

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI. RAMIT KOCHAR, ACCOUNTANT MEMBER
ITA No.272/ALLD/2018
Assessment Year: 2015-16**

Income Tax Officer, 5(4), Banda, U.P.	vs.	Shri Anurag Kumar Gupta, Prop. M/s Anurag Enterprises, Ardali Bazar, Katra, Banda, U.P. PAN-AIZPG6384J
(Appellant)		(Respondent)

Appellant by:	Sh. Praveen Godbole, CA
Respondent by:	Sh. Ramendra Kumar Vishwakarma, CIT DR
Date of hearing:	06.09.2022
Date of pronouncement:	06.09.2022

ORDER

VIJAY PAL RAO, JUDICIAL MEMBER

This appeal by the Revenue is directed against the order dated 13.4.2018 of CIT(A), Kanpur for the assessment year 2015-16. The A.O. has raised the following grounds:-

- "1. That the CIT(A) has erred in law and on facts in allowing the relief of Rs. 3,10,69,398/- without appreciating the fact that the assessee has not accounted for this amount at the time of filing the ITR online.*
- 2. That the CIT(A) has erred in law and on facts in allowing the relief of Rs. 3,10,69,398/- without appreciating the fact that the audit report has been submitted by the assessee, before the AO during the course of assessment proceedings, after adding the figure of Labour Charges amounting to Rs.3,10,69,398/-.*
- 3. That the CIT(A) has erred in law in allowing the relief of Rs. 51,84,300/ on account of VAT without appreciating the fact that during the course of assessment proceedings the assessee has submitted the evidence of payment of VAT of ONLY to the tune of Rs. 29,28,357/-.*
- 4. That the order of the CIT(A) being erroneous in law and on facts needs to be vacated and the order of the Assessing Officer be restored."*
- 5. That the Revenue craves leave to add or amend any one or more of the grounds of the appeal as stated above as and when need for doing so may arise."*

2. The assessee is a proprietor of Anurag Enterprises and engaged in the business of Electric Goods supply to various Nagar Palikas in the State of Uttar Pradesh. The assessee filed his return of income on 1st October, 2015 declaring total income of Rs. 6,27,430/-. Initially, the Return was processed under section 143(1) and later on the case was selected for limited scrutiny through CASS to examine the receipts under section 194C and 194J reflected in the Form No. 26AS more than the receipts shown in the ITR and mismatch in sales / turnover reported in the audit report and ITR. The Assessing Officer while framing the assessment under section 143(3) has made an addition of Rs. 3,77,38,095/- on account of discrepancy between the receipts shown in 26AS and declared by the assessee. The assessee challenged the action of the Assessing Officer before the CIT(A) and contended that differential amount of Rs. 3,77,38,095/- was received from Nagar Palikas on account of labour expenses and the same is recorded in the books of accounts duly audited under section 44AB of the Income Tax Act. The assessee has not disputed the total receipt of Rs. 7,51,78,167/- but it is claimed that a sum of Rs. 3,10,69,398/- is against labour supply which was treated as reimbursement of labour expenses and the balance amount was explained by the assessee on account of VAT collected to the extent of Rs. 51,84,300/- and the said amount was shown as part of the receipts in 26AS. The assessee also claimed a sum of Rs. 14,84,398/- towards payment of preceding year. The CIT(A) accepted the explanation of the assessee regarding the labour charges and VAT and sustained the addition to the extent of Rs. 14,84,398/- as against Rs. 3,77,38,095/- made by the Assessing Officer.

3. Aggrieved by the order of the CIT(A), the Revenue has filed the present appeal.

4. The learned CIT DR has submitted that before the Assessing Officer, the assessee vide reply dated 19.12.2017 has claimed that a sum of Rs. 3,10,69,398/- were received from the Nagar Palika and invested towards labour side by side which is shown in the profit and loss account and Rs. 3685584.49/- were paid towards VAT. The assessee has thus submitted that Rs. 35,514/- is short receipt from Nagar Nigam, Jhansi and claimed that there is no difference as shown in the show cause notice issued by the Assessing Officer. The ld. CIT DR has submitted that though the assessee has claimed a sum of Rs. 3,10,69,398/- towards labour expenses however, there is no documentary evidence to show either the amount received on account of labour charges or any labour expenses incurred by the assessee. Thus, the assessee has suppressed the income by treating this amount as reimbursement of labour expenses. The learned CIT DR has referred to the invoices raised by the assessee as well as the agreement between the assessee and Nagar Palika and submitted that there is nothing in the invoice or in agreement regarding supply of labour by the assessee and payment against the same by the Nagar Palika. The entire payment has been made for supply of the electrical goods and it is a clear term of the agreement that Nagar Palika shall not pay for any labour expenditure incurred by the assessee for providing the service of supply of goods and even for maintenance of the goods supplied by the assessee. The expenditure on account of replacement of the defective was to be borne by the assessee during the guarantee period. Therefore, the ld. CIT DR has contended that when the assessee has not produced any supporting evidence in respect of the claim of labour charges and receipt on account of the labour supply then this claim of the assessee cannot be accepted. The ld. CIT(A) has accepted the explanation of the assessee without any supporting evidence. The CIT(A) has also relied on Instruction No. 10 of 2017 dated 15.11.2017. However, the said instruction is related with processing of ITR under section 143(1) and does not apply on the scrutiny assessment. He has pointed out that the CBDT instruction is only

explaining the applicability of sub clause (vi) of section 143(1) in the cases of business receipts which are reported in the return and therefore, the reliance on the instruction is misplaced. He has referred to the return of income and submitted that the assessee has shown the gross receipts and sales at Rs. 3,74,40,072/- and not the entire receipt of Rs. 7,51,78,167/-. The ld. CIT DR then referred to profit and loss account and submitted that the assessee has shown the sales at Rs. 3,74,40,072/- and not shown the total receipt even in the profit and loss account placed at page no. 128 of the paper book of the department. Thus, he has submitted that the assessee has suppressed the gross receipts / sales and the claim of the balance receipt on account of labour supply is completely without any supporting documentary evidence. Even the assessee has not produced any supporting evidence for the entire claim of payment of VAT. In fact, during the assessment proceedings, the assessee produced the evidence for payment of VAT only to the extent of Rs. 29,28,357/-. The assessee has produced two set of tax Audit reports and therefore the veracity of the accounts as well as the tax Audit reports of the assessee is also doubtful. Hence, the ld. CIT DR has pleaded that the impugned order of the CIT(A) be set aside and the order of the Assessing Officer be restored.

5. On the other hand, the learned AR of the assessee has submitted that the assessee is deriving income from the supply of electrical goods in several district of Uttar Pradesh. The assessee is maintaining regular books of accounts which are audited. The entire receipt are through account payee cheques. He has further submitted that the amount for labour supply was paid only to expand for the labourers for executing work and containing the no profit element. The amount received on account of labour charges was exclusively incurred for the purpose of labour supply hence, the same was shown separately as receipt as well as expenditure (net of) and hence not reflected in the return of income under the head business receipt though the same is reflected in Form 26AS. The total receipt is not in dispute as receipt was through banking channel and by account payee cheques.

6. Before the CIT(A), the assessee duly reconciled the differences as reproduced by the CIT(A) in the impugned order at page no. 5. The CIT(A) has deleted the addition after thorough verification and examination of the details. He has supported the impugned order of the CIT(A) and submitted that the assessee has produced the confirmation letters from the departments/Nagar Palikas regarding the payment.

7. We have considered the rival submissions as well as the relevant material on record. Undisputedly, the assessee received a sum of Rs. 7,51,78,167/- from various Nagar Palikas for supply of electrical goods. As per the agreement between the assessee and Nagar Palikas, the assessee was to supply the electrical goods to the Nagar Palika and as per the terms and conditions of these agreements, the assessee was under obligation to repair or replace the defective goods. There is nothing in the agreement for supply of any labour by the assessee and therefore, the claim of the assessee that the part of the payment was received on account of labour supply is out of the contract between the parties. We further note that even as per the invoices raised by the assessee to the Nagar Palika, the assessee has shown only the supply of goods and there is no invoice regarding supply of labour. The Assessing Officer during the assessment proceedings has called information from the assessee and also issued a show cause notice. In reply, the assessee submitted that the assessee supplied the goods of Rs. 3,74,40,072/- to Nagar Palika department and Rs. 3,10,69,398/- were received from the Nagar Palika and invested towards the labour side by side. This reply of the assessee was not substantiated by any documentary evidence. The Assessing Officer finally added the differential amount in para 4.4 to 4.5 as under:-

"4.4 The reply of the assessee is not acceptable as the assessee deliberately has not shown receipts of Rs.3,77,38,095/- in his ITR i.e. not offered for taxation. However, the assessee has been debited all expenses in the profit and loss account.

4.5 In the light of facts stated above, it is found that the assessee deliberately has not shown i.e. not offered for taxation the receipts of Rs.3,77,38,095/-; accordingly, the same is being added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) are being initiated separately for concealing true particulars of his income.”

8. The learned CIT(A) has deleted the addition except Rs. 14,84,398/- as under-

“I have gone through the facts and the written submissions filed along with the details filed enclose therein. AO on verifying the receipts shown as per Form 26AS and after comparing it with the receipts shown in ITR, found that there is a difference between receipts as per Form 26AS and receipts shown in ITR is of Rs, 3,77,38,095/-. AO further found from perusal of trading and profit & loss account forming part of audit report for the year ending 31.03.2015, that the assessee has shown receipts on account of contract at Rs. 3,77,40,071/- and on account of labour charges at Rs. 3,10,69,398/-.

In the meantime, a tax evasion petition was received by AO in this case. The Gist of Tax evasion petition is that the appellant is selling the items at a margin of 500%. AO checked the purchases and sales of the assessee and gave certain observations that are not relevant to the addition made. Hence they are not being repeated. Appellant submitted the reply to AO explaining the reasons for difference in the Form 26AS and the ITR. As per the appellant main reason for difference is that the assessee supply the goods against Rs. 3,74,40,071.72 to Nagar Palika Department and Rs. 3,10,69,398/- were received from the department on account of Labour charges that are duly accounted for in the books of accounts, which were spent towards labor simultaneously, as shown in the P/L A/C and Rs. 36,85,584.49 were paid towards as a VAT Tax. That Rs. 3,514/- is short receipt from Nagar Nigam Jhansi. Hence there is no difference as shown by your notices. The net position as submitted is as under:

Receipt as per from No. 26AS	Rs. 7,51,78,167/-
Receipt as per assessee's account.	Rs. 6,85,09,469/-
VAT included in receipts and paid to the Commercial Taxes Department	Rs. 51,84,300/-
Payment of preceding year, received During this year	Rs. 14,84,398/-
	Rs. 7,51,78,167/-
Difference=	Rs. NIL

This reply of the assessee was not accepted by AO and without giving any reason whatsoever it was held that the assessee has deliberately not shown receipts of Rs. 3,77,38,095/- in his ITR. AO made the observation that the assessee has debited all expenses in the profit and loss account but did not care to comment on the correctness of the same. AO accepted all the expenses to be genuine Appellant has not been able to place on record any evidence pertaining to Payment of preceding year, received during this year of Rs. 14,84,398/ Secondly, even if the fact submitted by appellant is true then this payment is not to be shown in Form 26AS for the year under consideration as it must have been shown in earlier years Form 26AS. It is therefore established that there is a difference of Rs. 14,84,398/-.

CBDT has recently issued an Instruction No. 10/2017 on 15th Nov. 2017, as per which:

Order under section 119 of the Income-tax Act, 1961

Subject: Processing of income-tax returns filed in Forms ITR-2, 3, 4, 5 & 6 under section 143(1) of the Income-tax Act-applicability of section 143(1)(a)(vi)-reg.

"Sub-clause (vi) of clause (a) of sub-section (1) of section 143 of the Income-tax Act, 1961 ('Act') as introduced vide Finance Act, 2016, w.e.f. 01.04.2017, while processing the return of income, prescribes that the total income or loss shall be computed after making adjustment for addition of income appearing in Form 26A5 or Form 16A or Form 16 (the three Forms) which has not been included in computing the total Income in the return.

"3.5 In case of business receipts being taxable under the head 'income from business or profession' which are reported in ITRS 3, 5 & 6 Forms, comparison of such receipts in the three Forms with data in ITR at gross level may not be possible as receipts shown in the three Forms would get subsumed in the consolidated income in P&L A/c. Further, items in the P&L a/c such as commission, interest etc. may be shown at a net basis whereas the details in the three forms are reported on a gross basis. Hence, any likely difference in business receipts as contained in ITRS 3, 5 & 6 with the three Forms is excluded from the purview of intimations proposing adjustments under section 143(1)(a)(vi) of the Act since they may not be comparable."

This instruction also proves that there is a possibility of having difference in the figures of Form 26AS and ITR for the reason that in ITR various figures are shown on net basis. Here appellant has shown the whole amount received as per Form 26AS but the expenditure done on Labour

was not reflected in the Form 26AS. However, keeping in view the failure of the appellant to substantiate the existence of difference of Rs. 14,84,398/-, part of the addition made by the AO amounting to Rs. 14,84,398/- is confirmed out of the total addition of Rs. 3,77,38,095/-. Appeal is partly allowed.”

9. Thus, it is clear that the CIT(A) has given its finding on the submissions and details provided by the assessee without verifying any supporting evidence of claim of labour supply and corresponding expenditure incurred by the assessee for labour supply. Even the assessee has not produced any supporting evidence regarding the expenditure incurred on the alleged supply of labour to the Nagar Palikas. The CIT(A) has also placed reliance on the CBDT Instruction No. 10/2017, which in our view is misconceived on the part of the CIT(A) as the said instruction is only in respect of the adjustments to be made while processing the return under section 143(1)(a)(vi) therefore, the said instruction would not restrict or having any implication on the scope of scrutiny assessment. The assessee has now produced certain certificates of confirmation from various Nagar Palikas alongwith affidavit of the assessee regarding the labour expenditure incurred by the assessee for execution of the supply work. These certificates also reflect that no separate payment was made by the Nagar Palikas to the assessee on account of labour expenditure or repair or maintenance but whatever payment was made which includes the labour and repair expenditure incurred by the assessee. Therefore, these certificates *prima facie* do not support the claim of the assessee however, since the claim of labour expenditure is required to be verified and assessee has to produce the supporting evidence therefore, in the facts and circumstances of the case and in the interest of justice, we set aside the impugned order of the CIT(A) and the matter is remanded to the record of the Assessing Officer for fresh adjudication after verification of the claim of the labour expenses

incurred by the assessee. Needless to say the assessee be given an appropriate opportunity of hearing before passing the fresh order.

10. In the result, the appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 06.09.2022 on conclusion of hearing and reduced in writing and signed on the date indicated below.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 06/09/2022

Allahabad

Sh

Copy forwarded to:

1. Appellant- I.T.O., 5(4), Banda, U.P.
2. Respondent- Sh. Anurag Kumar Gupta
3. CIT(A),
4. CIT
5. DR

By order
Sr. P.S.