

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No. 270/Hyd/2022		
Assessment Year: 2017-18		
Sri Zulfi Ravdjee Hyderabad PAN:AEAPA2227H (Appellant)	Vs.	A.C.I.T. Circle 14(1) Hyderabad (Respondent)
Assessee by:	Shri P. Murali Mohan Rao, CA	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	22/09/2022	
Date of pronouncement:	26/09/2022	

**ORDER**

**Per R.K. Panda, A.M**

This appeal filed by the assessee is directed against the order dated 17.6.2022 of the learned CIT (A)-NFAC, relating to A.Y.2017-18.

2. Facts of the case, in brief, are that the assessee is engaged in the business of construction under the name and style of AZ Developer. It has undertaken two contract works, one at Moinabad and the second one at Kompally and also maintaining the building "Alcazar Plaza and Towers". He filed his return of income on 31.10.2017 declaring total income of Rs.33,76,600/-. The case was selected for scrutiny and statutory notices u/s 143(2)/142(1) were served on the assessee in response to which,

the AR of the assessee appeared from time to time and filed the requisite details.

2.1 During the course of assessment proceedings, the Assessing Officer noted that the assessee has declared a net profit of Rs.27,88,095/- which is 9.29% of the total sales of Rs.3,00,24,574/-. The total expenditure debited to the P&L A/c is Rs.41,56,54,455/-. The Assessing Officer asked the assessee to substantiate the claim of expenditure with documentary evidence such as invoice/bills and vouchers etc.,. On verification of the details filed, he noticed that the assessee has not furnished any voucher/bill for verification. He noted that the assessee was required to furnish the bills and vouchers in respect of the following heads:

i) Construction Cost -	Rs.7,32,59,319
ii) Maintenance expenditure -	Rs. 81,34,287
iii)Administrative overheads -	Rs. 41,67,277
TOTAL	Rs.8,55,60,883

3. Despite sufficient opportunities granted by the Assessing Officer, the assessee failed to discharge the onus cast on him by proving the genuineness of various expenses debited. The Assessing Officer, therefore, relying on the decision of the Hon'ble A.P. High Court in the case of Transport Corporation of India Ltd (256 ITR 701) where it has been held that it is the duty of the assessee to prove the genuineness of the payments, made addition of Rs.85,56,088/- being 10% of the total expenditure of Rs.8,55,60,883/-.

4. The Assessing Officer similarly made addition of Rs.1,00,764/- being 30% of the expenditure of Rs.3,34,880/- for

non-deduction of TDS as per the provisions of section 40a(ia) of the I.T. Act. Thus, the Assessing Officer determined the total income of the assessee at Rs.1,20,33,452/-.

5. In appeal, the learned CIT (A) dismissed the appeal filed by the assessee.

6. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

*“1. The learned CIT (A) erred in dismissing the appeal instead of allowing the appeal.*

*2. As per the ratio laid down by the Honourable Supreme Court of India in the case of National Thermal Power Co. Ltd v. CIT (1998) 229 ITR 383 (SC), the Hon'ble ITAT has jurisdiction to examine the question of law which has been taken before the ITAT for the first time though not taken before the first appellate authority.*

*3. a) The Ld. CIT(A) erred in confirming the disallowance of expenditure of Rs.85,56,088/- being 10% total expenditure of Rs.8,55,60,883/-*

*b) The Ld. CIT(A) ought to have accepted the net profit admitted at 9.29% of the total sales.*

*c) The Ld. CIT(A) ought to have appreciated that the net profit rate admitted in the return of income is reasonable and therefore, ought to have deleted the addition made of Rs.85,56,088/- .*

*d) The Ld. CIT(A) ought to have appreciated that if the amount of Rs.85,56,088/- is added to the net profit admitted it results in a net profit A: rate of 37.78% which is abnormal and which is not possible to be achieved in the line of trade of the appellant.*

*4. a) The Ld. CIT(A) ought to have appreciated that the disallowance of Rs.85,56,088/- made in the expenditure has resulted in abnormal increase in the net profit rate which has been done without rejecting the books of account of the appellant.*

*b) The Ld. CIT(A) ought to have deleted the disallowance made of Rs.85,56,088/- without rejecting the books of account which is crystal clear from the very assessment order.*

*c) The Ld. CIT(A) ought to have appreciated that the Assessing Officer erred in making the addition of Rs.85,56,088/- by disallowing 10% of total business expenditure without considering the facts of the case.*

*d) The Ld. CIT(A) ought to have appreciated that the assessee is maintaining regular books of account as required under Income Tax Act and are duly audited by a Chartered Accountant as required under provisions of Income Tax Act.*

*e) The Ld. CIT(A) ought to have appreciated that the addition of Rs.85,56,088/- has been made by the Assessing Officer by relying on the Andhra Pradesh High Court decision in the case of CIT vs. Transport Corporation India Limited which is with regard to the claim of a Secret Commission and which is distinguishable on facts of the appellant's case.*

*5. The Ld. CIT(A) ought to have appreciated the that the Assessing Officer erred in considering the total revenue of Rs.3,00,24,574/- which includes maintenance, rental and other income as total sales instead of actual sales of Rs.1,95,00,000/-*

*6. The Ld. CIT(A) ought to have appreciated that the Assessing Officer erred in making the addition of Rs.1,00,764/- under section 40(a)(ia) on account of non-deduction of TDS on some payments without appreciating the facts of the case.*

*7. The Ld. CIT(A) ought to have appreciated the fact that the assessee has already disallowed the expenditure on account of non-deduction of TDS in the computation of income.*

*8. Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated the fact that the assessee has not been treated as assessee in default u/s 201(1) of the Income Tax Act, 1961 and therefore, that the addition made u/s 40(a)(ia) is not in order.*

*9. The appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal."*

7. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in confirming the various additions made by the Assessing Officer. So far as the disallowance of Rs.1,00,764/- u/s 40(a)(ia) of the Act is concerned, the learned Counsel for the assessee submitted that the assessee has already disallowed the expenditure on account of non-deduction of TDS in the computation of income, therefore,

the learned CIT (A) not justified in confirming the disallowance made by the Assessing Officer which amounts to double disallowance.

7.1 So far as the order of the learned CIT (A) in sustaining the addition of Rs.85,56,088/- by the Assessing Officer is concerned, he submitted that the assessee has already declared the net profit of 9.2% and disallowance of Rs.85,56,088/- will result to a net profit rate of 37.8% which is abnormal and is not possible in this line of business undertaken by the assessee. He submitted that the disallowance made by the Assessing Officer and sustained by the learned CIT (A) is very much on the higher side and therefore, the same should be deleted.

8. The learned DR, on the other hand, strongly relied on the order of the learned CIT (A). Referring to the assessment order, he submitted that the assessee in the instant case failed to produce the bills and vouchers before the Assessing Officer for which the Assessing Officer disallowed 10% of the expenditure for which he has asked for the bills and vouchers. He submitted that the Assessing Officer is very reasonable in asking the bills and vouchers in respect of only three heads namely construction cost, maintenance expenditure and administrative overheads and has not asked for bills and vouchers in respect of other items. He submitted that since the order of the learned CIT (A) sustaining the addition of Rs.85,56,088/- is justified, therefore, the same should be upheld and the grounds raised by the assessee on this issue should be dismissed.

8.1 So far as disallowance of Rs.1,00,764/- for TDS violation is concerned, the learned DR submitted that the assessee never stated before the Assessing Officer and the CIT (A) that the assessee has suo moto disallowed such expenditure in the computation statement and now the assessee is saying that the assessee himself has disallowed the same. Therefore, he has no objection if the matter is restored to the file of the Assessing Officer for due verification.

9. The learned Counsel for the assessee, in his rejoinder, referring to Page No.46 of the Paper Book, drew the attention of the Bench to the computation statement of the total income and submitted that the assessee himself has disallowed an amount of Rs.132,828/- which includes the amount of Rs.1,00,764/-. Therefore, once the assessee filed the computation of income, the Assessing Officer and the CIT (A) are supposed to go through the same and the assessee should not be unnecessarily put to hardship because there is no fault on the part of the assessee.

10. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A)-NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made disallowance of Rs.85,56,088/- being 10% of expenditure of Rs.8,55,60,883/- on the ground that the assessee failed to discharge the onus cast on him by proving the genuineness of the expenditure debited. The Assessing Officer similarly made disallowance of Rs.1,00,764/- on the ground that the assessee failed to deduct TDS in respect of professional services and contractual charges totaling to

Rs.3,35,880/- and therefore, as per the provisions of section 40(a)(ia) of the Act, 30% of the expenditure has to be disallowed. We find the learned CIT (A) sustained both the addition made by the Assessing Officer. It is the submission of the learned Counsel for the assessee that the disallowance of Rs.85,56,088/- amounts to profit rate of 37.8% which is not possible in this line of business. It is his submission that the assessee has already declared 9.2% profit on the total sales and therefore, the addition of Rs.85,56,088/- is on the higher side. Similarly, the disallowance of Rs.1,00,764/- amounts to double addition since the assessee has already made suo moto disallowance in the computation of total income.

10.1 We find some force in the above arguments of the learned Counsel for the assessee. Admittedly, the assessee has declared 9.29% profit on the total sales and addition of Rs.85,56,088/- gives the profit rate of 37.8% which is not possible in this line of business. At the same time, by not providing the bills and vouchers before the Assessing Officer, the assessee has failed to prove the genuineness of the expenses debited. It is the settled proposition of law that for claiming any expenditure as allowable, the onus is always on the assessee to prove to the satisfaction of the Assessing Officer by furnishing bills and vouchers for such expenditure. However, the assessee in the instant case failed to furnish all the details before the Assessing Officer for which the disallowance of expenditure on estimate basis is justifiable. At the same, the disallowance of expenditure @ 10% of the expenditure in the instant case appears to be on the higher side since it gives a profit rate of 37.78% which is not possible in the line of business. Therefore, considering the totality

of the facts of the case and considering the fact that the assessee has already declared profit rate of 9.29%, the disallowance of Rs.10,00,000/- on lumpsum basis in the instant case, in our opinion, meet the ends of justice. We hold and direct accordingly. The grounds raised by the assessee on the first issue of disallowance of Rs.85,56,088/- is partly allowed.

11. So far as the 2<sup>nd</sup> issue raised by the assessee is concerned, i.e, disallowance of Rs.1,00,764/- being 30% of the expenditure of Rs.3,34,880/- (professional services Rs.2,50,000 + Contract charges of Rs.85,088/-), we find from perusal of the page No.46 of the Paper Book that the assessee in its computation of income has suo moto disallowed an amount of Rs.1,32,828/- which includes the amount of Rs.1,00,764/- disallowed by the Assessing Officer. We, therefore, deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the computation statement and after being satisfied, delete the addition. The 2<sup>nd</sup> issue raised by the assessee in the grounds of appeal is accordingly allowed for statistical purposes.

12. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 26<sup>th</sup> September, 2022.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
--	--

Hyderabad, dated 26<sup>th</sup> September, 2022.

**Vinodan/sps**

Copy to:

S.No	Addresses
1	Sri Zulfi Ravdjee C/o P. Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	ACIT, Circle 14(1) Hyderabad
3	CIT (A)-NFAC, Delhi
4	Pr. CIT-, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*