

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

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

ITA No. 2250/MUM/2022
(Assessment Year: 2014-15)

DCIT-17(1),
Room No. 117, 1st Floor,
G-Block, Kautilya Bhavan,
Bandra Kurla Complex,
Mumbai - 400051

..... Appellant

Vs

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

..... Respondent

Appearances

For the Appellant/Department : Shri R.N. D'souza
For the Respondent/Assessee : Shri Bharat Kumar

Date of conclusion of hearing : 02.11.2022
Date of pronouncement of order : 28.11.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 20.07.2022, 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 2014-15, whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 31.12.2016 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 not considering that the assessee had not submitted any fresh documentary evidence in support of his claim though the expenses were incurred wholly in cash and no supporting bills produced for verification?

Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in substituting the disallowance of expenses made on “salary & Wages” and “Other Expenses” @ 55% and 45% by the Assessing Officer to 10% without any objective basis or ground reasoning?”

3. The relevant facts, in brief, the Assessee is an individual engaged in the business of collecting toll and parking charges as per contracts awarded to him under proprietorship concern with his family members also engaged in similar business through different proprietorship. The Assessee filed return of income on 27.11.2014 declaring total income of INR 74,48,220/-. The case of the Assessee was selected for limited scrutiny. During the assessment proceedings the Assessing Officer noted that the Assessee had debited to Profit & Loss Account the Salary and Wages aggregating to INR 3,18,45,163/- and Other Expenses aggregating to INR 42,94,492/-. The other expenses consisted of Conveyance Expenses (INR 6,54,872/-), Sundry Expenses (INR 10,32,547/-), Staff Welfare Expenses (INR 1,45,872/-), Telephone Expenses (INR 1,39,654/-) and Printing & Stationery Expenses (INR 23,21,547/-). The Assessee was asked to furnish the break-up, details and supporting documents in relation to the aforesaid expenses claimed as deduction. Not being satisfied with the supporting documents furnished by the Assessee, the Assessing Officer disallowed INR 1,75,14,840/- being 55% of

Salary & Wage Expenses and INR 19,32,521/- being 45% of the Other Expenses vide order, dated 28.03.2016, passed under Section 143(3) of the Act, thus, assessing total income of the Assessee at INR 2,68,95,580/-. While doing so, the Assessing Officer placed reliance on the assessment framed in the case of M/s S.S. Enterprises, a proprietorship concern of the Assessee for the Assessment Year 2013-14.

4. In appeal preferred by the Assessee against the Assessment Order dated 31.12.2016 the CIT(A) reduced the disallowance from 60/50% to 10% vide order, dated 20.07.2022.
5. Being aggrieved, the Revenue has preferred the present appeal.
6. When the matter was taken up for hearing, the Ld. Authorised Representative for the Assessee placed on record common order, dated 30.09.2022, passed in ITA No. 2063&2064/Mum/2022 whereby the appeal filed by the Assessee for the Assessment Year 2014-15 against the aforesaid order of CIT(A), dated 20.07.2022, was disposed off by the Tribunal by further reducing the rate of disallowance from 10% to 5% by placing reliance on the decision of co-ordinate Bench of the Tribunal in ITA No. 5592 & 5593/Mum/2018, dated 05.02.2019 passed in the case of the father of the Assessee who was also running a similar proprietorship concern. He submitted that in view of the aforesaid decision of the Tribunal, the present appeal by the Revenue be dismissed.

7. Per contra, the Ld. Departmental Representative made following submission:

"For the A.Y. 2014-15 the assessee claimed expenses under the head "Salary & Wages" to the tune of Rs. 3,18,45,163/- The assessee during the assessment proceedings failed to furnish any corroborative contemporaneous documentary evidences in support of his claim of having actually incurred the expenses wholly in cash. Accordingly, in the absence of any valid documentary evidences, the AO made a disallowance out of 'Salary & Wages' to the extent of Rs. 1,75,14,840 - (55% of total Salary & Wages).

Further, the AO noticed from the documents submitted by the assessee that expenses to the tune of Rs. 42,94,492/- were incurred wholly in cash under various other heads. In support of his claim the assessee submitted only self made vouchers. Therefore, in absence of supporting bills and documentary evidence, the AO made a disallowance of Rs 19,32,521/- (45% of Rs 42,94,492/-) under the head 'Other Expenses.

The Ld.CIT(A) vide order dated 20.07.2022 restricted the disallowance to 10% each, instead of 55% under the head "Salary & Wages" and 45% under the head "Other Expenses". It is seen from the appellate order that the assessee has not submitted any fresh documentary evidence in support of his claim. It is observed from the assessment order that all the expenses in question were incurred wholly i cash and supported by self made vouchers only. No supporting bills were produced for verification. Thus, the authenticity and correctness of such expenses remained unverified during the course of assessment proceedings.

The Ld.CIT(A) by restricting the disallowance to 10% instead of 55% under the head "Salary & Wages" and 45% under the head "Other Expenses" made by the AO, in absence of any fresh documentary evidence submitted by assessee has in a way accepted that the assessee has not entirely discharged the onus of proving the genuineness of said expenses. Thus, the revenue

filed appeal before Hon'ble ITAT against the order of Ld.CIT(A) for A.Y. 2014-15.

Further, as stated in revenue appeal filed before the Hon'ble ITAT. the Ld.CIT(A) was not correct in restricting the disallowance to 10% without any factual basis. Further, the powers of Ld.CIT(A) are coterminous with that of AO as per section 251(1) of the Act. Thus, when the assessee had failed to submit cogent documentary evidence before AO to prove the genuineness of expenses made in cash, the Ld.CIT(A) could have asked the assessee to submit such details before him and could have remanded the same to the AO to verify the genuineness of said expenses. Thus, the Ld.CIT(A) has erred in restricting the disallowance of expenses made on "Salary & Wages' and 'Other Expenses" to 10% without any objective basis in assessee's case for A.Y. 2014-15."

8. We have considered the rival submissions and perused the material on record. We note that Tribunal has, vide common order dated 30.09.2022 passed in ITA No. 2063&2064/Mum/2022 [pronounced on 30.09.2022] granted further relief to the Assessee. 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."

9. On perusal of above, it is clear that after examining the facts and circumstances of the case the Tribunal was pleased to further reduce the rate of disallowance from 10% [as determined by the CIT(A)] to 5%. Thus, in effect, rejecting the grounds raised by the Revenue in the present appeal whereby the Revenue has sought for increase of the rate/quantum of disallowance from 10% to 55%/45% [as made by the Assessing Officer]. Thus, in view of the decision of the Tribunal on the same issue in the appeal preferred by the Assessee arising

from the same order of CIT(A) impugned by the Revenue by way of the present appeal, Ground No. 1&2 raised by the Revenue are dismissed.

10. In the result, the present appeal by the Revenue is dismissed.

Order pronounced on 28.11.2022.

Sd-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.11.2022
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