

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
(VIRTUAL COURT)
BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 99 & 137/Asr/2018
Assessment Year: 2008-09

M/s Alfa Mechanical & Electricals Engineering Works, Khonomoh, Srinagar [PAN: AAIFA 9871D] (Appellant)	Vs.	Income Tax Officer, Ward 3(1), Srinagar (Respondent)
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Appellant by : Umar Rashid Wani, Adv.

Respondent by: Smt. Kanchan Garg, Sr. DR

Date of Hearing: 13.02.2023

Date of Pronouncement: 15.02.2023

ORDER

Per Anikesh Banerjee, J.M.:

The instant appeals of the assessee are directed against the order of the Id. Commissioner of Income-tax (Appeals)-I, Amritsar (in brevity CIT(A)), order passed u/s. 250(6) of the Income Tax Act, 1961 (in brevity of the Act), for assessment year 2008-09. Impugned orders are originated from the order of the Id.

Income Tax Officer, Ward 3(1), Srinagar, order passed u/s143(3) and 271(1)(c) of the Act.

2. In the outset we advert that ITA NO. 137/ASR/018 was related to the quantum appeal of the assessee. The ITA no. 99/ASR/2018 is related to penalty u/s. 271(1)(c) for assessment year 2008-09. The appeal against the penalty was filed with delay of 149 days. The assessee filed a condonation petition before the bench. The delay was explained by the assessee. Due to wrong advise of consultant, the assessee filed appeal in delay against the order section 271(1)(c) before the ITAT. The Id, CIT(A) first served the order related to penalty. The assessee was waiting for quantum appeal as per advice of consultant. The wrong advice of the consultant may cause the delay for filing the appeal. The Revenue has not made any objection related to condonation of delay for 149 days. Accordingly, the delay is condoned. We take the appeal for hearing.

3. The assessee has taken the following grounds in relation to **ITA No. 137/ASR/2018:**

GROUND OF APPEAL

“1. *The Id. Commissioner of Income-tax (Appeals) -I, Amritsar has erred in law and in facts in confirming the addition made by the Assessing Officer at Rs.7,76,128/- u/s. 69 of Income-tax Act, 1961.*

2. *That the ld. Commissioner of Income-tax (Appeals) -I, Amritsar has erred in law and on facts in confirming the addition made by the Assessing Officer at Rs. 69,447/- on account of disallowance of depreciation.”*

4. The brief fact of the case is that in assessment proceeding the addition was made amount to Rs.7.76,128/- u/s. 69 for unreconciled amount of turnover with the bank deposit. The assessee-firm was maintaining two bank accounts one is with SBI and secondly with Jammu & Kashmir Bank. The total deposit appearing in two accounts amount to Rs.1,18,47,526/- which is higher than the gross contract receipts amount of Rs.71,27,340/-. During assessment assessee was unable to reconcile the difference amount of Rs.7.76,128/-. Also, assessee was unable to supply the list of fixed assets before the ld. AO. So, the depreciation amount to Rs.69,447/- was disallowed and added back with the total income of the assessee. Aggrieved the assessee filed an appeal before the CIT(A). But the assessee was remained unsuccessful. Being aggrieved assessee filed an appeal before us by challenging the order of the CIT(A).

5. The ld. Counsel for the assessee vehemently argued and filed written submission before the Bench. Also pointed out the reconciliation related to deposit in bank.

6. We heard the rival submission and relied on the documents available in the record. The addition was made amount to Rs.7,76,128/- u/s. 69 of the Act. The

assessee has filed the reconciliation and placed that Rs, 7,50,000/- was borrowed from Mr. Mohammad Amin Khan. The assessee placed bank account of the party and own bank account to prove the connecting entry in bank. The corresponding entries in both the accounts are reflected, **APB page 6 & 7**. The relevant affidavit of the party testifying the acknowledgement of credit to the appellant is also enclosed in **APB page 8**. The banker, J & K Bank also placed the certificate dated 13.11.2018 about confirmation of the payment received from Mr. M. Amin Khan Rs.7,50,000/-. The copy of the certificate from banker is enclosed at **APB page 9**.

6.1. In argument the Counsel for assessee placed that relevant documents are submitted before the CIT(A). But that ignoring the submissions of the assessee, the appeal was adjudicated. Relating to claim of depreciation Rs.69,447/-, the assessee further placed that the list of fixed assets was duly placed before the CIT(A). The said affidavit of the party is first time produced before the ITAT.

6.2. The Sr. DR vehemently argued and invited our attention in respective paragraph of the appeal order which is reproduced as below:-

“The appellant had not claimed before the AO that an amount of Rs.7,50,000/- was borrowed by assessee from Mohammad Amin Khan as nothing in this regards funds mention in the assessment order. Besides as stated by the AO, the amount of unexplained difference of Rs.7,76,128/- in the reconciliation statement of filed by assessee was not recorded in the books of account. The appellant has filed to plain the source of unexplained deposit of Rs.7,76,128/- before AO or in appeal proceedings. Hence, this addition of Rs. 7,76,128/- is hereby upheld. These grounds are dismissed.

Ground no.2.

The AO disallowed the amount of depreciation of Rs. 69,447/- on the reason that the assessee has filed to provide proof in this regard. But again during appellate proceedings the appellant has filed to provide any proof / evidence of assets against which depreciation was claimed. Hence this ground is dismissed.”

7. During the hearing before the ITAT assessee has explained the source of fund which is submitted before the Bench. But issue was not verified by the lower authority. There was no examination of this party who has paid this amount to the assessee and also there is no verification of the credit worthiness of the party with reference to this amount. In our opinion, it is appropriate to remit the issue in dispute to the file of CIT(A) to carry out necessary enquiry and to reconsider the issue also to verify the claim of depreciation accordingly. Needless to say, that the Id. CIT(A) shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defence shall be admitted by the Id. CIT(A) and adjudicated on merits in accordance with law. We order accordingly.

ITA NO. 99/ASR/2018:

8. This particular appeal is related to penalty u/s. 271(1)(c) of the Act. The levying of penalty is consequential in nature & related with ITA No. 137/Asr/2018. So, the appeal is setting aside with the quantum appeal and remit back to CIT(A) for further adjudication after considering the quantum appeal. Needless to say, the assessee should get reasonable opportunity for hearing in the set aside proceedings.

9. In the result **ITA No. 137/ASR/2018** and **ITA No. 99/ASR/2018** are allowed for statistical purposes.

Order pronounced in the open court on 15.02.2023

Sd/-
(Dr. M. L. Meena)
Accountant Member

Sd/-
(Anikesh Banerjee)
Judicial Member

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Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(A),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T
- (6) The Guard File

True Copy
By Order