

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.548/Del./2018
Assessment Year 2013-2014

M/s. NSBP Company [Formerly known as M/s. KSMN & Company], Chartered Accountants, 137, Tribhuvan Complex, Ishwar Nagar, Mathura Road, New Delhi – 110 065 PAN AAIFK7757L	vs.	The ACIT, Circle-61(1), Civic Centre, New Delhi.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri J.S. Minhas, CIT-DR

Date of Hearing :	31.10.2022
Date of Pronouncement :	31.10.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the Assessee is directed against the Order of the Ld. CIT(A)-20, New Delhi, dated 23.11.2017 in Appeal No.10360/2016-17, relating to the A.Y. 2013-2014.

2. Briefly stated facts of the case are that the assessee is a Chartered Accountant Firm who filed its return of income for the A.Y. 2013-14 on 31.03.2014 declaring a total income of Rs.57,34,580/-. The case was selected scrutiny. Thereafter, assessment was framed by the A.O. under section 143(3) vide order dated 22.03.2016 for the A.Y. 2013-14, determining the total income of assessee at Rs.59,81,970/-.

2.1. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 23.11.2017 granted partial relief to the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before the Tribunal and has raised the following effective grounds :

1. *Ld. CIT(A) has erred both in law and on facts in confirming the order of Ld. AO in making disallowance of amount of stale cheques appearing as outstanding towards Other Creditors amounting to Rs.27,252/-.*

2. *Ld. CIT(A) has erred both in law and on facts in confirming the order of Ld. AO in treating 10% as element of personal nature in the following expenses and making disallowance on adhoc basis:*

2.1. *Disallowing Rs.1,21,694/-out of ‘Car Repair and Maintenance Expenses’ of Rs.12,16,941/-.*

2.2. *Disallowing Rs.20,374/- out of ‘Communication Expense’ of Rs.2,03,743/-.”*

4. On the date of hearing none appeared on behalf of the assessee nor any adjournment application was filed despite the fact that the notice of hearing was issued to the assessee through speed post which has been returned unserved. Preferring an appeal does not mean merely only formally filing it, but, also taking all the steps to effectively pursue the appeal. We are of the view that it is the duty of the assessee to furnish new/change of address, if any, by filing the revised Form No.36 in the Registry of the Tribunal so that the notice could be sent to the correct address. Since the assessee has failed to furnish new/change of address, if any, therefore, we had no option, except to

dispose of the appeal *ex-parte qua* the assessee, after hearing the Ld. D.R. We, therefore, proceed to dispose of the appeal *ex parte qua* the assessee, after considering the submissions of Learned DR and the material on record.

5. Grounds of appeal no.1 is with respect to disallowance of Rs.27,252/-. During the course of assessment proceedings, the A.O. noted that Rs.27,252/- was appearing under the head "Other Creditors" in the Balance Sheet. The assessee was asked to show case as to why the same be not disallowed, to which, the assessee, *inter alia*, submitted that it relates to the cheque issued to the creditors, but, not presented by them to the Bank. The submission of the assessee was not found acceptable to A.O. as he noted that assessee was following cash system of accounting. He, therefore, disallowed Rs.27,252/- .

5.1. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who upheld the order of A.O. by observing as under :

“4.4.3. The contention of the Assessing Officer and the submission of the appellant has been considered. In the paper book the details of stale cheques were given and it is found that on 31st January 2013 the amount of Rs.12,000/- and on 31st March, 2013 the amount of Rs.13,360/- was reversed with the narration of 'being amount of above cheques became stale now reversed'. In this light, I find merit in the contention of the Assessing Officer that when the appellant is following cash system of accounting how the amount of Rs.27,252/- which is on account of cheque issued but not cleared was shown under the head 'other creditors'. As the appellant has already debited this amount earlier now when there is no liability to pay this amount this has to be credited in the P & L a/c when the entry of cheque is reversed. Since, the appellant is maintaining cash system of accounting, it can be claimed in the P & L A/c only when it is paid. In this light, the addition made by the Assessing Officer of Rs.27,252/- is confirmed”.

6. Before us, the Ld. D.R. took us through the findings of the lower authorities and supported their orders.

7. We have heard the Ld. D.R. and perused the material available on record. We find that the Ld. CIT(A) after considering the details submitted by the assessee and for the reasons noted in the order has upheld the disallowance made by A.O. Before us, no fallacy in the findings of the Ld. CIT(A) has been pointed out by assessee nor has it placed any material on record to support its case. We, therefore, find no reason to interfere with the orders of the Ld. CIT(A) on this ground. Thus, the **ground of appeal of no.1 of the assessee is dismissed.**

8. Grounds of appeal Nos.2 to 2.2 are with respect to adhoc disallowance of Rs.12,16,941/- out of 'Car Repair and Maintenance Expenses' and Rs.20,374/- out of 'Communication Expenses'.

9. During the course of assessment proceedings, the A.O. noted that assessee had claimed Rs.12,16,941/- under the head 'Car Repair and Maintenance Expenses' and

Rs.2,03,743/- under the head 'Communication Expenses' in its P & L A/c. Since the personal element of these expenses cannot be ruled out and in absence of details filed by the assessee, the A.O. disallowed 10% of these expenses which comes to Rs.1,21,694/- and Rs.20,374/- respectively and added the said amounts back to the income of the assessee. When the assessee carried the matter in appeal before the Ld. CIT(A), he upheld the disallowance by observing as under :

“5.3.2. The Assessing Officer has also made the disallowance of Rs.1,21,694/- under the head 'car repair and maintenance expenses' and of Rs.20,374/- under the head 'communication expense' which is @10% of the expenses claimed on the ground of personal element. During the course of appellate proceedings, the appellant has challenged these additions and relied upon the decision of Ld. CIT(A) in Appeal no. 186/2014-15 order dated 15.03.2016 where the CIT(A) has given relief in para 7.3 & 7.8 of the order.

During the course of appellate proceedings, the Ld. AR was asked to submit the details of telephone and vehicle with RC to substantiate that partners are having separate telephone/mobile phones and vehicles for exclusive personal use which are not used in the business of the appellant. This was recorded in the order sheet dated 09.08.2017 and the case was adjourned to 23.08.2017. On 23th August, the Ld. AR appeared and asked some more time to furnish the details which was granted and the case was adjourned to 20.09.2017. However, again on 20.09.2017 the time petition was filed on the ground that due to sudden death in the family of the Ld. counsel it was not possible to appear. The time was again granted and the case was adjourned to 14.11.2017 i.e. giving more than two months to furnish these details. However, again on 14.11.2017 the Ld. AR has filed a time petition on the ground that he is unable to attend the hearing due to viral fever. This time petition was rejected and duly communicated to the person who came to file this time

petition. It is strange that this case was being adjourned since August 2017 only to show the RC of the vehicle and details of the telephone expenses in support of the claim of the appellant that there is no personal element in the expenses claimed under these heads. This was also clarified to the Ld. A.R. that the details could be filed on e-mail also duly mentioned in the notice as this is an electronic appeal and 'notices were also served on e-mail of the appellant. From this, it is apparent that there are no separate vehicles and telephones/mobile phones for exclusive personal use of the partners. As the partners are not having separate vehicles or telephone/mobile phone, the observations of the Assessing Officer that 'the personal element cannot be ruled' appears correct. Since, during the appellate proceedings also the opportunity could not be availed by the appellant, I do not find any reason to interfere in the decision of the Assessing Officer and the additions of Rs.1,21,694/- under the head 'car repair and

maintenance expenses' and of Rs.20,374/- under the head 'communication expense' are confirmed”.

10. Aggrieved by the order of Ld. CIT(A), the assessee is now in appeal before us.

11. Before us, the Ld. D.R. took us through the findings of the lower authorities and supported their orders.

12. We have heard the Ld. D.R. and perused the material available on record. We find that the Ld. CIT(A) after considering the details submitted by the assessee and for the reasons noted in the order has upheld the disallowances made by A.O. Before us, no fallacy in the findings has been pointed out by assessee nor has he placed any material on record to support its case. We, therefore, find no reason to interfere with the orders of the lower authorities on this ground. Thus, the **ground of appeal of nos.2 to 2.2 of the assessee are dismissed.**

13. In the result, **appeal of the Assessee is dismissed.**

Order pronounced in the open Court on 31.10.2022.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 31st October, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.