

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH 'DB': AGRA**

**BEFORE,  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.115/Agr/2015  
(ASSESSMENT YEAR: 2010-11)**

Mohan Agrawal Construction Company A-2, Site No.1 City Centre, Gwalior PAN-AAMFM 3878J <b>(Appellant)</b>	Vs.	Income Tax Officer-3(2) Gwalior <b>(Respondent)</b>
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Appellant by	Mr. Rajendra Sharma, Advocate
Respondent by	Mr. Shailendra Shrivastava, Sr-DR

Date of Hearing	19/07/2023
Date of Pronouncement	08/08/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals), Gwalior ["Ld. CIT(A)", for short], dated 24/03/2015 for the Assessment Year 2010-11.

Grounds taken in this appeal are as under:

**"Ground No.1-** *On the facts and in the circumstances of the case, the learned CIT(Appeals) were not justified in confirming the disallowance of Rs.66000/- on account of rent payment by account payee cheque for the*

*premises taken at the works-site for business purpose. The above disallowance may kindly be deleted.*

**Ground No.2-** *On the facts and in the circumstances of the case, the learned CIT(Appeals) was not justified in confirming the disallowance of Rs.1189800/- paid to Shri Vijay Sharma who stood guarantee to various petty and local suppliers of sand, BT metal, moram & other material. The above disallowance may kindly be deleted.*

**Ground No.3-** *On the facts and in the circumstances of the case, the learned CIT(Appeals) was not justified in confirming an addition of Rs.350000/- u/s 68 despite furnishing the copy of legal notice and conclusive proof of repayment of the above loan to the creditor (Shri Ashutosh Maheswari). The said addition be deleted.*

**Ground No.4-** *On the facts and in the circumstances of the case, the learned CIT(Appeals) was not justified in partly confirming a disallowance of Rs.2000000/- out of I) Site, advertisement, business, traveling, printing, stationary and repairs II) fabrication expenses III) labour & wages and IV) bricks BT metal, oil & paints, sand stone, moram, shuttering expenses etc. Necessary interference may kindly be made and suitable relief allowed to the appellant firm.*

**Ground No.5-** *The appellant craves leave to add, amend, alter, modify, substitute or delete nay ground at the time or before hearing of appeal.”*

3. Brief facts of the case are that, the assessee filed return of income for the Assessment Year 2010-11 declaring income of Rs. 9,58,920/-, the case of the assessee was selected for scrutiny under CASS and an assessment order came to be passed u/s 143(3) of the Act by computing the total income of the assessee at Rs. 71,20,720/-. As against the assessment order, the assessee preferred an appeal before the CIT(A). The CIT(A) vide order dated 24/03/2015, upheld the disallowance of claim of rent of Rs.66,000/-, disallowance of Rs. 11,89,800/- claimed as guarantee payment and also

upheld the addition of Rs. 3,50,000/- made u/s 68 of the Act and also partly confirmed addition of Rs. 20,00,000/- out of disallowance for

- (i) Site advertisement, travelling, printing, stationary, repairs
- (ii) Fabrication
- (iii) Labour and Wages
- (iv) Bricks, BT Metal, oil and paint, sand, moram, shuttering expenses etc.

4. Aggrieved by the order of the CIT(A), in sustaining the additions/disallowance made by the A.O., the assessee preferred the present appeal on the grounds mentioned above.

**Ground No. 1: Disallowance of Rs. 66,000/- claimed as expenses under the head Rent.**

5. The Ld. Counsel for the assessee submitted that the assessee was undertaking his contract work at very far and remote area at where one Sh. Vijay Sharma was a 'prominent person' had provided the premises to the assessee with the undertaking that the amount for rent is to be paid to Sh. Vijay Sharma who will settle or pay the rent to the actual owner. Therefore submitted that, the rent paid to Sh. Vijay Sharma ought to have allowed. Further, submitted that the A.O. has not given any opportunity to cross-examine the Sh. Vijay Sharma . Therefore, the Ground No. 1 deserves to be allowed.

6. Per contra, the Ld. Departmental Representative submitted that the said Sh. Vijay Sharma whom the cheque of Rs. 66,000/- is paid as rent has denied

receiving any rent from the assessee. Therefore, the ld. A.O. has not committed any error in making the above said disallowance.

7. We have heard both the parties and perused the material available on record. Though the assessee has claimed to have paid Rs. 66,000/- by way of cheque to Sh. Vijay Sharma as rent, the said Sh. Vijay Sharma has specifically denied before the A.O. of receipt of any such rent from the assessee. It is also noted that the Assessing Officer has not provided an opportunity of cross examining the said Sh. Vijay Sharma. Therefore, we restore the issue to the file of the A.O. with a direction to provide an opportunity of cross examining Sh. Vijay Sharma to the Assessee and decide the matter afresh, accordingly, Ground No. 1 is partly allowed for statistical purpose.

**Ground No. 2:- Disallowance of Rs. 11,89,800/- claimed as outstanding amount payable.**

8. Ground No. 2 is regarding addition of Rs. 11,89,800/- made by disallowing the outstanding amount appearing in the balance sheet as payable to various vendors against which the name of one Sh. Vijay Sharma was mentioned. The Ld. Counsel for the assessee submitted that the A.O made addition of Rs.11,89,800/- towards the assessee income by not accepting the liability appearing in the balance sheet in respect of outstanding payment to be made to various vendors related with the purchases. As against the outstanding liability the name of Sh. Vijay Sharma was mentioned in the

balance sheet of the Assessee. Further submitted that, the said Sh. Vijay Sharma in his statement and also in the affidavit has accepted that he stood guarantee for the assessee for purchasing of material from various vendors on credit basis. The Ld. Counsel further submitted that the A.O. without making any enquiry or verification from the vendors whose name were given during the assessment proceedings, disallowed the liability related with the outstanding payments. Therefore, submitted that the CIT(A) should have deleted the disallowance.

9. The Ld. Departmental Representative contended that the said Sh. Vijay Sharma whose name has been reflected in the balance-sheet in respect of outstanding payment to be made has specifically denied before the A.O. an outstanding amount payable to various vendors appearing in the balance-sheet. Therefore the assessee cannot find fault with the order of the Lower Authorities.

10. We have heard both the parties and perused the material available on record. It is not in dispute that the assessee in his balance sheet mentioned the name of Sh. Vijay Sharma against the outstanding liability. It is also not in dispute that the said Sh. Vijay Sharma has denied before the Assessing Officer that 'no such amount is due with the assessee'. It is the case of the assessee that the assessee is doing construction work at far and remote place, approached one Sh. Vijay Sharma who is a prominent figure in the area which

has taken the guarantee of the assessee before the vendor from whom the purchases are to be made by the assessee on credit and the assessee for the sake of convenience has mentioned in the balance sheet the name of Sh. Vijay Sharma against the outstanding amount payable to various vendors having total number of 50. Further submitted that, the said Sh. Vijay Sharma has sworn an affidavit by admitting the above facts which is placed that Page No. 23 of the paper book, therefore submitted that the disallowance of Rs. 11,89,800/- deserves to be deleted.

11. The Ld. Departmental Representative vehemently submitted that the said Sh. Vijay Sharma has specifically denied about the outstanding amount payable to various vendors appearing in the balance sheet of the assessee and the alleged affidavit produced by the assessee cannot be taken into account since the same was not before the A.O. therefore, submitted that the Ground No. 2 of the assessee is liable to be dismissed.

12. We have heard both the parties and perused the material available on record. The assessee himself shown the name of Sh. Vijay Sharma in the balance sheet stating outstanding amount payable to various vendor, but the said Sh. Vijay Sharma has denied about outstanding amount payable to various vendors appearing in the balance sheet. The assessee has filed an affidavit of Sh. Vijay Sharma before us at page No. 23 of the Paper Book, wherein the said Sh. Vijay Sharma has made certain averments supporting the

claim of the assessee. Considering the above peculiar facts and circumstances and also considering the fact that the said Sh. Vijay Sharma has filed an affidavit supporting the claim of the assessee, we deem it fit to restore the matter to the file of the A.O. for de-novo consideration and the assessee is directed to establish the claim before the A.O. Accordingly, the Ground No. 2 of the assessee is partly allowed for statistical purpose.

**Ground No. 3:- Addition of Rs. 3,50,000/- unexplained loan.**

13. Ground No. 3 is regarding addition of Rs. 3,50,000/- treating same as unexplained loan. The Ld. Counsel for the assessee submitted that the said Rs. 3,50,000/- are not related to the year under consideration and are the old outstanding amount carried forward from the previous years, which is reflected in the balance sheet as liability payable to three persons. In support of the above contention of the Assessee, the assessee has produced the copy of the account of three creditors.

14. Considering the fact that the aforesaid amount does not related to the year under consideration and are the old balance and also the assessee has paid the aforesaid amount to the creditors in the subsequent years through cheques, we find no reason to sustain the addition made u/s 68 of the Act. Accordingly, Ground No. 3 of the assessee is allowed and the addition made by the A.O. of Rs. 3,50,000/- u/s 68 of the Act is hereby deleted.

**Ground NO. 4:- Disallowance of expenses of Rs. 20,00,000/-.**

15. Ground No. 4 is regarding disallowance of Rs. 20, 00,000/- sustained by the CIT(A) out of the disallowance made by the A.O. at Rs. 45,56,000/- from various heads of expenses which are as under:-

1.	<i>Site expenses, adv. Exp., business exp., travelling, printing &amp; stationery expenses and repair expenses</i>	<i>Rs. 1,96,000</i>
2.	<i>Fabrication expenses</i>	<i>Rs. 60,000</i>
3.	<i>Labour wages expenses</i>	<i>Rs.23,00,000/-</i>
4.	<i>Bricks, Bt. Metal exp, oil and paint exp</i>	<i>Rs. 20,00,000</i>
5.	<i>Send, soil stone and Murram exp, shuttering expense</i>	<i>Rs. 45,56,000/-</i>

16. The Ld. Counsel for the assessee submitted that the A.O. has made disallowance by way of estimation without pointing out that any expenses which is either not related with the business or incurred for the purpose other than the business. Though the A.O. has accepted the books of accounts, while disallowing the expenses, no specific reason expressed that the expenses which are either not related with the business or incurred for other than business. Further submitted that even the CIT(A) without any basis restricted the addition at Rs. 20,00,000/-. Further submitted that, once the books of account are accepted the entire accounts are liable to be accepted no disallowance out of accepted books of accounts should be made.

17. Per contra, the Ld. Departmental Representative relied on the finding and conclusions of the CIT(A).

18. We have heard the parties perused the material available on record. It is found from the record the Ld. A.O. while disallowing the expenses from various heads of expenses, has not given specific finding, even the CIT(A) while restricting the addition made by the A.O. at Rs. 45,56,000/- to Rs. 20,00,000/, has only considered the past history of the Appellant and not referred to any of the documents produced by the Assessee. The CIT(A) has not given any specific finding in respect of expenses claimed by the assessee and the assessee pleaded that the entire expenses should have been allowed by the CIT(A). Considering the above submissions and also the submissions made by the parties, we deem it fit to restore the issue of disallowance of expenses of Rs. 20,00,000/- which was sustained by the CIT(A) to the file of A.O. to pass speaking order by considering the past history of the assessee and also the documents produced by the assessee. Ordered accordingly. Thus, the Ground No. 4 of the assessee is partly allowed for statistical purpose.

19. In the result, the Appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 8<sup>th</sup> August, 2023

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Dated: 08/08/2023  
*Pk/R.N, Sr.ps*

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, AGRA