

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 61/Ind/2022**  
**(Assessment Year:2014-15 )**

Satya Narayan Agrawal 25, station Road, Ganj Basoda, Vidisha	vs.	ACIT, 4(1) Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AAXPA 1865 E</b>		
Assessee by	Shri Arun Jain, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	30.05.2023	
Date of Pronouncement	22 .06.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is directed against the order dated 25.01.2022 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2014-15. The assessee has raised following grounds of appeal:

*“1.That on the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in facts and also in law in confirming the disallowance of the genuine expenditure of Labour Contract amounting to 6229332/- being 25% of the expenses of 24917330/- made by assessing officer (AO) u/s 69C of the Act which is unjust, illegal and arbitrary.*

*2. That on the facts and in the circumstances of the case the CIT(A) erred in facts and also in law in confirming the disallowance of the genuine expenditure of Machinery Hire Charges amounting to*

578670/- being 25% of the expenses of 2314680/- made by AO u/s 69C of the Act which is unjust, illegal and arbitrary.

3. That on the facts and in the circumstances of the case the learned CIT(A) erred in facts and also in law in confirming the disallowance of the genuine expenditure of Departmental Deduction amounting to 333355/- being 25% of the expenses of 1333421/- made by AO u/s 69C of the Act which is unjust, illegal and arbitrary.

4. That on the facts and in the circumstances of the case the learned CIT(A) erred in facts and also in law in confirming the disallowance of the genuine expenditure Transportation amounting to ₹ 226832/- being 25% of the expenses of 907330/- made by AO u/s 69C of the Act which is unjust, illegal and arbitrary.

5. That on the facts and in the circumstances of the 9 case the learned CIT(A) erred in facts and also in law in confirming the disallowance of the genuine expenditure of Bank Interest amounting to 266205/- being 25% of the expenses of 1064822/- made by AO u/s 69C of the Act which is unjust, illegal and arbitrary.

6. That on the facts and in the circumstances of the case the learned CIT(A) erred in facts and also in law in confirming the disallowance of the genuine expenditure of Bank Guarantee Charges amounting to 104212/- being 25% of the expenses of 416851/- made by AO u/s 69C of the Act which is unjust, illegal and arbitrary.

7. That on the facts and in the circumstances of the case the learned CIT(A) erred in facts and also in law in confirming the disallowance of the genuine expenditure of Bank Charges (wrongly mentioned as advertisement by AO) amounting to 42025/- being 25% of the expenses of 168100/- made by AO u/s 69C of the Act which is unjust, illegal and arbitrary.

8. That on the facts and in the circumstances of the case the learned CIT(A) erred in facts and also in law in not considering the fact that proper opportunity of hearing was not granted by AO as assessment order was passed u/s 144 and notice u/s 144 of the Act was not served to assessee which is against the natural justice and illegal.

9. That on the facts and in the circumstances of the case the learned CIT(A) erred in facts and also in law in not considering the fact that the source of expenditures are not unexplained and recorded in the books of account hence invocation and addition u/s 69C is bad in law.

10. That on the facts and in the circumstances of the case the learned CIT(A) erred in facts and also in law in not considering the fact that the assessment order has been set aside by Commissioner of Income Tax u/s 263 of the Act hence assessment order has become non est

*(not in existence). Appeal order passed against this order is bad in law.*

*11. That on the facts and in the circumstances of the case the learned CIT(A) erred in facts and also in law in confirming disallowance of expenditures which were not included in the reason for limited scrutiny as AO has no jurisdiction on these issues. Disallowance of these expenditures is bad in law and assessment order is also illegal.*

*12. That on the facts and in the circumstances of the case the learned CIT(A) erred in facts and also in law in passing non-speaking order by not considering or not discussing in the order the replies along with enclosures submitted by assessee.*

*13. The appellant prays to seek leave to add or amend any grounds of appeal, if necessary, in the interest of justice under law..”*

2. The assessee is an individual and carrying out business of road construction under the contract with the Government. The assessee filed his return of income on 31.11.2014 declaring total income of Rs.52,38,640/-. The case was taken up for limited scrutiny under CASS. The AO issued notices u/s 143(2) and 142(1) of the Act. Initially the Authorized Representative of the assessee appear before the AO and filed written submission but thereafter, the assessee has not responded to notice issued u/s 142(1) whereby the assessee was asked to show cause as to why the expenses claimed by the assessee under various head should not be disallowed for want of supporting evidence being bills and vouchers.

3. Accordingly the AO propose to frame the assessment on best judgment basis u/s 144 of the Act and consequently the assessment was completed u/s 143(3) r.w.s. 144 of the Act at the total income of Rs.1,30,19,271/- as against return of income of Rs.52,38,640/-. The AO made disallowance of various expenses @ 25% for want of supporting evidence. The assessee challenged the action of the AO before the Ld. CIT(A) but could not succeed.

4. Before the Tribunal the Ld. AR of the assessee has submitted that the AO has made ad hoc disallowance of 25% of all these expenses while framing *ex-parte* assessment u/s 144 of the Act. He has pointed out that

the notice issued u/s 144 was not served upon the assessee and therefore, there was no response on behalf of the assessee. Ld. AR has further contended that the AO also applied the provision of section 69C of the Act in respect of adhoc disallowance of expenses, whereas all the expenses are duly recorded in the books of account of the assessee and there is no question about the source of expenses incurred by the assessee. Thus, the Ld. AR has submitted that the addition made by the AO and confirmed by the Ld. CIT(A) are not justified and liable to be deleted. He has relied upon the decision of *Hon'ble Delhi High Court in the case of CIT vs. Refam Management Services P. Ltd. and Anr. 386 ITR 393* and submitted that the Hon'ble High Court has held that section 69C applied only when the source of the expenditure incurred by the assessee is not explained. He has referred to the details of the various expenditures as extracted from the vouchers and bills of the expenditure incurred and submitted that most of the expenses are paid through banking channel and subjected to TDS wherever it is applicable. Only the expenditure on account of machinery higher charges were paid in cash. Therefore, disallowance made by the AO @ 25% in respect of all expenses is not justified. He has further submitted that the AO has also disallowed 25% of the bank interest and bank charges which are mistakenly mentioned as advertisement expenses. Therefore the Ld. AR has submitted that the disallowance are liable to be deleted.

4. He has referred to the letter dated 14.10.2016 filed before the AO and submitted that along with said letter the assessee enclosed TDS details in form 26Q and details of ITR in respect of MP VAT Act. The assessee also given details of the departmental deductions as per the terms of the contract. The deductions were made by the contractee department from the bills of work done, for royalty of sand, gitti, moram etc. The AO without considering all these details has made adhoc disallowance.

5. On the other hand, Ld. DR has submitted that the AO has issued various notices u/s 142(1) calling the supporting evidence in the shape of

bills and vouchers in respect of claim of various expenses. However, the assessee failed to produce any supporting evidence before the AO. Even before the Ld. CIT(A) when no supporting evidence was produced the disallowance made by the AO was confirmed. He has thus contended the details produced by the assessee as well as bills and vouchers which are required to produce in support of the claim needs to be examined and verified at the level of the AO.

6. We have considered the rival submission as well as relevant material on record. The Assessing Officer has given details of notice issued to the assessee as under:

*“1. The assessee has e-filed the Return of Income vide acknowledgement no. 433712781301114 on 30.11.2014 declaring total income of Rs. 52,38,640/-. This case was selected for limited scrutiny under CASS for A. Y. 2014-15. Accordingly, notice u/s 143(2) of the Income-Tax/ 196 was issued to the assessee on 28.08.2015 by the ACIT-3(1), Bhopal and duly served upon the assessee. The case was transferred to ACIT-4(1) thereafter. A notice u/s 142(1) of Income-Tax Act, 1961 alongwith questionnaire was issued to the assessee on 03.05.2016, fixing the hearing on 08.06.2016. In response to the said notice dated 03.05.2016, Shri Arun Kumar Jain, CA, the AR of the assessee appeared in the office & file written submissions, which are placed on record. Another notice u/s 142(1) of Income-Tax Act, 1961 was issued to the assessee on 30.05.2016, fixing the hearing on 13.06.2016. However, the assessee did not comply with the same. Vide letter dated 03.05.2016, the reasons for limited scrutiny was also provided to the assessee.*

*2. Upon change of incumbency, another notices u/s 142(1) of Income-Tax Act, 1961 alongwith questionnaire was issued to the assessee on 06.09.2016, fixing the hearing on 14.09.2016. Again, the assessee did not comply with the same. Further, a notice u/s 271(1)(b) of Income-Tax Act, 1961 was issued to the assessee on 19.09.2016, fixing the hearing on 26.09.2016. In response to the notice u/s 271(1)(b) dated 19.09.2016, Shri Harsh Agrawal, S/o Shri Satya Narayan Agrawal appeared and pleaded in the writing that for reason mentioned therein, the penalty proceeding u/s 271(1)(b) is being dropped. Further. He was requested to appear on 10.10.2016 with submissions as per questionnaire. Again, the assessee did not comply with the same.*

*3. A show cause notice u/s 144 of the Income Tax Act, 1961 was issued to the assessee on 21.11.2016 to show cause that why the assessment should not be completed u/s 144 of the Income tax Act,*

*1961. It was also mentioned in the aforesaid notice u/s 144 that the assessee had not complied with the notice u/s 142(1) dated 06.09.2016 and penalty proceeding u/s 271(1)(b) were dropped on assurance of full and proper compliance. As per point no. 7 (of submission dated 14.10.2016) the assessee had requested for some more time for verification of vouchers, which had not produced in this office till the date of issue of 144 notice mentioned above. Since the assessee has repeatedly delayed submissions and despite a specific show cause u/s 144 of the Income Tax Act, 1961 not complied fully and properly with the notice u/s 142(1) of the Income Tax 1961 dated 06.09.2016, the undersigned proceeds to assesses the income of the assessee as per the provisions of s.144 of the Income Tax Act, 1961.”*

7. Initially in response to notice u/s 143(2) and 142(1) Ld.AR of the assessee appeared and filed written submissions. However, when the AO has again issued notice u/s 142(1) and asked the assessee to produce bills and vouchers in respect of various expenses debited in the profit and loss account assessee did not appear or filed any evidence in support of the claim. Therefore, there was no compliance on the part of the assessee to the notice issued u/s 142(1) dated 06.09.2016. The AO then issued a show cause notice u/s 144 dated 21.11.2016 but again there was no compliance on behalf of the assessee. Ld. AR of the assessee has contended that the said notice issued u/s 144 was not served upon the assessee. However, when there is no compliance even to the notice issued u/s 142(1) this contention of the assessee shall have no consequence. Accordingly, the AO framed the assessment on best judgment basis as per the material available with the AO. The AO made disallowance @ 25% of the expenses under the head:- labour contract, machinery higher charges, departmental deductions, transport expenses, bank interest, bank guaranty charges and advertisement expenses. The assessee challenged the action of the AO before the Ld. CIT(A) and the Ld. CIT(A) has confirmed the addition made by the AO as under:

*“5.3 The above submissions of the assessee have been carefully considered. Just because the books of accounts are audited, expenses cannot be allowed. In particular when the case has been selected for scrutiny and the AO has called for the ledgers, bills and vouchers, in support of the expenses claimed, once the details are*

*called for, the onus is on the assessee to establish that the expenses incurred are genuine, are related to business income of the assessee, and they are allowable as per law by producing the relevant details and documents in support of his claim. It is found from the assessment order that the assessing officer has disallowed the portion of expenses, as the assessee has not established that these expenses are business expenses of the assessee, all the more as to whether they were genuinely incurred or not. The Apex Court has held that sums paid through banking transactions need not prove the genuineness of the transaction. Since the relevant claim of expenses under various heads are found to be is not established to be genuine and are meant wholly and exclusively for business, the adhoc disallowance of expenditure made by AO of Rs.77,80,629/- is hereby confirmed. The relevant grounds are dismissed.”*

8. Thus, the Ld. CIT(A) has also given reasons that the assessee has failed to produce the bills and vouchers in support of the expenses claimed. It is manifest from the assessment order as well as impugned order of the CIT(A) that the relevant details and supporting bills and vouchers of the expenses have not been considered either by the AO for want of production by the assessee or by the CIT(A). The AO has also applied the provision of section 69C however, once the expenses are duly recorded in the books of account then the provision of section 69C are not applicable while disallowing the expenses for want of supporting bills and vouchers. It is not the case that some expenses are detected by the AO and the assessee has failed to explain the source of such expenditure or part thereto. But these expenses are duly recorded in the books of account and source of which are also recorded in the books of account then the provisions of section 69C are not applicable.

9. The AO has not made any allegation in the assessment order that the assessee failed to explain source of expenses but the disallowance was made only for want of supporting bills and vouchers which can at the best lead to disallowance being inflated expenses or not incurred wholly and exclusively for the purpose of business of the assessee. Therefore, in the facts and circumstances of the case the provision of section 69C would not apply. Since the additions are made by the AO for want of bills and vouchers which is confirmed by the CIT(A) on the same ground and now

the assessee has explained the details of expenses and also given details of TDS as well as other deductions made by the Government Department which needs to be verified and examined at the level of the AO. Accordingly in the facts and circumstances of the case as discussed above the impugned order of the Ld. CIT(A) is set aside and the matter is remanded to the record of the Assessing Officer for verification and examination of the relevant details and record including the bills and vouchers to be produced by the assessee and then decided this issue of disallowance of expenses fresh after giving opportunity of hearing to the assessee.

10. In the result, appeal of assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22.06.2023.

**Sd/-**

**(B.M. BIYANI)**  
Accountant Member

**Indore, 22.06.2023**

**Patel/Sr. PS**

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

**Sd/-**

**(VIJAY PAL RAO)**  
Judicial Member

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*