

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI S. RIFAUH RAHMAN, VICE PRESIDENT AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1973/Mum./2022
(Assessment Year : 2017-18)

Ajaipal Mangal & Co.
402, Giriraj Building
Sant Tukaram Road
Masjid (East), Mumbai 400 009
PAN – AAGFA5905Q

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-17(1), Mumbai

.....Respondent

Assessee by : Shri J.P. Bairagra
Revenue by : Shri Manoj Sinha

Date of Hearing – 06/10/2022

Date of Order – 12/10/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 14/06/2022, passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*'learned CIT(A)'*], for the assessment year 2017-18.

2. In this appeal, the assessee has raised following grounds:

"1. The learned CIT(A) erred in confirming the disallowance of Rs. 12,47,574/- being 10% of labor charges paid in cash.

2. The learned CIT(A) further erred in confirming the disallowance of Rs. 79,48,296/- being 10% of sub contract expenses paid.”

3. The issue arising in ground No. 1, raised in assessee's appeal, is pertaining to disallowance of 10% of labour charges paid by the assessee in cash.

4. The brief facts of the case, as emanating from the record, are: The assessee is a firm and is engaged in the business of construction of roads, small bridges, irrigation, etc. in remote areas. For the year under consideration, the assessee filed its return of income on 01/11/2017, declaring total income of Rs. 54,63,150. Assessee has shown to have income under the head income from business of engineers and contractors, construction of buildings, roads and such other business. During the course of assessment proceedings, upon perusal of profit and loss account it was observed that the assessee has claimed labour charges amounting to Rs. 1,24,75,743. Accordingly, the assessee was asked to submit party-wise labour charges details, payment proof, bank statement, labour charges register, vouchers etc. In reply, assessee submitted a list containing names of the labourers and labour charges paid to them in cash. The assessee also submitted that labour charges were paid for various work done on-site i.e. fabrication, shattering, pouring concrete, excavation of hard and soft top strata, steel bar binding, sand collection, metal breaking, etc. The Assessing Officer ('AO') vide order dated 25/12/2019, passed under section 143(3) of the Act disallowed 10% of labour charges paid in cash by the assessee, by observing as under:

"3.3 Assessee's above explanation has been considered. The assessee himself admitted that they have not kept proper records of time required, number of labour etc. From the list it may be seen that the assessee has submitted only names of the labourers to whom labour charges paid and amount paid in cash. Complete names, address, telephone no of the labourers, number of days labourers were employed, supporting vouchers alongwith Daily Labor Register, site address etc have not been submitted. In the absence of all these details, it is not possible for the AO to cross-examine the claim of labour charges of the assessee. Assessee's explanation is not supported by proper evidences. Further, as discussed above, the labour charges claim is not found to be verifiable in the absence of proper details etc as discussed in above Para. Therefore, considering the nature of business, quantum of labour expenses in cash and non submission, non compliance at various occasions, 10% of the labour charges paid in cash is disallowed and added to the total income of the assessee. Disallowance and addition on this account comes to Rs. 12,47,574/-. Penalty proceedings u/s. 270A of the Act are initiated separately."

5. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on this issue, by observing as under:

"10. In the facts and circumstances, I do not find the contention of the appellant genuine and bonafide. The appellant claimed labour expenses to the tune of Rs.1,24,75,743/- which is huge amount. Any business entity whose sole purpose is profit driven and doing business at a large scale would surely maintain the detail and voucher of above said expenditure or any other expenditure of such huge amount. More so, when even if working in remote areas, appellant is getting fabrication work, steel bar binding, etc. which involves handling of raw material, for which inventory monitoring is essential, so why labour expenses cannot be maintained is difficult to understand. The contention of the appellant firm that separate record could not maintained of the labour charges incurred at a scale of Crore/ Lakhs of rupees seems to be non genuine and in appropriate. Therefore, ground of appeal No. 1 of the appellant is dismissed."

Being aggrieved, the assessee is in appeal before us.

6. During the course of hearing, learned Authorised Representative ('learned AR') reiterated the submissions made before the lower authorities. The learned AR submitted that assessee is incurring these expenses since past 30 years of its business. The learned AR by referring to assessment orders for

assessment years 2012–13 to 2014–15 passed under section 143(3) of the Act submitted that no disallowance was made on this issue in these assessment years.

7. On the other hand, learned Departmental Representative (*'learned DR'*) vehemently relied upon the orders passed by the lower authorities and submitted that assessee is required to maintain some records particularly when it is in a continuous business since past so many years.

8. We have considered the rival submissions and perused the material available on record. In the present case, assessee has claimed to be in business of construction of roads, small bridges, irrigation, etc., in the remote areas, since past 30 years. As per the assessee, it takes the contract for construction from PWD, Central Railways, etc. During the year under consideration, assessee claimed labour charges amounting to Rs. 1,24,75,743. As per the assessee, these works are done by unskilled labour availed from nearby villages and for getting these work done, the assessee has to pay only cash in small amounts from time to time. Further, it is submitted that since these people are not having any establishment, therefore, their names and addresses, etc. are not available.

9. During the course of assessment proceedings, assessee filed list containing names of labourers and labour charges paid in cash, which forms part of the paper book from page No. 43 – 47. Apart from these details, no other information in the nature of daily labour register, vouchers, details

regarding duration of project etc. is brought on record. There is also no mention of the site at which each of these labours have worked for the assessee, during the year under consideration, for which charges in cash was paid by the assessee. We find that in assessment year 2015-16, the AO vide order dated 22/12/2017 passed under section 143 (3) of the Act disallowed 10% of labour charges incurred by the assessee in cash. In further appeal, learned CIT(A) vide order dated 13/05/2019 granted partial relief to the assessee and restricted the disallowance to 5% of labour charges incurred in cash. During the course of hearing, it was agreed by both the sides that no further appeal has been preferred against the aforesaid order of learned CIT(A) and the disallowance at 5% of labour charges has been accepted. Since, in the present case neither assessee could provide complete details in support of its claim nor Revenue treated the entire payment to be bogus, therefore, we deem it appropriate to restrict the disallowance of labour charges paid in cash to 5%. We order accordingly. As a result, ground No. 1 raised in assessee's appeal is partly allowed.

10. The issue arising in ground No. 2, raised in assessee's appeal, is pertaining to disallowance of sub-contract expenses.

11. The brief facts of the case, as emanating from the record, are: During the assessment proceedings, upon perusal of profit and loss account it was noticed that assessee has debited sub-contract charges amounting to Rs. 7,94,82,965. Accordingly, the assessee was asked to furnish party-wise details

of sub-contract expenses, bank statement highlighting payments to sub-contractors, TDS, copy of agreements entered with the sub-contractors. In response, assessee submitted a list of PAN, sub-contract amount and details of tax deducted at source. The AO vide order passed under section 143(3) of the Act disallowed 10% of sub-contract expenses, by observing as under:

"Thus, from the list it may be seen that the assessee has submitted only PANs, sub-contract amount and TDS in respect of sub contractors. Complete names, address, telephone no of the sub contractors, nature of work carried out by them with evidence, supporting bills, work orders, agreements between the assessee and the sub contractors etc have not been submitted. In the absence of all these details, it is not possible for the AO to cross-examine the claim of sub contract payments. It is seen that the explanation of the assessee is not supported by proper evidences. No proof for TDS. Further, as discussed above, the sub contract payments are not found to be verifiable in the absence of proper details etc as discussed in above Para. Therefore, considering the nature of business, quantum of sub contract expenses claimed, and facts of the facts, 10% of the sub contract expenses is disallowed and added to the total income of the assessee. Disallowance and addition on this account comes to Rs.79,48,296/-. Penalty proceedings u/s. 270A of the Act, are initiated separately.

12. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on this issue, by observing as under:

"14. The appellant has neither provided details during assessment proceedings nor at appellate proceedings complete names, addresses, telephone numbers, nature of work carried out by them with evidences, supporting bills and agreement before the appellant and the sub contractors. On these circumstances and lack of evidence, genuineness of the transactions could not be verified. Regarding the fact that similar issue was accepted in earlier years, reliance is placed on Hon'ble Supreme Court's decision in the case of Instalment Supply (Pvt.) Ltd. & Radhasoami Satsang Vyas, wherein it has been held that each assessment year is a separate unit. Decision in one year may not carry forward and hold for a subsequent year, thus the appellant's plea is not accepted.

Further, in the case of CIT vs. SPL Infrastructure Pvt. Ltd. (Hon'ble Madras High Court) TCA No. 766 of 2017 dated 07.08.2020, 10% disallowance of expenditure towards sub-contract for want of proper bills restricted by the Ld. CIT(A), as against 100% disallowance made by the AO, was held justified.

Therefore, considering the nature of business and the huge amount of expenditure claimed in crores of rupees, I do not find the contention of the appellant bonafide. It is held that the AO has reasonably made the addition of Rs.79,48,296/- Therefore, Ground of appeal No. 2 of the appellant is dismissed."

Being aggrieved, the assessee is in appeal before us.

13. During the course of hearing, learned AR by reiterating the submissions made before the lower authorities submitted that all the payments were made through cheque and TDS was also deducted. On the other hand, learned DR vehemently relied upon the orders passed by the lower authorities.

14. We have considered the rival submissions and perused the material available on record. In the present case, in response to queries raised by the AO, assessee furnished details of sub-contract expenses, wherein assessee provided PAN, sub-contracted amount and TDS amount paid. These details forms part of the paper book from page 48 – 49. Despite these details being furnished, the AO insisted that the assessee has not provided complete names, address, telephone No. of the sub-contractors, nature of work carried out by them with evidence, supporting bills, work orders, agreement between assessee and the sub-contractors, etc. From the record it is evident that even after receipt of PAN details of the parties, to whom sub-contract amount was paid by the assessee and TDS being deducted, no further action was taken by the AO either by issuing notice under section 133 (6) of the Act or by issuing summons under section 131 of the Act to these parties, in order to determine the veracity of assessee's claim. It is also evident that the AO has also not

cross verified the details of TDS amount furnished by the assessee from the record available with the Department. Once the PAN of the parties to whom sub-contract amount has been paid was available with the AO, all the basic details as sought from the assessee could have been easily traceable from the data available with the Department. However, no such efforts by the AO are evident from record. Therefore, in view of the above, we find no merits in sustaining the addition of even 10% of sub-contract expenses claimed by the assessee. Accordingly, we direct the AO to delete the impugned addition of 10% of sub-contract expenses claimed by the assessee. As a result, ground No. 2 raised in assessee's appeal is allowed.

15. In the result, appeal by the assessee is partly allowed.

Order pronounced in the open Court on 12/10/2022

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED:

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai