

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 105/Srt/2021 (Assessment Year 2014-15)
(Physical hearing)

Tarit F Das, AAA-49, Shreeji Sadan Bungalows, Swaminarayan Mandir Road, Zadeshwar Road, Bharuch. PAN No. ACGPD 8543 H	Vs.	A.C.I.T., Circle-1, Bharuch.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Krutarth Desai, A.R.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	17/03/2023
Date of pronouncement	22/03/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-3, Vadodara, (in short, the Id. CIT(A)) dated 14/07/2020 for the Assessment year (AY) 2014-15 wherein the assessee has raised following grounds of appeal:

- “1. Assessment order and the first appellate order itself is bad in law, without appreciation of facts and legal position and nonest and bad in facts and therefore, the order deserves to be quashed and set aside.*
- 2. The appellant submits that the assessment order and the first appellate order has been passed without appreciating the material available on record, without appreciation of facts and legal position and therefore, deserves to be quashed and set aside in the interest of justice.*
- 3. The learned first appellate authority has misdirected itself in appreciating the submission made by the appellant and has not appreciated the factual matrix of the case and applicable legal position and therefore the order passed by the learned assessing officer and learned Commissioner of Income Tax (Appeals)-3 deserves to be quashed and set aside in the interest of justice.*

4. *The appellant submits that the assessing officer and the Commissioner of Income Tax (Appeals)-3 has failed to appreciate the legal position as held by the Hon'ble Supreme Court of India in the case of Mysore Minerals and other legal precedents also in the case of the assessee for the assessment year 2013-14 in which the depreciation of the same assets has been allowed by the Commissioner of Income Tax (Appeals)-3m Baroda. The beneficial ownership of the assets lies with the appellant and therefore, depreciation ought to have been allowed*
 5. *The appellant submits that the direction given to the assessing officer for verification of labour expenses is totally unwarranted for as it was verified at the time of assessment proceedings. The assessing officer has arbitrarily made addition of 5% on whims for correctness of vouchers. Therefore, the addition may please be dropped in the interest of justice.*
 6. *The appellant craves for leave to add or amend or alter or modify any of the grounds of appeal in the interest of justice."*
2. Perusal of record reveals that the impugned order by Id CIT(A) was passed on 14/07/2020, however, the present appeal is filed before the Tribunal on 02/06/2021. Thus, there is delay of 275 days in filing the present appeal before the Tribunal. The assessee has filed an application for condonation of delay supported with affidavit of assessee. The learned Authorised Representative (Id. AR) of the assessee submitted that the impugned order was passed on 14/07/2020 and the assessee was required to file appeal within 60 days from the date of receipt of order. The Id. AR submits that he has two fold submissions; firstly, that the impugned order may have been received on the e-mail of advocate of the assessee who represented the assessee before the Id. CIT(A). But, such order was not immediately conveyed to the assessee. Thus, the assessee have no knowledge and could not file appeal immediately and secondly, the impugned order was passed on 14/07/2020 at that time, the pandemic of Convid-19 was in full swing and offices of various authorities were not functioning because of

nationwide lockdown. The assessee and all his family members suffered by the infection and were in quarantine. The Id AR for the assessee submits that time period for filing appeal before the various forums/courts/authorities were extended by the Hon'ble Supreme Court in suo moto writ petition No. 3/2020 dated 23/03/2020, which was modified from time to time and finally on 10/01/2022 and directed to extend the period of limitation for various compliances from 15/03/2020 to 28/02/2022 before various forums/ authorities and further grace period of 90 days' time was granted to take resource of law, wherein the time limit of period of limitation was expiring during such time. The Id. AR submits that the assessee filed the present appeal within grace period. There was no intentional or deliberate delay in filing the appeal before the Tribunal rather it is due to reason beyond his control.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue not opposed seriously on the plea of Id. AR of the assessee. The Id. Sr. DR submits that most of the period is covered by the decision of Hon'ble Apex Court in suo moto writ petition No. 3/2020 and the Bench may take decision in accordance with law.
4. I have considered the submissions of both the parties and find that the impugned order was passed on 14/07/2020. Admittedly, at the time of passing the impugned order, there was severe Covid-19 Pandemic. Considering the submissions of both the parties and the fact that the

period during which the present appeal was filed is covered by the decision of Hon'ble Supreme Court in Suo Moto Writ Petition No. 3/2020 dated 10/01/2022, therefore, the delay in filing the appeal is condoned. Now advertent to the merits of the case,

5. Brief facts of the case are that the assessee is a proprietor of M/s Das Fabrication engaged in the business of fabrication work, labour supply for load and unloading of coal and salt on hiring. The assessee while filing the return of income offered income from house property, business income and income from other sources. The assessee declared his income in the return of income of Rs. 21,79,820/- which was filed on 30/11/2014 for the A.Y. 2014-15. The case was selected for scrutiny. During the assessment, the Assessing Officer besides other additions/disallowances, disallowed depreciation of Rs. 6,91,621/- and 5% of labour expenses. The disallowance of depreciation was made by the Assessing Officer by taking a view that on verification of chart of depreciation, the Assessing Officer noted that the assessee claimed depreciation of Rs. 9.00 lacs out of which Rs. 6,91,621/- relates to depreciation on Tata Tripper having registration No. GJ-16W-8837 (Vehicle) which is not owned by assessee. Such vehicle is owned by Sabyasachi T. Das who is son of assessee. The Assessing Officer further recorded that similar depreciation was claimed in A.Y. 2013-14 on same vehicle, which was disallowed. The Assessing Officer issued show cause notice as to why the depreciation on vehicle should not be

disallowed. The Assessing Officer noted that no reply was furnished by assessee. Thus, the Assessing Officer disallowed depreciation of Rs. 6,91,621/-.

6. The Assessing Officer disallowed 5% of labour expenses by taking a view that the assessee has debited amount of Rs. 93,29,794/- on account of labour expenses. In the course of assessment, the assessee was asked to furnish the detailed bills with supporting evidences. Ongoing through such details, the Assessing Officer noted that most of the amounts were paid to casual workers and overtime workers and all the payments were made in cash. All expenses are not fully supported with proper vouchers and payment is incurred in cash. In absence of proper supporting and complete and want of verification, the Assessing Officer disallowed 5% of the expenses. The Assessing Officer worked out the disallowance of Rs. 4,66,490/- and added to the income of assessee.
7. Aggrieved by the additions/disallowances, the assessee filed appeal before the Id. CIT(A). On the disallowance of depreciation, the assessee submitted that the Assessing Officer disallowed the depreciation on the ground that the vehicle is owned by son of assessee. The admissibility of depreciation is nothing but the systematic allocation of capital nature over a period of its useful life incurred by the assessee for the purpose of business and profession. In order to claim the benefit of depreciation, the condition of right of ownership of the asset with the assessee, must be

used for the purpose of business, it should be used during the relevant previous year and depreciation is available on tangible as well as intangible asset. For claiming depreciation, it is not necessary that the assessee must be registered owner of the asset. There are certain other qualities of rights which gives the holder a virtual ownership of assets. Exclusive possession rights, to exclude others from enjoyment of assets, full control over the assets, rights to retain possession and defend the same but some of the characteristics of ownership which will entitle a person to claim benefit of depreciation if the asset is used for the purpose of carrying on a business. The assessee relied on certain case laws.

8. The Id. CIT(A) after considering the submission of assessee, upheld the disallowance of depreciation by holding that for claiming depreciation, the ownership of the asset is fundamental criteria which needs to be fulfilled. In this case, the vehicle is in the name of person who is not the assessee. The assessee relied on various case laws and tried to argue that beneficial ownership of the particular asset lied with the assessee and therefore, the depreciation is allowable. The Id. CIT(A) distinguished all the case laws and upheld the disallowance.
9. On 5% of disallowance of labour expenses, the assessee submitted that the Assessing Officer made addition casually for want of verification. The assessee is engaged in fabrication business in which involvement of labour is very high. For payment to labour, cash is required for their wages. Unless

payment is made to labour and overtime payment, it is well difficult to take work from labour. Entire payment was made for the purpose of business. The disallowance must be made on the basis of material available on record, which shows beyond reasonable doubt that the expenses are of bogus in nature. The lump sum addition on the part of revenue without any substantive proof of its bogus nature is not warranted. The assessee also stated that the lump sum addition was also made in A.Y. 2013-14 which was set aside by the Id. CIT(A) and on the same analogy, the disallowance may be deleted.

10. The Id. CIT(A) after considering the contention of assessee, held that the Assessing Officer has clearly mentioned that the expenses incurred for payment of casual labour are not supported by proper vouchers and supporting evidences. The assessee has produced self-made vouchers before the Assessing Officer. The Assessing Officer disallowed only 5% of the expenses for want of evidence. The assessee relied on the decision of his predecessor for the A.Y. 2013-14 wherein lump sum addition was deleted. The Id. CIT(A) held that from the assessment order, it is clear that no evidence was filed regarding payment of casual labour. The assessee could not substantiate the claim of expenditure. The Id. CIT(A) further held that he differed from the view taken by his predecessor, yet he concurred with the contention of assessee that lump sum addition is not fair. By making such observation, directed to examine the evidence regarding

expenditure of Rs. 93,29,794/- on account of labour expenses and to disallow the expenses to the extent to which the assessee is unable to substantiate labour expenses. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

11. I have heard the submissions of Id. AR of the assessee and the Id. Sr. DR for the revenue and perused the material available on record. At the time of hearing the submissions of both the parties, I directed the Id. AR of the assessee to make it clear, which additions are challenged in the grounds of appeal and directed him to file short written synopsis. The Id. AR of the assessee, thus, as per my direction, filed his written submission comprising only on the disallowance of depreciation of vehicle and addition on account of labour expenses. Thus, precisely the facts leading to such additions are recorded above.

12. Ground No. 1 of the appeal relates to addition/disallowance of depreciation on vehicle. The Id. AR of the assessee submits that the Assessing Officer made disallowance of depreciation on vehicle by holding that the vehicle is not owned by the assessee. The Id. AR submits that on similar disallowance, the Id. CIT(A) in A.Y. 2013-14, allowed similar depreciation. Copy of order of Id. CIT(A) for A.Y. 2013-14 dated 01/03/2018 is placed on record. The Id. AR further submits that as per following decisions, he is eligible for depreciation. To support his submissions the Id AR for the assessee also relied on the following decisions;

- (i) Mysore Minerals Limited Vs CIT
- (ii) CIT Vs Mohammad Bux Shokat Ali
- (iii) CIT Vs Aravali Finlease Limited
- (iv) ITO Vs Electro Ferro Alloys Limited
- (v) CIT Vs Basti Sugar Mills Co Ltd. (2002) 257 ITR 88 (Delhi).

13. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id. Sr. DR for the revenue submits that for claiming depreciation on asset particularly vehicle, the ownership is sine qua non. The assessee is not the owner of such vehicle.

14. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. As noted above, both the lower authorities disallowed the depreciation on vehicle by taking a consistent view that the assessee is not the owner of the vehicle. On the other hand, the Id. AR of the assessee vehemently relied on the decision of Id. CIT(A) for A.Y. 3013-14. It is settled legal position under law that ratio of decision of Id. CIT(A) has no binding precedent on Tribunal. No doubt, it has little persuasive value if it contains good and sound reasoning. The Id. CIT(A) in A.Y. 2013-14, allowed depreciation by holding that vehicle is used for the purpose of business and cannot be used for personal purpose. Thus, he has no reason to disbelieve the contention of assessee and allowed depreciation. I find that the Id. CIT(A) in A.Y. 2013-14, allowed relief to the assessee without verification of fact whether similar depreciation is claimed by son of assessee or not. No finding about the prime condition about the ownership was considered and discussed,

therefore, I totally differ from the finding of Id. CIT(A) in A.Y. 2013-14 and concur with the finding of Id. CIT(A) for the year under consideration. The case laws relied by the Id. AR of the assessee are not at all applicable on the facts of the present case.

15. In Mysore Minerals Limited Vs CIT (supra), the depreciation was claimed on immovable property wherein the assessee was having possession and occupying the property and usufruct enjoyment in his own right like the owner. In CIT Vs Mohammad Bux Shokat Ali (supra), the vehicle was in the name of one of the partner of the assessee firm. In CIT Vs. Aravali Finlease Limited (supra), the vehicle in question was in the name of Director of assessee company. In ITO Vs Electro Ferro Alloys Limited (supra), the vehicle was also in the name of Director. Thus, the facts of all the cases are entirely different. In all the cases, the owner was either Director or partner of the entity. Similarly in case of CIT Vs Basti Sugar Mills Co Ltd. (supra), the vehicle was owned and used by the assessee. Here in the present case, the vehicle is in the name of a different person though he is a son. Thus, none of the ratio of case law is applicable on the facts of present case.

16. In the result, ground of appeal related to disallowance of depreciation of vehicle is dismissed.

17. Next ground of appeal relates to addition on account of 5% of labour expenses. The Id. AR of the assessee submits that the Assessing Officer

made addition of labour expenses for want of verification. The books of assessee is duly audited by a qualified Chartered Accountant under the provisions of Section 44AB of the Act. Tax audit has also been carried out. The tax audit report has not been disputed by the Assessing Officer. It is settled position in law that when books of account are audited then books cannot be rejected. The business of assessee is a labour oriented and cash payment is made to the labourers. The expenses were incurred wholly and exclusively for the purpose of business. The payment of labour is 34% of the total turnover. To support his submission, the Id. AR of the assessee relied on the decision of PCIT Vs R.G. Buildwel Engineers Limited. The Id. AR submits that in the A.Y. 2013-14, the ad hoc addition on account of labour expenses was made. However, the same was deleted by the Id. CIT(A) in order dated 01/03/2018.

18. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id. Sr. DR submits that the Assessing Officer disallowed a very reasonable amount for want of verification of evidence. Though, the Id. CIT(A) directed the Assessing Officer to verify various evidences and restrict the disallowance to the extent of unverifiable claims. Yet the assessee has challenged such fair direction.

19. I have considered the submissions of both the parties and have gone through the orders of lower authorities. I have seen that the Assessing Officer made disallowance of 5% of total labour expenses for want of

proper evidence. The Id. CIT(A) held that for want of evidence, the addition made by Assessing Officer cannot be faulted. However, the Id. CIT(A) directed the Assessing Officer to disallow the expenditure to the extent which is not substantiated. As recorded above, before me, the Id. AR of the assessee submits that the similar addition was made in A.Y. 2013-14 and was deleted by the Id. CIT(A). I find that in A.Y. 2013-14, the assessee claimed labour expenses of Rs. 40,46,000/- and disallowed Rs. 10,68,454/- for want of justification. I find that in A.Y. 2013-14, the Assessing Officer disallowed about 25% by treating as bogus. The Id. CIT(A) allowed relief to the assessee by holding "*that looking to the factual matrix of the case involved, I am reasonably of the view that such addition was not at all warranted and therefore the same is directed to be deleted.*"

20. I find that the reasoning given by the Id. CIT(A) lacks the sound reasoning. Once the addition was made for want of evidence, cannot be allowed without holding that there is sufficient evidence to substantiate such claim. Now advertent to the facts for the year under consideration, as noted above that the Id. CIT(A) partly concur with the findings of the Assessing officer that no supporting evidence was given. Before Tribunal, the assessee has neither given any evidence nor furnished the details of number of labourers, casual labours or their salary or attendance register to substantiate such claim. In absence of any evidence or explanation, I find that the Assessing Officer was quite justified in making

addition/disallowance to the extent of 5% of the labour expenses.

Therefore, I uphold the orders of lower authorities qua this issue. In the result this ground of appeal is also dismissed.

21. In the result, this appeal of assessee is dismissed.

Order pronounced in the open court on 22nd March, 2023.

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

Surat, Dated: 22/03/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue --
3. CIT(A)
4. CIT
5. DR
6. Guard File

// TRUE COPY //

By order

Sr. Private Secretary, ITAT, Surat