

**IN THE INCOME TAX APPELLATE TRIBUNAL, GUWAHATI BENCH, GUWAHATI
VIRTUAL HEARING AT KOLKATA**

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No. 28/GTY/2021
Assessment Year: 2016-17**

Monjil Ali Barbhuiya		ITO, Ward-2, Silchar
Mazumder Barzar, Tarapur, Silchar, Cachar-788003.	Vs.	
PAN: ANZPB 6357 P		
(Appellant)		(Respondent)

Present for:

Appellant by : None

Respondent by : Shri N.T. Sherpa, JCIT

Date of Hearing : 28.06.2023

Date of Pronouncement : 28.07.2023

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2016-17 is directed against the order dated 08.08.2019 passed by the ld. Commissioner of Income-tax Appeals, Shillong [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

"i. For that under the facts and circumstances of the case, the assessment is bad in law and facts as your humble appellant could not get the opportunities for unavoidable reasons to rebut the materials gathered against the assessee and also considering other facts and circumstances.

ii. For that addition of Rs. 43,00,000/- as undisclosed income is not tenable in the eye of law.

iii. For that disallowance of depreciation amount of Rs. 4,55,957/- is not fair because ownership of the related property vests with your humble appellant.

iv. For that the appellant reserves the right to make additions of further ground on or before hearing of the appeal."

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2016-17 by declaring income of Rs.

3,68,200/- . The case of the assessee was selected for limited scrutiny under CASS followed by notices u/s 143(2) and 142(1) of the Act. During the assessment proceeding, the ld. AO made an addition of Rs. 4,59,957/- in the hands of assessee as the assessee claimed excess depreciation in his return of income and further the ld. AO make an addition of Rs. 43,00,000/- in the hands of assessee which was credited in the bank account of the assessee for which no proper explanation was given by him during the framing of assessment by the AO. The ld. AO while framing the assessment he stated that the assessee vide his voluntary statement recorded on oath on 10.08.2017 u/s 131(1A) of the Act before the Additional Director of Income-tax (Investigation) Unit-2, Guwahati) declared a sum of Rs. 43,00,000/- as his undisclosed income. Therefore, the ld. AO had taken a view against the assessee and assessed the income of the assessee at Rs. 51,24,161/- for the assessment year in question.

3. Dissatisfied with the above, assessee preferred an appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Aggrieved by the order of ld. CIT(A), assessee is in appeal before this Tribunal. At the time of hearing no one turned up on behalf of the assessee although notice for the hearing was duly served on registered address of the assessee. Therefore, we have no other option but to decide the appeal ex-parte on merits of the case with the assistance of ld. DR. We first take up the issue no. 1 & 2 of this appeal since they are connected and linked with each other. Therefore, we clubbed them together and going to decide the same. The instant issues are here relating to addition of Rs. 43,00,000/- made by the AO in the hands of assessee and the order passed by

the CIT(A) by sustaining the order of AO by observing in his order, the relevant portion of the impugned order is reflected as under:

“3.3. I have carefully considered the matter As mentioned earlier, the assessee, in a sworn statement had admitted that the sum of Rs 43,00,000/- was his undisclosed income. Before the AO, in spite of several opportunities, no explanation of any sort was given. Now, at the stage of appeal, assessee is taking a plea that the money was received Universal Infraworld Pvt. Ltd. (UIPL in short) as advance and the same was transferred to Rajccb Langthasa as per the instruction of UIPL. A confirmation from Rajeeb Langthasa was filed in this connection. On careful consideration of the matter, I am of the view that the evidence introduced now lacks in credibility. The money comes to assessee's bank A/c from UIPL. Therefore, if any confirmation worth consideration is filed. the same should be a confirmation from UIPL. Purportedly, the money was advance received from UIPL and the claim of appellant is that due to disagreement in terms and conditions for supply of materials, the money advanced had to be refunded. On examination of copy of bank statement furnished, the money got deposited in assessee's bank A/c on 18.08.2015. The money again got transferred to Rajeeb Langthasa on the same day. It is not understood as to how the alleged money was advanced if there was disagreement between UIPL and assessee. It is difficult to envision a situation in which advance was given on a particular day and that on the same day, there was disagreement due to which assessee had to refund the advance. And more strangely, the date on which assessee wrote cheque No. 674198 for Rajeeb Langthasa was 13.08.15. This is clearly mentioned in the Bank Statement furnished to me which is duly signed by banking authorities. Therefore, assessee had already signed a cheque for Rajeeb Langthasa even before he received alleged advance from UIPL.

3.3.1. Further, in the written submission, it was stated that recipient i.e. Rajeeb Langthasa hailed from remote area of North Cachar Hills and that he could not be connected (sic) during assessment proceeding. This makes the case queerer. It is not known what kind of relationship UIPL was having with tax-exempt tribal residing in remote comer of N.C. Hills. All the acts of receiving advance from UIPL, disagreement with UIPL for material supply, instruction by UIPL to assessee to refund the amount to Rajeeb Langthasa and actual refund of the sum to the said Langthasa occurred on the same day. And as mentioned earlier the cheque meant for Rajeeb

Langthasa was written five days earlier. The role played by Langthasa, a tax-exempt tribal requires lots of answer. The explanation given by assessee contain more contradictions and more factual improbabilities than clarifying the factual position. There is no credibility at all and the same is therefore rejected. The ground is dismissed.

4. In this ground, it is stated that appellant who is illiterate was examined by Addl. DIT and he signed the statement without understanding the content and that the AO was wrong making addition solely on the basis of statement given.

4.1. It is a fact that the AO placed reliance on statement given in course of proceeding u/s 131 of the Act. But the AO did not totally rely on statement given. He also relied upon the fact that there was no explanation of any sort from the appellant.

4.2. The claim of assessee is not tenable. Assessee cannot be totally an illiterate person. He is running business with substantial turnover. His books of accounts were also audited. In any case, from the discussion while adjudication ground number 1 of the appeal, even without considering the admission before the Addl. DIT, there is sufficient reason to add the sum of Rs, 43,00,000/- to assessee's income. The ground is dismissed.”

5. We after examining the facts of the case and on perusal of material available on record, we notice that assessee by his own statement recorded on oath dated 10.08.2017 before the Additional Director of Income-tax Unit-2, Guwahati by way of voluntarily declaration declared an amount of Rs. 43,00,000/- as his undisclosed income over and above the normal return of income filed for the A.Y. 2016-17 and on the statement of the assessee, the ld. AO made an addition of Rs. 43,00,000/- in the hands of assessee. During the course of assessment proceeding, the assessee has failed to offer any explanation about the source of such income before the AO. Although enough opportunities were given by the him to reply the same but assessee did not turn up and even before the ld. CIT(A), assessee has taken another plea stating that alleged

money which was received from Universal Infracore Pvt. Ltd. (UIPL) as an advance and the same was transferred to Rajeeb Langthasa as per the instruction of UIPL. In this connection, a confirmation letter from Rajeeb Langthasa was also filed before the Id. CIT(A) by the assessee but assessee could not file any confirmation from UIPL which was worth for consideration for evidence in this matter. Besides that money deposited in assessee's account on 18.08.2015 by UIPL again it transferred to one Rajeeb Langthasa on the same day by putting date on 13.08.2015 on the cheque which was quite before the assessee receiving the alleged advance from UIPL and in view of that the contention made by the assessee was not sustained by the Id. CIT(A) in his order. Therefore, from the facts of the case and findings of the authorities below, we do not find any infirmity in the order passed by the Id. CIT(A) by sustaining the order of the AO in respect of addition of Rs. 43,00,000/- made in the hands of assessee. Accordingly, ground no. 1 & 2 taken by the assessee are hereby dismissed. Ground no. 3 in the instant appeal by which assessee challenging the disallowance of claim of depreciation of Rs. 4,55,957/- on the various assets shown at the B/S as opening balance of the F.Y. 2015-16 and on from the perusal of the record, it appears that assessee could not furnish any proof of purchase of such assets or any supported evidence to substantiate the written down value of the assets on which assessee calculate depreciation at the time of hearing before the Id. AO and the Id. AO disallowed the claim of the assessee by making an addition of Rs. 4,55,957/- in absence of supported evidence from the ends of assessee and similarly at the time of hearing before the Id. CIT(A), assessee even failed to prove its case by submitting proper document regarding proof of purchase of assets and the Id. CIT(A) dismissed the claim of the assessee by observing in his order as follows:

5.3. There are three items amongst others, of asset on which assessee claimed depreciation. The first is vehicle under registration No. MZ-05-9376 purportedly acquired on 08.12.2010. In case of this vehicle, the assessee filed copy of sale certificate from Supreme Earthmovers. From the certificate, it is seen that it is a Backhole Loader. The same was mentioned to be MZ-05A-1795 and the buyers name is assessee. It is seen the vehicle number is not the same as what was mentioned in the Depreciation Schedule. The sale certificate even did not mention the sale/purchase value. The xerox copy of certificate did not have the seal & signature of seller. In view of this the document is not foot-proofed evidence of purchase of loader. With regard to vehicle No. AS-11AC-9376 appearing in the depreciation schedule, the only document furnished is a proforma invoice. The same cannot be treated as evidence of purchase of vehicle. Regarding the third vehicle, i.e. TATA Tripper bearing registration No. AS-11BC-9376, the only document furnished is copy of financial contract deal with TATA Motors Finance Ltd. for vehicle No. AS-11 BC-1418. The registration number is difference from what was mentioned in depreciation schedule for A.Y. 2015-16 & 2016-17. It is a contract for financing of vehicle purchase only. Therefore, the same cannot be treated as proof of purchasing a vehicle of the description available in the books of the appellant.

5.3.1. Had the assessee actually purchased the vehicles, there are several evidences which could have been furnished by him. They need not be enumerated here. Before the AO, no evidences of any sort were furnished. The papers furnished before me in appeal are not sufficient to take the view that assessee had actually purchased the vehicles on which depreciation was claimed. In view of this, the ground taken is dismissed.

In the result, appeal stands dismissed.”

6. We after examining the facts of the case and on perusal of the material available on record, we find that at the time of hearing before the AO, assessee could not prove its case by showing purchase of assets which assessee had claimed depreciation and even before Id. CIT(A) assessee furnished certain documents to substantiate its claim however in case of one assets, assessee submitted a different registration number which was not the same as stated in depreciation schedule submitted by the assessee and in another asset, assessee could not produce the proof of the ownership of the vehicle and the assessee has filed only a proforma invoice before the Id. CIT(A) which cannot be treated as evidence for

claiming depreciation of the asset. Further, in the case of third assets, assessee could produce only financial contract which was executed between the assessee and Tata Motors Finance Ltd. for vehicle No. AS-11BC-1418 whereas in depreciation schedule it was stated as AS-11BC-9376 and due to difference of various registration of vehicle as shown in the schedule of depreciation filed by the assessee, the ld. CIT(A) did not convince with the submission of the assessee and sustained the order passed by the AO by disallowing the claim of the assessee of Rs. 4,55,957/- made in respect of depreciation and the assessee even before us has failed to substantiate its claim by placing any supported and correct document to justify its claim. In such a situation, we do not find any infirmity in the order passed by the ld. CIT(A). Accordingly the instant ground taken by the assessee is hereby dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 28.07.2023

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated: 28.07.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Monjil Ali Barbhuiya.
2. The Respondent: ITO, Ward-2, Silchar
3. The CIT,
4. The CIT (A)
5. The DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata