

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पणजी में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PANAJI

(Through Virtual Court)

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.148/PAN/2019  
निर्धारण वर्ष / Assessment Year : 2011-12

Vivek Ganpat Kerkar,  
Mangaurish, Near Sateri Temple,  
Mapusa – 403507

PAN : ABAPV1384M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

ACIT, Circle – 2(1),  
Panaji Goa

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.J. Kamat  
Revenue by : Shri N. Shrikanth

सुनवाई की तारीख / Date of Hearing : 10-11-2022  
घोषणा की तारीख / Date of Pronouncement : 17-11-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 11-02-2019 passed by the Commissioner of Income Tax (Appeals)-1, Panaji [‘CIT(A)’] for assessment year 2011-12.

2. Ground No. 1 raised by the assessee challenging the action of CIT(A) in sustaining the disallowance of Rs.2,85,938/- on account of personal use of vehicles.

3. I note that during the course of assessment proceedings, the AO noticed that the assessee incurred expenditure in his books relating to vehicle repairs and maintenance, petrol, diesel, depreciation on motor car and motor cycles to the extent of Rs.14,29,690/-. The AO asked the assessee to explain why 20% of the aforesaid expenditure should not be disallowed as personal expenses. I note that the assessee submitted its explanation vide letter dated 12-02-2014 and requested to the AO to make an appropriate inference taking into account the scale of operations of the assessee and its turnover and the motor cars are used wholly and exclusively for the purpose of business. The AO found the submissions of assessee as not acceptable and proceeded to disallow Rs.2,85,938/- being 20% of total expenses of Rs.14,29,690/-. The CIT(A) confirmed the same vide para 7 of the impugned order. The CIT(A) observed that no books of account were maintained by the assessee and there is chance of personal use of vehicles. The ld. AR argued by referring to para 5 of the AO's order that all the expenditure incurred towards exclusively for the purpose of business of assessee and in case any disallowance is to be made that should be restricted to Rs.61,082/-. The ld. DR supported the order of CIT(A) for the reasons no evidence brought on record by the assessee to show that no personal use effected and were used wholly and exclusively for the purpose of assessee's business. On perusal of the impugned order along with the order of AO, I find that no basis were made out to make

disallowance on estimation basis. The AO did not record any reasons for adopting estimation for the said disallowance. I note that the AO proceeded to ask the assessee to explain why 20% of total expenses with regard to vehicles should not be disallowed is, in my opinion, not justified. The assessee offered its explanation stating that the entire expenditure were incurred only for the purpose of its business and also requested the AO to appreciate the quantum of business and turnover while making the disallowance, but however, the AO did not consider the same and also the CIT(A) as well. Therefore, the disallowance made on estimation basis is not justified, but however, as fairly conceded by the ld. AR the disallowance is restricted to Rs.61.082/-. Accordingly, ground No. 1 raised by the assessee is partly allowed.

4. Ground No. 2 raised by the assessee challenging the action of CIT(A) in sustaining the disallowance of Rs.39,782/- u/s. 41(1) of the Act.

5. During the course of assessment proceedings, the AO found that the credit balance of Rs.39,782/- of R.K. Furnaces (Z). The ld. AR submits that the owner of R.K. Furnaces is uncle of assessee and the credit balance as a result of family disputes. The said balance is taken over from the erstwhile proprietary firm of the assessee and will be settled with other family settlements. Further, he submits the same arguments reiterated before the CIT(A), but however, on finding that the said credit balance is outstanding for long period of time of 10 years, confirmed the order of AO. The ld. AR submits that the liability has not been ceased and no steps have been carried out in this regard. Having no submission brought on record

contrary to the finding of CIT(A), I find no infirmity in the order of CIT(A) and it is justified. Thus, ground No. 2 raised by the assessee is dismissed.

6. Ground No. 3 raised by the assessee challenging the action of CIT(A) in sustaining the disallowance of Rs.3,17,490/- on account of credit balance of M/s. Vinsura Winery Pvt. Ltd.

7. The AO found that the credit in the books of the assessee, for not furnishing confirmation from M/s. Vinsura Winery Pvt. Ltd., added the said amount to the total income of the assessee. A submission was made before the CIT(A) regarding the genuineness of the said credit balance. According to the ld. AR that the credit balance as on 31-03-2011 is Rs.3,17,490/- and subsequently as on 31-03-2014 is only Rs.11,433/-. The ld. AR argued the said reduction in credit balance clearly shows the correctness of the transactions between the assessee and the said M/s. Vinsura Winery Pvt. Ltd., the AO and CIT(A) should have considered the credit balance as genuine. I note that the assessee furnished the ledger account of its creditors in the books of the assessee before the AO along with bills, delivery challans, transportation documents, excise passes, TCS, bank payments, sales promotion credit and debit notes. The AO did not find any adverse to all the said documentary evidences. Further, the assessee has shown the credit balance as on 31-03-2014 is only Rs.11,433/- which clearly shows the credit balance of M/s. Vinsura Winery Pvt. Ltd. reduced from Rs.3,17,490/- as on 31-03-2011. The AO and CIT(A) did not find any adverse remarks on the material evidences furnished and only for non-submissions of confirmation from the party the

addition has been confirmed by the CIT(A). The Id. DR did not dispute the reduction of credit balance as on 31-03-2014 as it is appearing from the accounts of assessee. Therefore, no addition is warranted. Thus, ground No. 3 raised by the assessee is allowed.

8. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 17<sup>th</sup> November, 2022.

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17<sup>th</sup> November, 2022.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Panaji
4. The Pr. CIT, Panaji
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पणजी,  
/ DR, ITAT, Panaji.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune