

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.170 & 171/Bang/2023
Assessment Year: 2015-16 & 2016-17

M/s. Hasan Hajee and Co. 20-8-678, Khadeeja Court Near Municipal Office Bunder Mangaluru 575 001 Karnataka PAN NO : AAAFH8204R	Vs.	Deputy Commissioner of Income-tax Circle-1(1) & TPS Mangaluru
APPELLANT		RESPONDENT

Appellant by	:	Ms. Sunaina Bhatia, A.R.
Respondent by	:	Shri Bipin C.N., D.R.

Date of Hearing	:	25.05.2023
Date of Pronouncement	:	25.05.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These appeals by assessee are directed against order of NFAC for the assessment years 2015-16 & 2016-17 dated 16.1.2023 and 25.1.2023 respectively. These appeals are common in nature except change in figures and hence, these are clubbed together, heard together and disposed of by this common order for the sake of convenience. The assessee has raised following grounds of appeal in ITA No.170/Bang/2023:

1. *“The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

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2. *The learned CIT[A] is not justified in sustaining the disallowance of Rs. 15,49,290/- made in respect of speed money paid in cash towards labour wages under the facts and in the circumstances of the appellant's case.*

3. *The learned CIT[A] ought to have appreciated that this issue has been disposed off in favour of the appellant by the Hon'ble ITAT, Bangalore in ITA No. 1358 to 1363/Bang/2015 dated 22/09/2022 vide Para 6.1 and thus, the impugned disallowance made requires to be deleted under the facts and in the circumstances of the appellant's case.*

4. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in. prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

We consider the facts in AY 2015-16.

2. Facts of the case are common in both the appeals. The return of income was processed u/s. 143 (1) of the Income-tax Act, 1961 ['the Act' for short]. vide order/intimation dated 02.12.2015, accepting the returned loss of (-) Rs. 59,78,282/-. Further, the return of income was picked up for scrutiny assessment, and the statutory notices u/s. 143(2) and 142(1) of the Act were issued, calling for various details and documentary evidence. In response thereto, the Authorized Representative (AR) of the assessee appeared before the AO from time to time and furnished the requisite details and documentary evidence called for. Accordingly, after having perused the details and documentary evidence furnished by the assessee, the AO framed the impugned order u/s. 143(3) of the Act dated 22.12.2017/-, determining the total loss of the assessee at (-) Rs. 7,58,551/-. While doing so, the AO made the following additions to the loss returned.

Sr. No.	Particulars of addition	Amount (in Rs.)
1	Disallowance of 6% of expenses incurred on wages paid in cash	15,49,290/-
2	Disallowance of depreciation	20,52,753/-
3	Addition towards cessation of liability u/s. 41(1) of the Act	16,16,942/-

2.1 Against this, assessee went in appeal before NFAC. The NFAC confirmed the order of the AO. Against this assessee is in appeal before us. Similarly, for the assessment year 2016-17 AO made advance disallowance of 6% of speed money/wages paid for which assessee furnished vouchers. According to the AO, vouchers are signed by single person. Hence, he disallowed 6% of total expenses. Against this assessee is in appeal before us.

3. After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in assessee's own case in ITA No.1358 to 1363/Bang/2015 vide order dated 22.9.2022 wherein held as under:

"6. We have heard the rival submissions and perused the materials available on record. The assessee claimed the expenditure in these assessment years as follows:-

	A.Yr	Disallowance by AO	Restricted to 10%
1	2006-07	Nil	Nil
2	2007-08	Rs.1,74,38,149/-	Rs.17,43,815/-
3	2008-09	Rs.35,52,611/-	Rs.3,55,261/-
4	2009-10	Rs.40,40,000/-	Rs.4,04,000/-
5	2010-11	Rs.33,27,170/-	Rs.3,32,717/-
6	2011-12	Rs.50,71,250/-	Rs.5,07,125/-
7.	2012-13	Rs.1,81,74,006/-	Rs.4,54,350/- (Restricted to 2.5%)
8	2013-14	Rs.2,52,34,742/-	Rs.6,30,869/- (Restricted to 2.5%)

6.1 *The main reason for disallowance by AO was that payment Labour Charges supported by self-made vouchers and have no signature of recipients. These expenditures mainly pertain to iron ore loading and unloading transit/site marshalling charges and other casual labour charges. According to the assessee, these expenditures incurred at various stages of iron ore movements. These expenses are pertaining to wages paid to various parties, such as workers manually handling iron ore from lorries/railway vehicles to the exporter's yard, those engaged to counter pilferage of iron ore at railway yards, export yards and other casual labourers engaged for cleaning purposes. It was explained before us that the assessee has been carrying voluminous quantity of iron ore and large number of workers who were illiterate and have no commercial knowledge and it is not possible to take down the signatures of those persons and in such circumstances, the vouchers were blank and for the accounting purposes assessee prepared vouchers and they were duly accounted in the books of accounts of the assessee and books of accounts were audited by the statutory auditors and no adverse comments has been made by them. The A.O. alleged in the first page of the assessment order that incriminating evidence has been seized which reveals that the assessee has been engaged in inflation of expenditure substantially. This statement of the AO in the first page of the order shows that he has opened the file with pre-determined mind that assessee has inflated the expenditure. It was so alleged by the AO even without rejecting the books of accounts. Before making allegation that assessee has inflated expenditure, it is incumbent upon the AO to reject the audited books of accounts maintained by the assessee, he should challenge the entries in the books of accounts by duly rejecting the same. In other words, it is evident that the AO considered the income declared by the assessee, thereafter, he made disallowances of expenditure after accepting the books of accounts. The total disallowance made by the AO is only on conjectures and surmises. The claim of labour charges in these assessment years commensurate with the nature of volume of business carried on by the assessee and there is no sudden or steep increase in the claim of assessee as compared to year to year. However, the AO opted to disallow the expenditure on the reason that these are supported by self-made vouchers and were written by common persons. In our opinion, when the self-made vouchers are prepared inhouse, it must be prepared by inhouse persons only and as such, it has common pattern and that cannot be reason to doubt the genuineness of the payment. The assessee cannot carry on this business without incurring the expenditure. The allegation of the AO is that the vouchers are prepared at a stretch on one or two days during the financial year. There is no basis for this kind of allegation made by the AO and he has not brought anything on record to establish this contention of him. Being so, we have to reject this plea of the revenue authorities. In our opinion, considering the nature of the business of the assessee, we can take the judicial notice of the fact that if the AO had any doubt with regard to genuineness of any one of the voucher produced by the assessee, he could have drawn sample vouchers and called upon the assessee to produce the concerned recipient to establish the genuineness. Without doing so, making any adhoc disallowance is not legally sustainable. If the Ld. CIT(A) also without carrying on any enquiry, certain percentage of the labour payment at 10% in assessment years 2007-08 to 2011-12 and 2.5% in assessment years 2012-13 &*

2013-14 was sustained. This act of Ld. CIT(A) is not justified. In our opinion, the impugned expenditure in fact claimed to have been incurred by the assessee wholly and exclusively for the purpose of its business and it cannot be said that this expenditure is bogus or fictitious and cannot be said that it has not been incurred by the assessee for the purpose of business. We do not see remotely there is any mention of rationale in arriving at the percentage of disallowance in the present case, and secondly, we find force in the claim of assessee that devoid of any specific infirmity in the books of accounts of the assessee, disallowance of labour charges expenditure by the lower authority is not proper and the adhoc disallowance made by authorities in most ordinary manner. In our opinion, to estimate any disallowance the first and foremost thing is that the A.O. has to reject the books of accounts by observing that books of accounts are not reliable and not verifiable. Then he has to specify the each entry which are to be considered as bogus or unverifiable and only to that extent he can make disallowance. In the present case, in a wholesome manner the A.O. made disallowance on estimate basis without rejecting the books of accounts. However, Ld. CIT(A) sustained this addition to the tune of 10% in A.Y. 2007-08 to 2011-12 and 2.5% in A.Y. 2012-13 & 2013-14. This is having no legal sanction. For this purpose, we rely on the judgement of Hon'ble Karnataka High Court in the case of Shri Ganesh Shipping Agency in ITA No.366 of 2015 dated 6.2.2021, wherein held as follows:-

“5. We have considered the submissions made on both sides and have perused the record. From perusal of the order passed by the authorities, it is evident that the authorities have accepted the books of accounts produced by the assessee. The Assessing Officer, in its order, has admitted that the payment of speed money is a trade practice which is followed by the assessee and similar business concerns functioning for speedy completion of their work. However, the disallowance of 20% of the expenses is made solely on the ground that the assessee had produced the self-made cash vouchers which showed that the payment was made by cash to each gang leader and the identity of the gang leader is not verifiable and the recipients are not assessee's employees. The aforesaid finding has been affirmed by the Commissioner of Income Tax (Appeals) as well as by the Tribunal. However, it is pertinent to note that the books of accounts have not been touted by any of the authorities under the Act. A Bench of this Court vide judgment dated 24.03.2015 passed in ITA No.22/2015, has held that admittedly the normal practice in the line of business of the assessee is to pay certain extra amounts to port labourers as speed money for promptly and speedily carrying out the labour work of handling cargo beyond working hours and has placed reliance on, the decision rendered by this Court in **KONKAN MARINE AGENCIES**, supra. It is pertinent to note that in **CLIFFORD D'SOZA**, supra, payment was made to the sub-contractors in cash as well as by Cheques. In the absence of any challenge to the entries made in the books of accounts by the authorities, in our opinion, the finding recorded by the Assessing Officer as well as the Tribunal that it denied the claim of the assessee for expenditure to the extent of 10% on account of payment of speed money, is perverse as the same is duly supported by the documentary

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evidence. Insofar as the submission made by the learned counsel for the revenue that in paragraph 4 of the order of the Commissioner the assessee himself had restricted the payment of speed money to 10% is concerned, it is pertinent to note that the restriction was made by the assessee in respect of Assessment Year 200405 and from the grounds of memorandum of appeal before the Tribunal, we find that the assessee had challenged the aforesaid finding which is evident from paragraphs 1 and 2, therefore, the aforesaid submission is of no assistance to the revenue.

6. *In view of aforesaid preceding analysis, the substantial question of law involved in this appeal is answered against the revenue and in favour of the assessee.”*

Accordingly, we delete the addition and allow the ground taken by the assessee in these appeals and dismiss the ground taken by the revenue in these appeals.”

3.1 In view of the above order of the Tribunal, taking a consistent view, we delete the above addition made by the AO in both assessment years.

4. In the result, both the appeals in ITA Nos.170 & 171/Bang/2023 are allowed.

Order pronounced in the open court on 25th May, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 25th May, 2023.
VG/SPS

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**