

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

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2062/MUM/2022
(Assessment Year: 2012-13)

Sandeep Shukla,
Flat No. A-200, 2nd Floor,
Green Tower, CHSL, Gillbert Lane,
Andheri, Mumbai - 400053 Appellant
[PAN: BJDPS4569M]

Vs

ITO Ward 2(4), Thane,
Asher IT Park, 6th Floor, Road No. 16 Z,
Wagle Industrial Estate, Thane (West), Respondent
Thane- 400604, Maharashtra

Appearances

For the Appellant/Assessee : Shri Bharat Kumar
For the Respondent/Department : Shri Sanyam Suresh Joshi

Date of conclusion of hearing : 11.10.2022
Date of pronouncement of order : 28.10.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 28.06.2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [hereinafter referred to as 'the CIT(A)'] for the Assessment Years 2012-13, whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 24.03.2015 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Revenue has raised the following grounds of appeals:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition made

by the Ld. A.O. of Rs. 43,444/- on account of adhoc expenses i.e. 10% of expenses.

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming addition u/s 68 of Rs. 56,94,580/-“*

Ground No. 1

3. The facts, in brief, relevant to adjudication of Ground No. 1 are that the Appellant is an individual engaged in the business of collecting toll and parking charges as per contracts awarded to him under proprietorship concern (i.e. M/s Ashutosh Enterprises). The Appellant filed return of income on 29.09.2014 declaring total income of INR 9,25,910/-. The case of the Appellant was selected for scrutiny and assessment. During the assessment proceedings the Assessing Officer noted that the Appellant had debited to Profit & Loss Account Expenses aggregating to INR 4,34,439/- consisted of Conveyance Expenses (INR 2,81,463/-), Sundry Expenses (INR 28,142/-), Staff Welfare Expenses (INR 21,643/-), Telephone Expenses (INR 34,827/-) and Printing & Stationery Expenses (INR 68,364/-). The Assessing Officer disallowed INR 1,30,332/- being 30% of the Expenses vide order, dated 24.03.2015, passed under Section 143(3) of the Act.
4. In appeal preferred by the Appellant against the Assessment Order dated 24.03.2015 the CIT(A) reduced the disallowance from 30% to 10% vide order, dated 28.06.2022.
5. Not being satisfied, the Appellant has preferred the present appeal.

6. The Ld. Authorised Representative for the Appellant placed on record copy of common order, dated 30.09.2022, whereby the appeals preferred by the Appellant for the Assessment Years 2013-14 and 2014-15 were disposed off by the Tribunal holding that disallowance at the rate of 5% would be reasonable given the facts and circumstances of the case. He submitted that in view of the aforesaid decision of the Tribunal, the present appeal be allowed since the facts and circumstances are identical. Per contra, the Ld. Departmental Representative relied upon the assessment order wherein disallowance was made at the rate of 30%. He submitted that sufficient relief in this regard has already been granted by the CIT(A).
7. We have considered the rival submissions and perused the material on record including the aforesaid decision of the Tribunal for the Assessment Years 2013-14 and 2014-15 passed in the appeals preferred by the Appellant [ITA No. 2063&2064/Mum/2022, pronounced on 30.09.2022] the relevant extract of which read as under:-

“10. Aggrieved, assessee filed an appeal before ITAT raising following grounds in its appeal: -

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred confirming the addition made by Ld. A.O. of Rs. 36,13,648/- on account of adhoc expenses i.e. 10% of Expenses.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred confirming the addition made by Ld. A.O. of Rs. 10,82,217/- on account of adhoc expenses i.e. 10% of various Expenses.

3. The assessee craves leave to add, alter or amend the existing grounds of appeal on or before the date of hearing.”

11. Ld. Counsel for the assessee reiterated the submissions made before Ld.CIT(A) and submitted that the addition made by the Ld.CIT(A) is on higher side, thus requested to reduce the same. Ld. Counsel for the assessee relying on the decision of the Coordinate Bench in assessee's sister concern in ITA.No. 5592 & 5593/Mum/2018 dated 02.05.2019 submitted that Coordinate Bench has estimate the profit rate at the rate of 3% which is engaged in the same industry and prayed that the same may be adopted.

12. Ld. DR relied on the orders of the Authorities below.

13. Considered the rival submissions and material placed on record. It is observed in assessee's sister concern case in ITA.No. 5592 & 5593/Mum/2018 dated 02.05.2019 in which the Coordinate Bench held as under: -

"34. We note that Ld. CIT(A) has found that the addition was to be limited to a fair estimate. The Ld. CIT(A) examined the profit ratio disclosed by the assessee and that in other units in the business. Thereafter, Ld. CIT(A) also noted that in the alternative contention that the assessee has offered 3% profit for taxation. Ld. CIT(A) on consideration of the overall facts made an estimate of profit at the rate of 5% of the turnover.

35. Now in this regard assessee is in appeal before us that the addition of estimate of profit made by the Ld. CIT(A) is on higher side and Revenue has also filed appeal against the Ld. CIT(A)'s order.

36. Upon careful consideration we note that the facts and circumstances of the average profit of the assessee for the period A.Y. 2009-10 to 2013-14 is as under:

A.Y.	Profit %
2009-10	1.78
2010-11	1.71
2011-12	2.53
2012-13	2.18
2013-14	1.90

The average of the profit of other two units in the same industry are 1.86% and 3.7% respectively. In these

circumstances in our opinion the estimate of profit at the rate of 3% offered by the assessee before Ld. CIT(A) served the interest of justice. We also note that rate of profit is a matter of fact and it has been so admitted by the assessee before Ld. CIT(A). We direct accordingly."

14. Respectfully following the above decision and considering the similar facts on record, we are inclined to accept the fact that the profit is around 3%. However, the whole expenses including the salary and wages were incurred only in cash, it is difficult to cross verify the same. Considering the overall facts on record we deem it fit to direct Assessing Officer to disallow 5% of the expenses as reasonable. Therefore, the appeal filed by the assessee is partly allowed.

15. Coming to the appeal in ITA.No. 2064/Mum/2022 for the A.Y.2014-15, since facts in this appeal are mutatis mutandis, therefore the decision taken in ITA.No. 2063/Mum/2022 for the A.Y. 2013-14 is applicable mutatis mutandis to this appeal also. Accordingly, the appeal filed by the assessee is partly allowed.

16. In the result, appeals filed by the assessee are partly allowed."

On perusal of above, it is clear that in identical facts and circumstances the Tribunal had reduced the rate of disallowance of expenses to 5% from 10% in appeals filed by the Appellant for the Assessment Year 2013-14 and 2014-15.

8. In the present case, the Assessing Officer made adhoc disallowance of 30% which was reduced to 10% by the CIT(A). The Tribunal has, in the identical facts and circumstances, in appeals preferred by the Appellant for the assessment years succeeding the assessment year before us has accepted the rate of 5% as being reasonable for determination of the quantum of disallowance. We find no reason to depart from the view so taken by the Tribunal and accordingly, restrict the disallowance to 5% of INR 4,34,439/-. Ground No. 1 raised by the Appellant is partly allowed.

- Ground No. 2
9. When the appeal was taken up for hearing, the Ld. Authorised Representative for the Appellant submitted that he would not be pressing Ground No. 2 raised in the present appeal, accordingly, the same is disposed off as being not pressed.
10. In the result, the present appeal by the Appellant is partly allowed.

Order pronounced on 28.10.2022.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.10.2022
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai