after sales service, Repairs & Renovation, printing

& stationary, Running & maintenance, and therefore, these appeals are adjudicated by this common order.

6. The Assessing Officer completed the assessment under section 143(3) of IT Act with an addition of being 10% of expenses on adhoc basis which was partly upheld by the worthy CIT(A) to the extent of varying amount ranging from Rs. 1,50,000/- to Rs. 2,00,000/- on the ground of non-availability of vouchers etc. in support of expenses claimed in books of account.

7. None appeared for the assesses, however, the Ld. AR for the appellants filed written submission, contending therein that the worthy CIT(A) has erred in partly upholding the action of Ld. ITO, without appreciating the fact that Ld. ITO has not specifically pointed to any particular voucher or documentary evidence not made available to him; that the additions made by Ld. ITO were made in a routine & perfunctory manner without application of mind & deserved to be deleted in toto and not in part and that the worthy CIT (A) has also erred in making general reference to cases without quoting the citation of the any decision of ITAT Amritsar Bench in support of his judgment on adhoc additions pertaining to the issues & nature of such as Freight, After sales service, Repairs &

Renovation, printing & stationary, Running & maintenance which do not contain any personal element and cannot be subject to any disallowance on % basis. The Ld. AR filed an identical written synopsis in all the three appeals and one such is reproduced as under:

*The appellant assessee is a running a business of automobiles/ batteries etc. For Asstt. Year 2013-14, the Ld. ITO completed the assessment under section 143(3) of IT Act. An addition of Rs. 3,82,190/- being 10% of expenses as per details below was made by him to the returned income of Rs.1,64,510/- which was partly upheld by the worthy CIT( A) to the extent of Rs. 2,00,000/-.*

### **NOW THE ARGUMENTS**

#### **GROUND NOS. 1 to 5**

*Your Honour- As is a common knowledge, various expenses have to be incurred to run any business. During the assessment proceeding, the Ld. ITO had listed following expenses & added back 10% of the same amounting to Rs. 3,82,190/-to the returned income*

a) After-Sales-Service	Rs.	11,36,114/-
b) Repairs & renovation Expenses :	Rs.	8,91,424/-
c) Advertisement	Rs.	10,91,040/-
d) Printing and Stationery:	Rs.	2,04,395/-
e) Others (details not provided by ITO)	Rs.	4,98,927/-
TOTAL EXPENSES	RS.	38,21,900/-
ADD BACK @ 10%	RS.	3,82,190/-

*In the first appeal, the worthy CIT(A) was kind enough to restrict the addition to a lump sum figure of Rs. 2.00.000/- which the appellant is contesting through this appeal.*

*Your honor, the whole mantra behind this addition is non-furnishing of vouchers/Supporting documents by the assessee.*

*During the appellate proceedings, the appellant assessee specifically brought to the notice of Ld. CIT(A) that:*

1) *Expenses on After-sales-Service, & repairs & renovation, advertisement & printing & stationary are wholly & solely incurred for business & by no stretch of imagination, can there be any element of personal benefit in these expenditures .Further, TDS has been deducted & deposited on such expenditures, wherever applicable. The worthy CIT has recorded this on page 2 of his order dated 28-02-2018. It was also brought to his notice:*

2) *That Ld. ITO has stated in her order dared 09-02-2016 (page 2, para 2) that A/R of assessee produced bills & vouchers but were not supported by **complete** vouchers. But she has not pinpointed in her order about absence or unavailability of any specific voucher or supporting document of expenditure.*

*During the appellate proceedings, the appellant assessee specifically brought to the notice of Ld. CIT(A) that:*

3) *That the details of all expenditures viz name of payee, date of payment, amount paid & mode of payment are duly entered in the books of account, which have been furnished before the Ld. ITO.*

4) *That the Ld. ITO has not made any sort of enquiry or cross verification from any of the payees to ascertain the genuineness of the expenses.*

5) *That all expenses have been made wholly & solely for business purposes & there is no element of any personal benefit accruing to partners of the firm.*

6) *That the books of account stand duly audited & audit report furnished to Ld. ITO as required u/s 44AB of IT Act. The said report doesn't contain any adverse comment, inspite of the fact that the auditor is supposed to mandatorily mention of such comment, if he comes across any during his audit.*

*However, to the dismay of appellant assessee, the worthy CIT(A), ignored this submission & proceeded to sustain the addition fully Your honor, -*

*An injustice has been done to appellant assessee in sustaining the addition to the extent of Rs.2,00,000/- on mere lumpsum basis which is neither backed by any argument or logic but only surmise & conjectures. As stated in preceding paras the Ld. ITO has neither pointed out non-availability of any specific*

*voucher nor made any enquiry or cross-verification to establish the veracity of the expenditure.*

*Secondly the expenses have been wholly & solely incurred for business purposes & cannot not be added back fully or partly merely on basis of suspicion of leakage of revenue.*

*Most importantly, the books of account of the appellant assessee stand audited u/s 44AB & the auditor has not pointed any deficiency of vouchers or part of any expenditure attributable to personal benefit.*

*It may be stated here that the Hon'ble ITAT, Amritsar bench has recently deleted similiar additions in toto by holding them as unjustified in ITA NoS.276/ASR/2018, 277/ ASR/2018, 300/ ASR/2018.*

*In view of above, it is clear that the addition of Rs. 2,00,000/- to cover a so-called non-existent leakage of revenue sustained by worthy CIT(A) is on purely adhoc & lumpsum basis without any logic reason or justification*

*In the premises, it is prayed The Hon'ble Tribunal may be pleased to direct that the addition of Rs.2,00,000/- to income of appellant assessee sustained by worthy CIT(A) on purely adhoc & lumpsum basis be deleted.*

*In support of my argument, reliance is also placed on:*

- a. *Pearl Farben Chem (P) Ltd(ITA No. 1122/Mum/2010)*
- b. *DC1T v M/s EPCOT Securities (P) Ltd. (ITA No.395/Mum/2009)*
- c. *M/s Matrix Inc. v. ITO(ITA No. 54/Del/2009)*
- d. *CIT. v M/s S.S.P Ltd. ITA-B1, 535 of 2010-P&H High Court*

*The appeal may be decided on the basis of above arguments.”*

8. Per Contra, the Ld. Addl. CIT(DR) stands by the CIT(A)'s order.

9. We have heard the Ld. DR, perused the written submissions filed by the assessee and the orders of the authorities below. The Id. counsel for the assessee has filed an application for the condonation of delay of one

day for all the three appeals on account of postal department as the appeals have been sent by speed post on 2<sup>nd</sup> May, 2018 vide Speed Post R/No. EE845065207IN but has been delivered to the registry on 14<sup>th</sup> of May, 2018 within unprecedented delay of 12 days on the part of the postal department and resulting into the aforesaid delay in the filing of the said appeals. Considering the cause for the delay being due to the postal department, we accept the request of the assessee as genuine. Accordingly, the delay in filing these appeals are hereby condoned, the appeals are allowed to be heard on merits on the basis of written submission filed by the Id. counsel for the assessee after hearing the DR for the department.

11. Admittedly, the AO has made disallowances @ of 10% of the general expenses, claimed by the appellants under the heads- sale services, repairs & renovations, advertisement, printing and stationery, running and maintenance of vehicles etc., by observing that the expenses claimed were not supported with the bills/vouchers, and some of them were supported by self made bills/vouchers. The Id. CIT(A) has observed that the appellant has not been able to produce the evidence to contradict the findings of the AO and he has only made bald submissions without

any supporting evidence. However, the Id. CIT(A) has not mentioned the specific amount of expenditure for which the assessee has failed to produce bills/vouchers while upholding the finding of the AO. Although, the Id. CIT(A) has made a reference that ITAT Amritsar Bench has upheld such disallowances made by the AO to the extent of Rs. 10% but he has not mentioned even a single decision of the ITAT in this regard. The disallowances of expense by the AO without any specific finding with support of corroborative evidence to prove the contrary and merely mentioning that supporting bills/vouchers were missing or not produced would not be sufficient for the purpose of such addition to reject the claim of the appellant's business expenses. The Id. CIT(A) without verifying the facts of the case, and considering the written submission of the assessee confirmed the addition on the basis of the observation of the AO. Such observation of the Id. CIT(A) is fallacious, since, expenses were claimed by the appellant assessee for the furtherance and running of its regular business. The Id. CIT(A) has not discussed any worthwhile argument as to why, he has treated the expenses claimed by the assessee as bogus. It has been held in plethora of the judgments that any expenses that goes towards proper understanding/or management of owns business is an expense allow u/s 37 of the Act. The mandate does not permit the AO to

step into the shoes of the business man and dictate him, how he has to manage the business.

12. From the above, it is evident that the authorities below did not point out any specific lacunae as regards to disallowance of expenses. It is noted that assessee is maintaining regular books of account which are subject to tax audit u/s 44AB of the Act. and that the authorities below had not pointed out any defect in the accounts as per the audited books of account of the assessee.

13. The Id. DR did not file any contrary view before us. In the case of CIT v. M/s S.S.P. Pvt. Ltd., Faridabad in ITA No. 535 of 2010 dated 20.07.2011, the Hon'ble Punjab & Haryana High Court has observed that where audited books of account along with vouchers were produced by the assessee and thereafter the Assessing Officer has failed to show that the said expenditure was not for the business purposes, then such disallowance made on ad-hoc basis without there being any material would not be justified.

14. Respectfully following the Hon'ble jurisdictional High Court, the ad-hoc addition of Rs. 3,82,190/- in ITA No. 297/Asr/2018, addition of Rs.

2,72,225/- in ITA No. 298/Asr/2018 and addition of Rs.3,35,669/- in ITA No. 299/Asr/2018 is hereby deleted.

15. In the result, all the three appeals are allowed.

*Order pronounced in the open court on 01.09.2022.*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy  
By Order