

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.330/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2014-15)

Velankanni Constructions 5 th Cross, Sagaya House Arani House, Stone House Hill, Ootacamund, Nilgiris – 643 002.	बनाम/ Vs.	ACIT Circle-1, Ooty.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AADFV-3227-H		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri ARV Sreenivasan (Addl. CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	03-08-2022
घोषणा की तारीख / Date of Pronouncement	:	07-09-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 25-08-2021 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 09-12-2016. The grounds taken by the assessee are as under:

- 1) The order of the Learned CIT(A) is bad and erroneous in law and against the principles of natural justice.

2) The Learned CIT(A) erred in not considering the written submissions in proper perspective.

3) Disallowance u/s. 40A(3) -Rs. 1,08,59,2247-

(a)Blue Metal, Sand and Bricks Purchase; b) Fabrication and Centering Charges; (c) Vehicle Expenses; (d) G.P.Nahar-pick-up loan and (e) Bricks Purchase

(i) The Learned CIT(A) erred in not considering the explanations and the written submissions filed by the appellant and erred in confirming the disallowance without any reasoning.

(ii) In respect of G.P.Nahar Pickup Loan, the learned CIT(A), without understanding the very fundamental concept, simply confirmed the disallowance u/s.40A(3), when the said sum did not represent expenditure and that it was a loan repayment. The Learned CIT(A) erred in not understanding the fundamental fact that the loan repayments will not come within the purview of Section 40A(3) and the addition was made without any basis.

4) Disallowance u/s. 40(a)(ia):Rs.13,11,362/-

The Learned CIT(A) erred in not considering the explanations furnished by the appellant pertaining to the payments made to Cholamandalam Finance, besides not understanding the very fact that the same represented loan repayments, which is confirmed by the production of the ledger extract filed before the Assessing Officer as well as before the Assessing Officer.

5) Disallowance 20% of Bricks Purchase and Machinery Rent: Rs.14,59,020/-

The Learned CIT(A) erred in not considering the explanations and the written submissions filed by the appellant and erred in confirming the disallowance without any reasoning.

After hearing rival submissions and after perusal of case records, the issues are adjudicated as under.

2. The assessee being resident firm is stated to be engaged in civil construction. The assessee could not produce bills or voucher for blue metal jelly purchase, brick purchase and sand purchase. The reasons adduced were that the assessee undertook work at remote places and was dependent on local supplies. The cost of two units of sand was stated to be costing Rs.1600/-, the cost of two unit of blue metal was stated to cost Rs.2400/- and one load of 5000 bricks was stated to cost Rs.15000/-. However, rejecting the same, Ld. AO invoked the provisions of 40A(3) and disallowed blue metal jelly purchase for Rs.17.88 Lacs. Similar disallowance was made for following items: -

No.	Items	Amount (Rs.)
1.	Sand Purchase	Rs.40.35 Lacs
2.	Fabrication and Centering Charges	Rs.45.68 Lacs
3.	Vehicle Expenses	Rs.3.06 Lacs
4.	Payment of Loan Installment	Rs.1.24 Lacs
5.	Bricks Purchase	Rs.0.35 Lacs

Another disallowance was made u/s 40(a)(ia) for want of TDS on interest of Rs.13.11 Lacs paid to Cholamandalam Finance. The last addition is estimated addition of 20% against brick purchase and machinery rent which resulted into addition of Rs.14.59 Lacs in the hands of the assessee. All these additions, upon confirmation by Ld. CIT(A), is in further challenge before us.

3. We find that the assessee is engaged in the business of civil construction. It undertakes work at remote places and purchases goods from local suppliers. The assessee consistently reflects net profit rate of 2.25% to 2.76% since past many years. Upon perusal of ledgers as extracted in the assessment order, it could be seen that the assessee was not able to produce bills / vouchers in support of cash payment. Consequently, Ld. AO invoked the provisions of Sec.40A(3) on the presumption that the payments exceeding Rs.20,000/- was made to a single party. However, this conclusion is not supported by any material on record. Therefore, the better course would be to disallow a portion of these expenses for want of supporting documents. Considering the same, we direct Ld. AO estimate addition of 10% against blue metal jelly purchase as well as 5 items as listed above.

6. So far disallowance u/s 40(a)(ia) is concerned, we find that the assessee has claimed interest on loan for Rs.2,13,398/- which alone should be disallowed since it is the amount of expenditure claimed by the assessee. The last estimated addition of 20% against brick

purchase and machinery rent would not require any interference since no new material has been placed before us.

7. The appeal stands partly allowed.

Order pronounced on 07th September, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 07-09-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF