

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: G: NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.5953/Del/2019
Assessment Year: 2016-17

Shri Shashi Kant Loyalka, 2/1, Block-41, Singh Sabha Road, Shakti Nagar, North Delhi, Delhi 110007 PAN AAVPL8019M	vs.	The ACIT, Circle-35(1), Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri Somil Agarwal, Advocate Shri Deepesh Garg, Advocate
For Revenue :	Shri Abhishek Kumar, Sr. DR

Date of Hearing :	05.12.2023
Date of Pronouncement :	13.02.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal filed by the assessee is directed against the order dated 24.06.2019 of the Ld. CIT(A)-12, New Delhi relating to Assessment Year 2016-17.

2. The grounds of appeal raised by the assessee read as under:

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making adhoc disallowances under the following heads and that too without appreciating/considering the submissions of the assessee and in violation of principles of natural justice.*

- *Rs.3,01,2001- on account of salary.*
- *Rs.84,375/- on account of conveyance and car running expenses.*
- *Rs.1,52,394/- on account of general expenses and general expenses & maintenance.*
- *Rs.52,0791- on account of staff welfare.*

2. *That in any case and in the view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making aggregate disallowance of Rs.5,90,048/- under the various above heads, is bad in law and against the facts and circumstances of the case.*

3. The learned counsel of the assessee placing reliance on the order of ITAT Raipur Bench dated 01.04.2022 in the case of Shri Kailas Chand Agarwal vs. DCIT in ITA no. 275/RPR/2016 for A.Y. 2010-11 submitted that there has been no clear finding as to which numbers of vouchers requiring denials of allowances with the amount of expenditure and nature of defects therein or therewith,

moreover the department could not bring out any depreciative material on record to substantiate its conclusion as logical. The learned AR vehemently pointed out that neither the Assessing Officer nor the Ld. CIT(A) has brought on record any positive adverse material against the assessee to controvert the genuineness of expenditure therein claim to have been incurred by the assessee wholly and exclusively for the purpose of its business did not inspire any confidence, nor it is a case of revenue that any part of expenditure in question was either found to be bogus or fictitious, nor was found to have not been incurred by the assessee wholly and exclusively for the purpose of his business. Therefore the addition made by the AO and confirmed by the Ld. CIT(A) cannot be held as valid and sustainable. Therefore the issue is covered in favour of the assessee by the said order of coordinate Bench of Raipur.

4. Replying to the above the learned Senior DR supporting the orders of the authorities below.

5. On careful consideration of rival submissions first of all we note that the coordinate Bench of ITAT Raipur in the case of Shri

Kailas Chand Agarwal vs. DCIT in operating para 7 to 7.6 held as follows:-

7. We shall now deal with ground number 2 relating to ad-hoc disallowances;

7.1. At the outset, the Ld AR submitted that, Ld AO had in a most arbitrary manner disallowed portion of expense applying ad-hoc percentile and which has been sustained by the Ld CIT(A), despite of the fact that, all these business expenditure debited to profit & loss account [for short "P&L"] and claimed in the return of income has all the valid characteristic laid in section 37(1) of the Act:

<i>Sr</i>	<i>Head of Expenses</i>	<i>Major Business Expenses</i>
1	Vehicle Repairing	73,42,144
2	Office Expenses	32,835
3	Diesel & Lubricants	10,84,337
4	Labour Welfare	3,18,643
5	Motor Cycle running	35,670
6	Salary & Wages	30,41,623
	<i>Total</i>	1,18,55,252

7.2. During the course of hearing, Ld AR claimed that, the solitary basis for making and sustaining the aforesaid disallowance of expenditure by the lower tax authorities was that, the some of the aforementioned expenditure were in cash and were supported only by self-made vouchers in the absence of third-party evidence.

7.3. Our careful consideration of assessment records and the records of appellate proceedings it transpired that, neither of the lower tax authorities had pointed any such voucher, the genuineness of the expenditure therein claimed to have been incurred by the assessee wholly and exclusively for the purpose of its business did not inspire any confidence, nor it was the case of the revenue that any part of the expenditure in question was either found to be bogus or fictitious, nor was found to have not been incurred by the assessee wholly and exclusively for

the purpose of his business. Indeed, it showcased an exercise of running around the circle by both the lower tax authorities while dealing with the present case. 7.4. We neither could come across any provision in the present Income Tax Statute nor it has been brought to our notice by either parties to dispute, which subscribes vis-à-vis authorises the tax authorities to arrive at this logic of subscribing ad-hoc disallowances. Evidently, there has been no clear findings as to number of vouchers requiring denial of allowances with the amount of expenditure and nature of defects therein or therewith, moreover department could not bring out any deprecative material on record to substantiate its conclusion as logical. We couldn't also see remotely there is any mention of rationale in arriving at the percentile of disallowance in the present case, consequently we find substantial force in the claim of the assessee that devoid of any specific infirmity qua the assessee's claim for deduction of the aforementioned expenditure by the lower tax authorities, and for the reason, the ad-hoc disallowance carried out in a most arbitrary manner could by no means be held to be justified.

7.5. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Madras in "V.C. Arunai Vadivelan Vs ACIT" (TCA No 612 of 2019 dt 05/02/2021), wherein the lordships has held para 7 as;

"Given the nature of the industry in which the assessee operates, we can take judicial notice of the fact that, computer generated vouchers may not always be issued by the transporters unless they are an organization owning a large fleet and If the Assessing Officer had any doubt with regard to the genuinity of any one of the vouchers produced he could have drawn sample vouchers and called upon the assessee to establish its genuineness. Without doing so, making an adhoc disallowance by not specifically assigning any reason to a voucher or bunch of vouchers is not legally tenable." (Emphasis supplied)

7.6. Considering the entire conspectus of case, we, do not find favour with the view taken by the lower tax authorities, consequently we vacate the ad-hoc disallowance in its entirety and thereby allow the ground number 2 of the appeal.

6. In view of above identical and similar facts are existing in the present case wherein neither the lower tax authorities pointing out any such vouchers, the genuineness of expenditure therein claim to have been incurred by the wholly and exclusively for the purpose of its business did not provide any sustainability to the orders of the authorities below. It was not the case of revenue that any part of expenditure in question was not either found to be bogus or fictitious nor was found to have not been incurred by the assessee wholly and exclusively for the purpose of his business. At the same time we observed that the total disallowance made by the assessee on four heads is aggregating to Rs. 5,90,048/- and the assessee under took gross turnover of Rs. 111,31,85,086/- against the claim of certain expenses including said amount of disallowance.

7. As has been held by the coordinate Bench of ITAT Raipur that in para 7.4 of the order that the department could not bring out any depreciative material on record to substantiate to its conclusion as

logical. In the present case the assessee has successfully demonstrated that his turnover during relevant financial period was Rs. 111,31,85,086/- and the quantum of disallowance is very small in comparison to the turnover. Therefore when the assessee has successfully demonstrated that the expense has been incurred wholly and exclusively for the purpose of business of assessee and the Assessing Officer has not point out any specific defect or deficiency therein then the disallowance cannot be made on ad-hoc basis without any specific allegation merely on the basis of general remarks and observations. Therefore, respectfully following the order of coordinate Bench of Raipur in the case of Shri Kailas Chand Agarwal (supra) the grounds of assessee are allowed and AO is directed to delete the entire disallowances.

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

Order pronounced in the open court on 13.02.2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 13th February, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi