

आयकर अपीलीय अधिकरण " बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.891/PUN/2022
निर्धारण वर्ष / Assessment Year : 2014-15

The Assistant Commissioner of Income Tax, Panvel Circle, Panvel.	Vs	M/s.SBW Logistics Pvt. Ltd., 502, 5 th Floor, Pujit Plaza, Plot No.67, Sector-11, CBD Belapur, Navi Mumbai – 400614. PAN: AAJCS 6396 R
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri K. Gopal – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	20/03/2023
Date of pronouncement	24/05/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Revenue is directed against the order of Id.Commissioner of Income Tax (Appeal)(NFAC)[Id.CIT(A)] dated 12.09.2022 emanating from assessment order dated 26.12.2016 under section 143(3) of the I.T.Act, 1961 for the A.Y.2014-15. The Revenue has raised the following grounds of appeal:

- “i. *On the facts and in the circumstances of the case, an in law, the Ld. CIT(A) erred by restricting the disallowance to Rs.7,00,000/- as against disallowance of cash expenses of Rs. 1,22,11,400/- by not appreciating that during the assessment proceedings the assessee was*

given sufficient opportunity to produce vouchers, invoices, bills, to support the cash expenses. However, the assessee had failed to produce any cogent evidence to substantiate the genuineness of these expenses.

- ii. On the facts and in the circumstances of the case, an in law, the Ld. CIT(A) erred in allowing the appeal of the assessee by not appreciating the fact that the assessee was given sufficient opportunity and repeated reminder to produce invoices or bills raised by Shri Rafiq Lilgar amounting to Rs.35,03,354/-. However, the assessee failed to produce any supporting documentary evidence to substantiate the claim of the expenditure.*
- iii. On the facts and in the circumstances of the case, an in law, the Ld. CIT(A) erred by considering the expenditure of Rs.60,35,065/- as revenue expenditure instead of capital expenditure as per finding of the AO given in the assessment order that the said expenses were incurred for construction/major repair of godown.*
- iv. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee by not appreciating the fact that the assessee was given sufficient opportunity and repeated reminder to produce details of such commission payments alongwith the details of the nature o services rendered by such parties and client in respect of whom such commission was payable. In spite of repeated reminder the assessee was not able to furnish any details in respect of the specific nature of services rendered and the clients in respect of whom such commission agents had rendered their services.*
- v. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.*
- vi. The appellant craves leave to add, amend, alter or delete*

any ground of appeal.”

Submission of Ld.AR :

2. Ld.AR filed a paper book. Ld.AR pleaded that all the expenditure was incurred for business of the assessee. The books of the assessee are audited. Ld.AR took us through the order of CIT(A). Ld AR invited our attention to the photographs to demonstrate that repairs were carried out.

Submission of Ld.DR:

3. Ld.DR relied on the order of the AO.

Findings and Analysis:

4. We have heard both the parties and perused the records. Our discussion and analysis are ground wise.

Ground Number 1 of Revenue, Disallowance of Rs.1,22,11,400/-:

4.1 The assessee has debited Rs. 2,17,49,819/- under the head repairs and Maintenance. AO observed that out of Rs.2,17,49,819/- the cash expenses were Rs.1,22,11,400/-.

Repairs and Maintenance expenditure claimed :

Expenditure incurred in cash (56%)	-	Rs.1,22,11,400/-
Expenses other than Case	-	Rs.95,38,419/-
Total	-	Rs.2,17,49,819/-

4.2 The AO asked the Assessee to produce Vouchers, bills, invoices. But the assessee failed to file any evidence before the AO with reference to expenses made in Cash. The AO in the assessment order observed that the assessee has inflated the expenses, AO doubted the genuineness of these expenses, and held that these expenses have not been incurred wholly and exclusively for the purpose of business of the assessee.

4.3 The Commissioner of income Tax(Appeal) confirmed the addition of Rs.7,00,000/- only. The ld.Commissioner of Income Tax was of the opinion that it was impossible for assessee to maintain proper bills vouchers for such cash expenses incurred on labour.

4.4 It is important to mention here that no bills, vouchers were produced before the ld.CIT(A). Before this Tribunal also no bills and vouchers produced. The ld.CIT(A) has also observed in the order that the Godowns were in Rural area and as per the Govt. of Maharashtra Policy, only local labours can be hired. However, no document has been filed by the assessee to demonstrate the Govt. of Maharashtra's such policy. We have perused the ledge account filed by the assessee (page 47-110 of Paper Book). All the entries are below Rs.20000/-.

Some of the entries are reproduced here as under :

12/04/13 Cash Being amount paid against Exp to Krishna Shukla	Rs.16796/-
13/04/13 Cash Being amount paid against Exp to Chandan Mishra	Rs.16,644/-
13/04/13 Cash Being amount paid against Exp to Laxman Sighna	Rs.16,644/-
11/04/13 Cash Being amount paid against Exp to Ganesh Zha	Rs.17,025/-

4.5 These kind of entries are there on all pages of the ledger. Assessee has not filed any evidence either before the Assessing Officer(AO), Id.CIT(A) or ITAT. The assessee has filed only this Ledger. No supporting evidence like Vouchers, Bills invoices were submitted. Normally for Labour expenditure vouchers are made on which description of activity is mentioned and signature or thumb impression of the Labour is obtained. No such vouchers have been submitted. We specifically asked the AR for vouchers but Ld.AR could not produce the same nor he explained whether such vouchers were maintained or not. This explains that the assessee do not have any evidence to substantiate the expenditure claim. We agree with the Assessing Officer, that primary onus is on the assessee. We do

not agree with the Id.CIT(A) that due to Maharashtra Government Policy only local rural labours were hired as one can see from the names entered in the ledger that apparently those names are not local rural people of Maharashtra. Be it as it may be, nothing prevented the assessee to obtain signatures or thumb impression of the labours. We are aware that we cannot teach the assessee how to run his business but at the same time we are also aware that Assessee has to prove genuineness of the expenditure claimed. The burden mainly in such kind of cash expenses is on assessee. The assessee failed to prove the Genuineness of the expenditure. The assessee failed to prove that the said expenditure was incurred wholly and exclusively for the purpose of business of the assessee.

5. The Id.CIT(A) has relied on the Decision of Hon'ble Delhi High Court in the case of Principal Commissioner of Income-tax v. R.G. Buildwell Engineers Ltd.[2018] 99 taxmann.com 283, in the said case, Hon'ble High Court in para 4 has held as under :

Quote, "4. This Court is of the opinion that the principal reasoning of the ITAT, i.e. omission to reject the books of account, in which event the adhoc disallowance could have been adjusted and also the historical treatment of such expenses, cannot be termed as unreasonable; in support of its ultimate conclusion. " Unquote.

6. Thus, in the case of R.G.Buildwell (supra) the Revenue had accepted the assessee's claim in earlier year. The decision is based on cumulative analysis of all the relevant facts of that case. The Hon'ble Delhi High Court has not laid down the law that for every disallowance of expenditure the AO has to first reject the books of account. Therefore, the Id.CIT(A) has erred in reading the decision of Hon'ble Delhi High Court.

7. The Id.CIT(A) has mentioned in the order that the AO's addition is based on whims, presumption, and there was no material on record for addition.(page 12 of CIT(A) order). However, this is a case, in which the assessee has claimed certain expenditure. Assessee has not filed any evidence like bills vouchers etc. Hence, the AO disallowed it. Thus, the Id.CIT(A)'s observations are erroneous.

7.1 In these facts and circumstances of the case, we uphold the disallowance of Rs. 1,22,11,400/-.

7.2 Accordingly Ground Number 1 of the Revenue is allowed.

Ground Number 2, Rs.35,03,354/- :

8. The assessee has debited Rs.35,03,354 in the name of Mr. Rafiq Lilgar. The AO had asked assessee to produce the evidence. However, the assessee failed to produce any bills, vouchers etc, the

AO disallowed the impugned expenditure. The AO held these expenditure as bogus and accommodation entry. The Id.CIT(A) has allowed it on the ground that TDS was deducted, payments through banking channel. It is again relevant to mention here that Assessee has not filed any bills or vouchers issued by said Mr. Rafiq Lilgar.

8.1 Before us also, the assessee has merely submitted copy of Ledger account of Rafiq Lilgar in the books of the assessee. The said Ledger Account does not contain any address of Mr.Rafiq Lilgar. No PAN is mentioned. Narration in the ledger account is “issued against Labour charges”.

8.2 Thus, it is fact that the assessee has not produced any bills issued by Rafiq Lilgar, no invoices, vouchers filed either before AO, Id.CIT(A), and ITAT. The assessee’s only claim is that TDS was done. The question here is whether the said expenditure was wholly and exclusively for the purpose of the business of the assessee and whether it was revenue expenditure. In the absence of Bills, one cannot decide the nature of expenditure. Mere narration in the ledger is not sufficient. The Assessee had mentioned before the Ld.CIT(A) that the AO should have issued letter u/s.133(6). We failed to understand in the absence of the address how AO could have made

inquiry. It is observed that the Assessee has chosen not to file proper and complete details.

9. The ld.CIT(A) has relied on the decision of Hon'ble Gujarat High Court in the case of CIT Vs Mundra Port and Sez Ltd.[2014]45 taxmann.com 361, in the said case the Hon'ble High Court has held as under :

Quote, " When the issue travelled to the Tribunal, it extensively dealt with the issue and concluded in favour of the assessee. It would be profitable to reproduce some of the relevant observations made by the Tribunal:

"12. Now we examine the applicability of the judgment of Hon'ble Gujarat High Court cited by ld. A.R. i.e. judgment rendered in the case of Heir and legal representatives of Late Laxmanbhai S Patel (supra). This judgment is with regard to not providing the assessee to cross examine the 3rd person. In the present case, the assessee had requested the A.O. to provide opportunity to cross examine the 3rd party but the same was not allowed by the A.O. But without going on this basis, we find that otherwise also no case was made out by the authorities below for making the disallowance when the assessee had provided the names of the parties introduced by N M Consultants to the assessee and the A.O. has simply made this allegation that specific details were not furnished by the assessee to establish the extent of services which means that the rendering of service by N M Consultants is not in doubt and the doubt is only about quantum of service. Moreover, we

have also noted that the assessee had reported a loss of Rs.7860.41 lacs and the assessment was completed by the A.O. at a loss of Rs.7795.45 lacs even after making this disallowance of Rs.65 lacs. This is also the claim of the assessee that the assessee is eligible for deduction of 100% u/s. 80-IA(4) even if the assessee is having income in a future year. Under these facts, it is very difficult to believe that any person will claim bogus expenditure. Considering all these facts, we do not find any reason to interfere in the order of Ltd. CIT(A)."

7. We do not see any reason to interfere in the findings given by the Tribunal for the reason that the Tribunal has taken into account substantiating material produced before it to conclude that it was difficult to believe that any assessee would claim such bogus expenditure more particularly when it is eligible for 100% deduction under section 80IA of the Act and even otherwise, on the basis of other material on record, the services rendered by N.M. Consultants were not found doubtful, doubt was only with regard to the quantum of service. However, when payment was through the channel of bank and tax also was deducted at source and N.M. Consultants is not found to be related to the respondent assessee, both the authorities concurrently and rightly addressed the issue."
Unquote.

9.1 Thus, in the case of Mundra Port (supra), the AO had not doubted the genuineness of the expenditure, also ITAT has held that since the assessee was eligible for 100% deduction u/s 80IA , it is unlikely to claim bogus expenditure. Thus, the decision relied by the

ld.CIT(A) is based on peculiar facts of that case. The facts of the case under consideration are different. In this case the AO has held the impugned expenditure as non genuine. Therefore, the ld.CIT(A) has erred in relying on the above decision. Therefore, in the facts and circumstances of the case, we uphold the disallowance made by the AO of Rs.35,03,354/-. Accordingly, the ground number 2 of the Revenue is allowed.

Ground Number 3:

10. The AO has held expenses of Rs.60,35,065/- as capital expenditure. The CIT(A) held it as revenue expenditure. The AO has admitted that the expenditure was for Construction/ repairs of Godowns. Thus, the AO has not verified whether the expenditure was for Construction of Godown or Repair of Godown. The CIT(A) has also not actually verified. Before us the assessee has not filed any document like bills, etc to demonstrate that the expenditure was for repairs. In these fact and circumstances of the case we deem it appropriate to set aside the issue to the file of AO for denovo adjudication. AO shall verify all the facts. AO shall give opportunity to the assessee. Thus, the ground number 3 of the revenue is allowed for statistical purpose.

Ground Number 4:

11. The AO has observed in the assessment order that an amount of Rs.2,12,35,684/- was debited as Commission Charges. AO had called for details but assessee failed to file the same. Hence, the AO disallowed 20% of the said expenditure. The Id.CIT(A) allowed it. The Id.CIT(A) observed that the assessee has filed Name, PAN and mode of payment. The assessee has filed copy of the list at page 112 and 113 of the paper book. It is observed that in following cases amount has been paid in cash, no PAN mentioned, no TDS deducted, no address mentioned.

Name	Mode	PAN	Amount
Bala Sakpal	Cash	-	73500
Kishore	cash	-	2350
Shekar	cash	-	4250
Sanjiv	cash	-	3400
Vikesh	cash	-	4700
Paresh	cash	-	1200
Vikesh	cash	-	4800
Kishore Ambre	cash	-	5000
TOTAL			99200

11.1 Other than the above-mentioned parties, in all other cases the assessee had provided Pan, deducted TDS, and amount was paid by cheque. The AO has not doubted all the payments. However, for the persons mentioned in above chart, the payments were made in cash. The names are also incomplete. No address provided, no PAN provided, no TDS done. Therefore, to the extent of above persons,

we agree with the AO that genuineness of payments could not be verified. The onus was on assessee to prove the same. The assessee has not filed any bills issued by these persons. Therefore, in the facts and circumstances of the case, we uphold the disallowance of Rs.99,200/- as calculated in above chart. Accordingly, the AO is directed to restrict the disallowance to Rs.99,200/-. Accordingly, the ground number 4 of the revenue is partly allowed.

Ground No.5 & 6 :

12. The grounds are general in nature, needs no adjudication, hence, dismissed.

13. In the result, appeal of the Revenue is Partly Allowed.

Order pronounced in the open Court on 24th May, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th May, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

ITA No.891/PUN/2022
M/s.SBW Logistics Pvt. Ltd. [R]

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.