

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No. 727/SRT/2018

निर्धारणवर्ष/Assessment Year: (2012-13)

(Physical Court Hearing)

The ACIT, Valsad Circle, Valsad.	Vs.	Sheel Engineers, 14, BCDA Shopping Centre-5, Morarji Desai Road, Valsad-396001.
(Assessee)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAJFS5915R		

Assessee by	Shri Suresh K. Kabra, CA
Respondent by	Shri Ashok B. Koli, CIT-DR
Date of Hearing	24/11/2022
Date of Pronouncement	19/12/2022

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Valsad [in short “the ld.CIT(A)”], in Appeal No. CIT(A)/VLS/704/17-18/1067, dated 28.09.2018, which in turn arises out of an order passed by the assessing officer, under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 29.12.2017.

2. The grounds of appeal raised by the Revenue are as follows:

“i) Whether on the fact and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,48,20,237/- by ignoring the facts narrated by this office in order u/s 263 of the IT Act and assessing officer in assessment order under question.

ii) Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.3,48,20,237/- without remanding back the issue to the assessing officer, if he wants further verification on the above matter.

iii) *Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) has erred in law by accepting the assessee's claim regarding destruction of bills and vouchers of various expenses in the July 2016 flood by without considering the facts that the bills and vouchers for F.Y. 2013-14 and F.Y. 2014-15 were produced by the assessee during the assessments proceedings for A.Y. 2014-15 and A.Y. 2015-16 respectively, if bill and vouchers for F.Y. 2013-14 and F.Y. 2014-15 would also have been damaged during the flood but the bill and vouchers only for F.Y. 2011-12 were destroyed.*

iv) *Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee without considering the facts that the assessee did not prove the claim of expenses of Rs.3,48,20,237/- with documentary evidences such as bills and vouchers. The onus is on the assessee to prove the genuineness of the expenses claimed with supply evidences such as bills and vouchers etc. and it can't shift its onus on the assessing officer by asking to verify the same from the parties concerned.*

v) *It is prayed to quash the order of the Ld.CIT(A) and restore the order of the assessing officer.*

vi) *The revenue reserves the right to add/alter/withdraw/modify any ground at the time of regular hearing."*

3. Brief facts of the issue in dispute are stated as under. During the assessment proceedings, the assessee was asked to furnish the bills and vouchers of expenses debited to Profit and Loss account. However, no such bills and voucher were produced by the assessee. Further during the course of revision proceedings u/s 263 of the Act, the assessee has not submitted the following bills for verification.

i) Labour Charges	Rs.3,01,06,893/-
ii) Carting Charges	Rs. 11,44,736/-
iii) Repair and Maintenance	Rs. 14,54,124/-
iv) Repair and Maintenance(Petty cash)	Rs. 5,51,214/-
v) Hire Charges	<u>Rs. 15,63,270/-</u>

Therefore, during the assessment proceedings, the assessee was asked to explain as to why the above, expenses for which no bills were provided during 263 proceedings and also not provided before assessment proceedings, should not be disallowed.

4. In response to the show cause notice, the assessee submitted written submissions before assessing officer, vide letter dated 28/12/2017, which is reproduced as under:

"We refer to the personal discussion we had in connection with the assessment proceedings in process in respect of the revision proceedings completed u/s 263 of the Act in case of our above named client for assessment year under reference.

During the course of discussion, we were asked as to why not an amount of missing bills of purchases and certain construction expenses be added back to the total income of the assessee. As appraised to you and repeatedly explained to you during the course of assessment proceedings that due to the under stated reasons the proposed addition is not called for, unwarranted and unjustified. Since during the revision proceedings, we had informed the Hon'ble Pr. CIT, Valsad that due to heavy flood in July, 2016 the accounting records of the assessee were destroyed and therefore we could not produce certain bills which could be saved. We have submitted to you a copy of letter dtd. 27th instant wherein the said fact was reiterated and a PANCHNAMA was also furnished in support of our claim. You may appreciate that the circumstances stated herein above are beyond the control of the assessee and may be considered positively.

2. As stated and explained to you, we had furnished all the details along with the copy of account of each of the service providers wherein the name, addresses, amount etc. were furnished.

3. Kindly recall that we had requested you to verify the same from your end issuing notice u/s 133(6) of the Act as we still claim that the expenditure claimed were genuine.

4. On a perusal of the copy of accounts of the expenses etc, you must have noticed that the assessee has made payments through CROSSED ACCOUNT PAYEE CHEQUES which further proves that the assessee has no motive of whatsoever to claim non-genuine expenditure.

5. We have also stated that in case of certain expenses TDS was also deducted (where ever applicable) which ultimately identifies the beneficiary of the said amount and further strengthen our claim of genuineness of expenditure.

6. In addition to all the above facts, we are pleased to enclose herewith a detailed chart of Gross Profit and Net Profit analysis for four years wherein you may notice that the assessee has shown higher Net Profit than that of stipulated % under the respective provisions of the Act in case of an assessee engaged in the business of Civil Industrial Construction which is highly an unorganized sector. This fact may also be considered

7. Last but not the least, we would like to inform you that the assessment of the assessee were finalized u/s 143(3) of the Act for the assessment year under

reference and some other years wherein the book results of the assessee were accepted by your office.

8. In view of the foregoing submission, we would earnestly request you to kindly not to add back the gross expenses just for the sake of missing bills/the bills which could not be produced before you and oblige".

5. However, assessing officer rejected the explanation offered by the assessee and held that assessee did not prove the claim of above expenses with primary documentary evidences, such as bills and vouchers, thus, the expenses claimed of Rs.3,48,20,237/- were disallowed.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by Assessing Officer observing that payments were made by assessee through crossed account payee cheques, and TDS were deducted wherever applicable and assessee's net profit ratio and gross profit ratio did not show major changes.

7. Aggrieved, the assessee is in appeal before us.

8. The Learned Departmental Representative (Id. DR) for the Revenue submitted that assessee has neither submitted bills and vouchers before the assessing officer nor before Id CIT(A). The Id DR stated that without bills and vouchers, the scrutiny assessment is not completed, therefore the matter may be remitted back to the file of the Assessing Officer for fresh adjudication with the direction to the assessee to submit bills and vouchers. Alternatively, Id. DR also argued that since the assessee did not produce bills and vouchers and did not produce the parties also, before the Assessing Officer, therefore a reasonable expenses at the rate of 20% of Rs.3,48,20,237/- may be disallowed.

9. On the other hand, Shri Suresh K. Kabra, Learned Counsel for the assessee pleads that due to flood (heavy rain in Valsad) on 02.08.2016, the bills and Vouchers were destroyed in the flood, therefore assessee could not submit the bills, vouchers before the Assessing Officer. To substantiate this, the assessee has submitted the proof of the flood, "a declaration before Circle Officer", Valsad on 10.08.2016, with regard to damage of documents in flood,

which is placed at page no.55 of the paper book. The assessee also submitted the panchnama drawn by PANCH before Circle Officer, Valsad dated 10.08.2016 with regard to destruction of documents during flood, which is placed at page no.56 of the paper book. The assessee also submits the photos of destroyed files in flood, which is placed at page no.57 to 60 of the paper book. Therefore, Learned Counsel contended that it was not possible for the assessee to submit the bills and vouchers before the Assessing Officer. However, since the payment has been made by cheque and TDS has been deducted at appropriate places, therefore addition should not be made and it should be deleted.

10. The Learned Counsel also submitted comparative chart of Gross Profit and Net Profit Ratio which is placed at page no. 1 to 2 of the paper book. The assessee also submitted ledger account of labour charges which is placed at page nos.3 to 14 of the paper book, details of expenses disallowed, out of labour charges which is placed at page nos.15 to 16 of the paper book. The ledger account copy of carting expenses, which is placed at page nos.17 to 22 of the paper book. The details of expenses disallowed out of carting expenses, which is placed at page no.23 of the paper book. The ledger account copy of repairs and maintenance was submitted, which is placed at page nos. 24 to 43 of the paper book. The details of expenses disallowed out of repairs and maintenance was submitted, which is placed at page nos.44 to 46 of the paper book. The ledger account copy of hire charges, was submitted by the assessee, which is placed at page nos.47 to 50 of the paper book. Based on these documents, the Learned Counsel contended that GP ratio and Net Profit ratios were examined by Id CIT(A) with reference to expenses claimed by assessee in profit and loss account. Therefore, the addition has rightly been deleted by the Id. CIT(A).

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that assessee

without producing the bills and vouchers, in support of the expenses mentioned above, it has contended that bills and vouchers are not available and the same are destroyed during the floods, however, the payment were made through crossed /account payees cheque and therefore, genuineness of the expenses should not be doubted because of non-availability of bills. Further, the assessee has also requested the assessing officer to call for information u/s 133(6) of the IT Act from all parties and verify the genuineness of these expenses, however assessing officer has failed to do so. The assessee has challenged the disallowance of Rs.3,48,20,237/- before Id CIT(A), pertaining to labour charges, carting charges, repairs and maintenance and hire charges. We note that assessing officer has given reasons to disallow Rs.3,48,20,237/- debited in the Profit and Loss account stating that bills and vouchers of expenses debited in the Profit and Loss account pertaining to labour charges, carting charges, repairs and maintenance and hire charges were not produced for verification. We note that assessee's request for verification of these expenses through notice u/s 133(6) was turned down by the assessing officer on the ground that the onus is being shifted on assessing officer where as it is assessee who has to prove his claim for expenses.

12. The Id Counsel pleads before us that bills and vouchers of various expenses were destroyed in the July 2016 floods and copy of panchnama was filed to support this claim. The details of names, address and amount paid were furnished to the assessing officer and enquiry could have been conducted u/s 133(6) of the Act by assessing officer to ascertain the truth, which he has failed to do so. The assessee claimed that the copy of accounts of expenses furnished to the assessing officer indicated that payments were made by crossed account payee cheque. It was also stated that the TDS was deducted on expenses wherever applicable. Which ultimately identified the beneficiary of the amount paid and strengthened the genuineness of expenditure. We note that Id Counsel submitted before us the Gross Profit (GP) and Net Profit (NP) chart and argued

that GP and NP did not indicate any anomaly in current assessment years as compared to earlier years, therefore Id CIT(A) has rightly deleted the addition.

13. We note that during the appellate proceedings, the Id CIT(A) had gone through the GP, NP chart, which are indicating the percentage of major expenses over turnover and it is observed that labour charges for current assessment year is 20.49 % of the turnover as compared to labour charges of 21.60% of the turnover in immediately preceding assessment year 2011-12. Similarly, all other major expenses did not show any major deviation when compared with immediate preceding assessment year. In the light of the above facts and claim for non-availability of bills and vouchers due to very well-known floods of July 2016, it was harsh on the part of the assessing officer to ignore the requested enquiry u/s 133(6) of the Act. Once the assessee has put forth its explanation of expenses by way of copy of accounts, names and addresses, details TDS deducted and payments by crossed account payee cheques, it was incumbent upon the assessing officer to proceed for controverting this contention of the assessee. However, the assessing officer got stuck on the issue of bills and vouchers not produced despite the assessee's apparently genuine claim of loss of such documents in the floods. After considering these facts, the Id CIT(A) observed that the percentage of expenses under head labour charges, carting charges, repairs and maintenance and hire charges on the total turnover do not show any major deviations when compared with the same percentage of expenses to total turnover for immediately preceding years and the payments were made through crossed account payee cheques, TDS made wherever applicable, therefore, we do not find any infirmity in the conclusion reached by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid addition. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

14. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 19/12/2022 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 19/12/2022

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat