

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.791/Ind/2017

&

ITA No.431/Ind/2018

(Assessment Year:2012-13 & 2014-15)

ACIT 5(1) Indore	vs.	Shri Suresh Chand Jain 99, Thandla Road, Meghnagar, Jhabua
(Appellant / Revenue)		(Respondent/ Assessee)
PAN:AEZPJ 2697F		
Revenue by	Shri P.K. Mishra, CIT-DR	
Respondent by	None	
Date of Hearing	09.08.2023	
Date of Pronouncement	12 .09.2023	

ORDER

Per Vijay Pal Rao, JM:

These appeals by the Revenue are directed against two separate orders dated 07.09.2017 & 21.02.2018 of Commissioner of Income Tax(Appeals), Ujjain, for Assessment Years 2012-13 & 2014-15 respectively.

2. None has appeared on behalf of the assessee when these appeals were called for hearing. However the Ld. Counsel for the assessee has filed a letter dated 08.08.2013 seeking permission for withdrawal of his power of attorney because of non-supply of details by the assessee. It transpires from the record that these appeals are more than five years old and

assessee has been seeking adjournments and also keeps on changing the counsels frequently. Therefore, it is apparent that the assessee is not interested in contesting these appeals filed by the department. Accordingly the bench proposes to hear and disposed of this appeal *ex-parte*.

For A.Y.2012-13

The revenue has filed following grounds of appeal:

“1) Whether on the facts and in the circumstances of the case. Ld. CIT(A) was justified in deleting the addition of Rs. 6,36,75,614/- made on account unproved liability u/s 68 of the I.T. Act.

(2) Whether on the facts and in the circumstances of the case. Ld. CIT(A) was justified in deleting the disallowance of Rs. 95,99,872/- made on account of depreciation on trucks.

(3) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 23,38,690/- made on account of repair expenses u/s 40(a)(ia) of the I.T. Act.

(4) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs. 9,23,185/- made on account of notional interest.

(5) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 56,99,327/- made on account of various expenses.”

3. Ground No.1 is regarding the addition made by the AO u/s 68 on account of sundry creditors which was deleted by the Ld. CIT(A).

3.1. Ld. DR has referred to the assessment order and submitted that the assessee has shown sundry creditor of Rs. 6,36,75,614/-. The AO asked the assessee to file the details of these sundry creditors. In response the assessee submitted a list of 150 vehicles stating that the amount is payable in respect of freight charges due to these vehicles. On examination of the records the AO found that there was outstanding debtors of Rs.1,54,71,792/- which includes food Corporation of India, M.P. State Civil Supply Corporation etc. and therefore, the claim of the assessee that the amount was due to the creditors for the reason that the assessee has not received the payments from FCI and MPSCSC is incorrect. The AO

further noted that these vehicles have not done any transport work up to January or February 2012 and assessee has shown only for last two or three months as transport work done by these vehicles for which no payment was made even for the month of January 2012. The assessee even did not produce freight payment register for verification of freight payment or any detail or evidence in respect of transport work done by these vehicles. Therefore, the assessee did not produce supporting evidence to explain huge closing balance of sundry creditors of more than Rs.6 crore. He has further submitted that the Ld. CIT(A) has deleted the addition on the basis of the additional evidences filed by the assessee without verification and examination of the same. He has relied upon the order of the AO.

4. We have considered the submission of ld. DR and carefully perused the orders of the authorities below. The assessee has shown closing balance of sundry creditors of Rs.6,36,75,614/- and explained before the AO that due to non-receipt of payment from FCI and M.P. State Civil Supply Corporation these sundry creditors on account of freight charges were not paid. The AO noted that outstanding debtors has shown by the assessee is Rs.1,54,71,792/- including Food Corporation of India and M.P. State Civil Supply Corporation. Thus, the AO noted that there is no explanation so far as the outstanding sundry creditors of about Rs.5 crore after considering these outstanding debtors amount of Rs.1,54,71,792/-. Further the AO asked the assessee to produce freight payment register of freight payment and the evidence in support of transport work done by these vehicles.

4.1. Before the Ld. CIT(A) the assessee produced voluminous additional evidence running in 1000 of pages. The Ld. CIT(A) called for remand report from the AO who has submitted that additional evidence is not admissible and does not explain sundry creditors. The Ld. CIT(A) deleted the addition in para 5.2 as under:

“Ground No.2 & 9:- Through these grounds of appeal the appellant has challenged the addition of addition of Rs.6,36,75,614/- on account of unproved liability u/s 68 of the I.T. Act. The AO made the addition on the ground that the appellant failed to produce the owners of vehicles for verification. The appellant is an individual engaged in the transportation business and have to engage the vehicles from various places. The appellant was having sundry creditors numbering 150 vehicle-wise which is spread all over India. The AO made the addition only on the ground that the appellant failed to produce the vehicle owners. The AO has not made any enquiry by issuing notices u/s 133(6) of the I.T. Act, making an enquiry by Inspector or issuing summons and commissions. No enquiry of whatsoever was made by the AO. During the course of appellate proceedings, the appellant furnished the confirmations from various persons. During the course of remand proceedings also, the AO has not made any enquiry. The AO without making any enquiry stated that genuineness of sundry creditors is not acceptable. The appellant's books of account are audited u/s 44AB of the IT Act. All the expenses are duly recorded. and entered. The AO has not pointed out any specific defects in the books of accounts. The defects pointed out are general in nature. The appellant need not maintain separate books for each and every contract. Considering the nature of business it is not feasible to maintain the log book. The transport payments were duly recorded in the books of account and the AO has not pointed out which transport payments were bogus. The AO is not justified in making the addition without rejecting the books of account of the appellant. The AO has not rejected the books of account and not pointed out any specific defect. The appellant's books of account are audited u/s 44AB of the IT Act. All the expenses are duly recorded and entered. The AO has not pointed out any specific defects in the books of accounts. The defects pointed out are general in nature. The appellant furnished the confirmation from creditors which clearly show that there was an opening balance and during the year transportation was done by the truck owners and the same has been credited and the same was paid in the next year. No efforts of whatsoever has been made by the AO for verification of the creditors. The inability of the AO to verify the confirmations of creditors filed by the appellant is not a sufficient reason for rejecting the confirmations. When the entries stand in the name of third party and the appellant establishes the identity of the creditor and produce evidence showing that the entry is not fictitious, initial burden lying on the appellant stands discharged, the burden. shifts to the revenue to show that entry represented appellant's" suppressed income. The AO failed to establish that the confirmations were fictitious. Therefore, the addition made by the AO amounting to Rs.6,36,75,614/- is Deleted. Therefore, the appeal on these grounds is Allowed.”

4.2 Thus, it is clear that the addition was deleted by the Ld. CIT(A) on technical ground without examining of the additional evidence filed by the assessee. Further we note that the assessee has filed the confirmations in 1000 pages and no details of creditors are given in those confirmations except the vehicle number and signature. On the first look of these confirmations it appears that the signatures are of same font and style as well as in the same ink and impression of writing. Thus, *prima facie* it appears that these signatures have been done in one go and therefore, the genuineness of the signature is not free from serious doubt. It is matter of record that in the alleged confirmations no, PAN or address of the sundry creditors is given therefore, such voluminous records requires a proper and thorough verification and examination which was neither done by the AO nor by the Ld. CIT(A). Even otherwise this exercise of verification and examination of this voluminous record could not be done properly in the remand proceedings due to time constrain. Accordingly in the facts and circumstances of the case and in the interest of justice we set aside the impugned order of the Ld. CIT(A) and remand the matter to the record of the AO for proper adjudication after verification and examination of the evidence filed by the assessee as well as granting opportunity of hearing to the assessee.

5. Ground No.2 is regarding disallowance of depreciation on vehicles.

5.1 Ld. DR has submitted that during the year under consideration the assessee has purchased 36 vehicles (trucks) and claimed full depreciation in respect of 15 vehicles and 50% depreciation on the remaining 21 vehicles. The AO noted that the assessee could not give any evidence in respect of the days for which the vehicles were put to use in the absence of books of account. The assessee did not produce books of account and therefore, the claim of the assessee that 15 vehicles were used for more than 180 days and 21 vehicles were used for less than 180 days could not

be verified in absence of books of accounts. The AO obtained the information from M.P. Transport Department portal and found that the claim of assessee in respect of 15 vehicles used for more than 180 days was totally incorrect as these vehicles were registered on 05.10.2011 and their permits date & fitness date was also 05.10.2011. The remaining 21 vehicles purchased in January 2012 and their permits date and fitness dates are 11.04.2012. Thus, Ld. DR has submitted that on the inquiry conducted by the AO on the portal of the Transport Department the claim of the assessee was found to be incorrect and consequently the claim of depreciation in respect of 15 vehicles was allowed @ 50% of the rate applicable and rest of 21 vehicles were not used during the year under consideration and consequently the depreciation on the same was disallowed. He has relied upon the order of the Assessing officer.

6. We have considered the submission of ld. DR and carefully perused the orders of the authorities below. The AO has restricted the full claim of depreciation on 15 vehicles to 50% by considering the fact that those 15 vehicles were registered on 05.10.2011 and their permit & fitness was also given on 05.10.2011. In respect of balance 21 vehicles purchased on January 2012 the AO noted that these 21 vehicles were registered on 11.04.2012 and their permits & fitness date was also 11.04.2012. The AO obtained these details from the portal of the M.P. Transport Department and given at page no.5 of the assessment order as under:

Sr. No.	Vehicle No.	Registration Date	Permit Date	Fitness Date
1.	MP45H3450	05/10/2011	05/10/2011	05/10/2011
2.	MP45H3550	05/10/2011	05/10/2011	05/10/2011
3.	MP45H3650	05/10/2011	05/10/2011	05/10/2011
4.	MP45H3750	05/10/2011	05/10/2011	05/10/2011
5.	MP45H3850	05/10/2011	05/10/2011	05/10/2011
6.	MP45H3950	05/10/2011	05/10/2011	05/10/2011
7.	MP45H4050	05/10/2011	05/10/2011	05/10/2011
8.	MP45H4150	05/10/2011	05/10/2011	05/10/2011
9.	MP45H4250	05/10/2011	05/10/2011	05/10/2011
10.	MP45H4350	05/10/2011	05/10/2011	05/10/2011
11.	MP45H4450	05/10/2011	05/10/2011	05/10/2011
12.	MP45H4550	05/10/2011	05/10/2011	05/10/2011
13.	MP45H4650	05/10/2011	05/10/2011	05/10/2011
14.	MP45H4750	05/10/2011	05/10/2011	05/10/2011
15.	MP45H4850	05/10/2011	05/10/2011	05/10/2011
16.	MP45H4950	11/04/2012	11/04/2012	11/04/2012
17.	MP45H5050	11/04/2012	11/04/2012	11/04/2012
18.	MP45H5150	11/04/2012	11/04/2012	11/04/2012
19.	MP45H5250	11/04/2012	11/04/2012	11/04/2012
20.	MP45H5350	11/04/2012	11/04/2012	11/04/2012
21.	MP45H5450	11/04/2012	11/04/2012	11/04/2012
22.	MP45H5550	11/04/2012	11/04/2012	11/04/2012
23.	MP45H5650	11/04/2012	11/04/2012	11/04/2012
24.	MP45H5750	11/04/2012	11/04/2012	11/04/2012
25.	MP45H5850	11/04/2012	11/04/2012	11/04/2012
26.	MP45H5950	11/04/2012	11/04/2012	11/04/2012
27.	MP45H6050	11/04/2012	11/04/2012	11/04/2012
28.	MP45H6150	11/04/2012	11/04/2012	11/04/2012
29.	MP45H6250	11/04/2012	11/04/2012	11/04/2012
30.	MP45H6350	11/04/2012	11/04/2012	11/04/2012
31.	MP45H6450	11/04/2012	11/04/2012	11/04/2012
32.	MP45H6550	11/04/2012	11/04/2012	11/04/2012
33.	MP45H6650	11/04/2012	11/04/2012	11/04/2012
34.	MP45H6750	11/04/2012	11/04/2012	11/04/2012
35.	MP45H6850	11/04/2012	11/04/2012	11/04/2012
36.	MP45H6950	11/04/2012	11/04/2012	11/04/2012



6.1. On appeal the Ld. CIT(A) deleted the addition in para 5.3 as under:

“5.3 Ground No.3 & 10:- Through these grounds of appeal the appellant has challenged the addition of Rs.95,99,872/- on account

of depreciation. The AO made the addition on the ground that vehicles purchased during the year under consideration has not been put to use. He relied on the date of registration. The appellant has purchased 50 vehicles in the month of July, 2011 and 21 vehicles in the month of January, 2012. The RTO issued the temporary registration on payment of taxes. The RTO issued temporary registration for 15 vehicles in the month of August, 2011 and for 21 vehicles in the month of February, 2012 and paid the taxes accordingly. The appellant has paid road tax amounting to Rs.460/- for each vehicle. Mere non-registration of vehicles under Motor Vehicles Act will not disentitle the appellant for claiming depreciation. The purpose of registration under Motor Vehicles Act is different. It permits the appellant to ply the vehicle in any public place. It does not indicate a legal evidence of ownership. The ownership of the vehicle has to be determined from finances utilized in making purchases of vehicles, its control and management, use of the same as an apparatus for earning income, declaring income earned from these vehicles as appellant's in the return of income and their acceptance by the Department and there being no counter-claim against such declaration. Since as facts stand, depreciation has been disallowed merely on the ground that vehicles are not registered before March, 2012 and no other facts about investment, transfer of liabilities, plying of trucks by the appellant, declaration of income there from by the appellant and acceptance of the same by the Department are not disputed then appellant is treated as legal owner of the vehicles and claim of depreciation is to be allowed. The provisions of s. 22(1) of Motor Vehicles Act do not prevent a person from becoming owner of a motor vehicle without registration. Registration is not an essential prerequisite for acquisition of ownership of a motor vehicle for the purpose of running of the vehicle in any public place. Therefore, whether the vehicles were registered in the appellant's name or not, is not very material for the purpose of this case. This may be a factor that has to be taken into consideration. There is no reason to hold that the appellant was not the owner of the vehicles because the vehicles were not registered in the name of the appellant. The question of ownership is essentially a question of fact. In this case the new vehicles acquired and used by the appellant before March, 2012. That the appellant has purchased fifteen and twenty one new vehicles is not disputed. The only argument is that the vehicles were not registered in the name of the appellant under the Motor Vehicles Act before March, 2012. But that is one of the factors that have to be taken into consideration for deciding the question of ownership of the vehicles. It cannot be said as a matter of law that unless the vehicles are registered in the name of the appellant, the appellant cannot be regarded as the owner of the vehicles and put to use and was entitled to claim depreciation allowance on these vehicles. The requirement of s. 32 of the IT Act is that the vehicles must be "owned by the appellant and put to use". This section does not require that the appellant must be a registered owner of the vehicles in order to

claim depreciation allowance in respect of them. It is clear that the vehicles in question had been purchased by the appellant. The property in the vehicles passed on to the appellant. The law is well settled that in case of sale in which the price is to be paid by installments, the property passes as soon as the sale is made, even though the price has not been fully paid and may later be paid in installments. The appellant had purchased the motor vehicle for valuable consideration and used the same for his business, cannot be denied the benefit of depreciation on the ground that the registration was not done under the Motor Vehicles Act. Hence the appellant is entitled to depreciation on the vehicles. Therefore, the addition made by the AO amounting to Rs.95,99,872/- is Deleted. Therefore, the appeal on these grounds is Allowed.”

6.2 Thus, the Ld. CIT(A) has deleted the addition by accepting the claim of the assessee that prior to the regular registration these vehicles were granted temporary registration. We find that without fitness, insurance and permit, the commercial heavy vehicles cannot be used for transportation solely under temporary registration. Therefore, the temporary registration would not be proof of vehicles used for business purpose. The assessee has not produced any record to show that prior to registration, grant of permit and fitness certificate as well as insurance these vehicles were used for transportation of goods. The assessee has not produced any consignment/builty in support of his claim that these vehicles were used for business purpose prior to the registration and other permissions. Thus, the finding of the Ld. CIT(A) is based solely on the presumption without any supporting evidence and hence, the same is not sustainable and liable to be set aside. 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 order of the AO is restored.

7. Ground No.3 is regarding disallowance of repair & maintenance expenses u/s 40(a)(ia) for want of TDS which was deleted by the CIT(A).

7.1 Ld. DR has submitted that the assessee has made payments to various parties exceeding Rs.30,000/- in respect of repair and maintenance without deducting tax at source. The AO has given details of payments made on account of repairs and maintenance total amounting

to Rs.23,38,690/- on which the assessee has not deducted tax at source and therefore, the same was disallowed u/s 40a(ia) of the Act. He has relied upon the order of the AO.

8. We have considered the submission of ld. DR and carefully perused the orders of the authorities below. Ld. AO has made the disallowance of the entire repair and maintenance expenses u/s 40a(ia) of the Act without giving a finding as how the provisions of section 194C is applicable in respect of all these payments. On appeal the Ld. CIT(A) has deleted this addition in para 5.4 as under:

“Ground No.4 & 11- Through these grounds of appeal the appellant has challenged the addition of Rs.23,38,690/- out of repair and maintenance on account of non-deduction of TDS. The AO made the addition on the ground that the appellant has not deducted the TDS on the payment made for the repairs and maintenance. The payment made for repair and maintenance of vehicles is not under an agreement and section 194C is not applicable. The payment for repair and maintenance of vehicles to various parties on account of job work charges and spare parts used by the mechanic is not covered within the definition of works contract. The payment for repair and maintenance of vehicles are mainly for spare parts of the vehicle. The appellant was not required to deduct the TDS on the payment made on account of repairs and maintenance. Therefore, the addition made by the AO amounting to Rs.23,38,690/- is deleted. Therefore, the appeal on these grounds is Allowed.”

8.1 Thus, it is clear that the ld. CIT(A) has deleted this addition on the ground that the payment made by the assessee for repair and maintenance is not under any contract or agreement and therefore, the provisions of section 194C are not applicable. Accordingly we do not find any error or illegality in the impugned order of the Ld. CIT(A) qua this issue.

9. Ground no.4 is regarding the disallowance of interest from loan to relatives.

9.1 Ld. DR has submitted that the assessee has given interest free loan/advances of Rs.76,93,211/- to relatives. The AO asked the assessee to explain the business expediency for the advance made to the various

parties. The assessee did not give any reply whereas the assessee has taken interest bearing borrowed fund from bank as well as other parties. Therefore, the proportionate interest on the interest free advances made to the relatives and other parties is not allowable. He has relied upon the order of the AO.

10. We have considered the submissions Id. DR and carefully perused the orders of the authorities below. The AO made disallowance of interest on account of interest free loan and advance given to the relatives without any business expediency. Accordingly addition of Rs.9,23,185/- was made by the AO. On appeal the Ld. CIT(A) has deleted the addition in para 5.6 as under:

“5.7 Ground No.6 & 13:- Through these grounds of appeal the appellant has challenged the addition of Rs.9,23,185/- on account of notional interest. The appellant has given the loan and advance to the persons from own fund and interest free fund. It is accepted principle that if there is interest free fund available to the appellant sufficient to meet its investment and at the same time the appellant raised the loan, it can be presumed that the investment is from the interest free fund available. It is not the case that the appellant has diverted interest bearing borrowed funds for investment not earning income. Therefore, the addition made by the AO amounting to Rs.9,23,185/- is Deleted. Therefore, the appeal on these grounds is Allowed.”

10.1 Thus, it is clear that the Ld. CIT(A) has deleted the addition on the ground that the assessee's own interest free fund is sufficient to meet the requirements of interest free advance/loans given to the relatives. This is not simple case of assessee's own fund available for giving such interest free advance/loans because of the fact that the assessee is showing outstanding sundry creditors of more than Rs. 6 crores and also shown the outstanding debtors of more than Rs.1.5 crore. The assessee has explained non-payment of the sundry creditors due to non-availability of the funds and non-receipt of the payment from the debtors. Therefore, the use of borrowed funds for the purpose of giving loan and advances to the relatives without interest is not ruled out. The assessee has not disputed that there is no business expediency in respect of these transactions of interest free advances/loans to the relatives and other parties. Thus, in

the facts and circumstances of the case when the assessee has expressed non-availability of funds for making payment to the sundry creditors then the availability of interest free funds with the assessee for giving interest free advances and loans required a proper verification for which the assessee did not furnish any evidence before the AO. Since we have already set aside some of the issues to the record of the AO for proper verification and examination therefore, in the interest of justice the impugned order of the Ld. CIT(A) is set aside and this issue is remanded to the record of the AO for proper verification and examination of the record to ascertain whether the assessee's own interest free fund was sufficient and available for granting these interest free loans/advances. Needless to say the assessee be given appropriate opportunity of hearing before passing afresh order.

11. Ground No.5 is regarding the disallowance of expenditure for want of supporting evidence.

11. Ld. DR has submitted that the assessee has claimed expenses of Rs.24,61,85,402/- excluding depreciation. The AO asked the assessee to produce books of account but the same were not produced. The AO issued show cause as to why 20% of the total expenses should not be disallowed for want of supporting evidences. The AO after excluding other disallowances made on account of freight payments and interest expenses has finally made disallowance of 10% on the remaining expenses of Rs.5,69,93,266/- resulting addition of Rs.56,99,327/-. Thus, Ld. DR has submitted that the assessing officer has made a reasonable disallowance on the balance expenses for which the assessee has not produced any supporting evidence.

12. We have considered the submission of ld. DR and carefully perused the orders of the authorities below. The assessing officer has made disallowance of 10% in respect of the expenses to the tune of Rs.5,69,93,266/- in para 12 as under:

“12. The assessee has shown receipts of Rs. 27,79,13,476/- out of which he claimed expenses of Rs. 24,61,85,402/- excluding depreciation. During the course of assessment proceedings the assessee was asked to produce books of account but the same were not produced. Thereafter a show cause notice was issued on 17/03/2015 fixing the case on 24/03/2015, asking the assessee that as the books of account has not been produced, why the 20% of total expenses should not be disallowed. The assessee has neither attended on the date of hearing nor any written submission was furnished as such it is clear that the assessee has no objection for such disallowance. However in the preceding paras an addition of Rs. 6,36,75,614/- has been made in respect of freight payment as such the total freight payment of Rs. 17,53,57,412/- is also excluded out of total claimed expenses of Rs. 24,61,85,402/-. Further as the interest has been paid to the bank therefore the same is also excluded to work out amount for disallowance. As such total amount remaining is Rs. 5,69,93,266/- on which 10% disallowed and result an addition of Rs. 56,99,327/- added to the income of the assessee.”

12.1 On appeal the Ld. CIT(A) has deleted the addition in para 5.7 as under:

“Ground No.7 & 14- Through these grounds of appeal the appellant has challenged the addition of Rs.56,99,327/- out of various expenses. The appellant is engaged in transportation business. The above expenditures are integral part of the business. The AO is not justified in making the disallowance out of above expenses without any reason. The AO has made the disallowance in an adhoc manner without specifying which expenses are not supported by vouchers. The adhoc disallowances without identification of expenses which is not properly vouched and without finding any defects in any vouchers is not at all justified when appellant's books of account are duly audited. The AO has not brought out any specific instance wherein the expenditure debited under various heads was not for the purpose of business of the appellant. Therefore, the addition made by the AO amounting to Rs.56,99,327/- is Deleted. Therefore, the appeal on these grounds is Allowed.”

12.2 Thus, the Ld. CIT(A) has deleted the addition made by the AO on the ground that the AO has made ad hoc disallowance without specifying expenses which is not properly vouched and without giving any finding on the defects in the vouchers. The Ld. CIT(A) has also pointed out that assessee's books of account are duly audited. However, the AO has clearly stated that the assessee did not produce books of account as well as

supporting evidence of the claim of various expenses. Once the books of account as well as supporting evidences were not produced by the assessee then the AO was left with no option but to make reasonable disallowance as the assessee failed to prove that the expenditure was incurred wholly and exclusively for the purpose of business. Merely because the books of account of the assessee are subject to audit u/s 44AB does not ipso facto establish all the claim of the assessee as allowable. Therefore, if the assessee has failed to produce supporting vouchers in respect of the claim of expenditure then the AO is justified in making a reasonable disallowance of all such expenses as held by the Hon'ble Allahabad High Court in case of *Pr. CIT vs. Rimjhim Ispat Ltd.* 382 ITR 152 in para 7 to 9 as under:

“7. Having heard the learned counsel for the parties, we find that there is an express finding given by the Assessing Authority as well as by the Ist Appellate Authority with regard to non-production of bills and vouchers and for not maintaining the stock register. In the absence of non-production of bills and vouchers, the Assessing Officer was justified in disallowing certain expenditure by 10%, which was reduced by the Ist Appellate Authority to 5%. This aspect had not at all been considered by the Tribunal and the same had only been allowed on the ground that the turnover has increased by 5% and the expenditure has reduced. The Tribunal has lost sight of the fact that the expenditure claimed under the head manufacturing expenses, which forms part of the "profit and loss account", showing expenses made by the assessee are required to be proved by production of bills and vouchers. In the absence of production of bills and vouchers, an inference can be drawn by the Assessing Authority that such expenses shown under this head were inflated or were not supported by any bills, vouchers or any other documentary evidence, which would justify the Assessing Officer in disallowing certain portion of such expenses.

8. In the light of the aforesaid, we are of the opinion that the Tribunal committed an error in allowing the appeal of the assessee and by totally deleting the disallowance of 5%. We, accordingly, allow the Ist question of law as stated aforesaid, in favour of the appellant, i.e., the Department and against the assessee and set aside that part of the order of the Tribunal on this aspect and restore the order of the Ist Appellate Authority. In our opinion, the disallowance of 5% in the facts of the case is justified.

9. Insofar as the second question is concerned, nothing has been brought on record by the Department to indicate as to what was the

direction given by the authority for the assessment year 2001-02. We are of the view that the expenses made by the assessee on telephone and conveyance running expenses, etc have to be dealt with in the same fashion as have been dealt in the earlier assessment years. The Tribunal has relied upon a decision of the Gujarat High Court holding that the remuneration given to the Directors which includes any expenditure incurred in providing benefit free of charge under the Companies Act cannot be disallowed. As such disallowance for maintenance of vehicle or conveyance and telephone is not justifiable. The said decision is squarely applicable in the present case.”

12.3 Accordingly in the facts and circumstances of the case and interest of justice the impugned order of the Ld. CIT(A) is set aside and disallowance made by the AO is restricted to 5% of such expenses instead of 10%.

For A.Y.2014-15

The revenue has raised following grounds :

“i) Whether on the facts and in the circumstances of the case. Ld. CIT(A) was justified in deleting the disallowance of Rs. 9.64.102/- made u/s 36(1)(iii) of the I.T. Act, on account of interest expenses.

(ii) Whether on the facts and in the circumstances of the case. Id. CIT(A) was justified in deleting the addition of Rs. 2,35,94,714/- made on account of unexplained cash credits u/s 68 of the IT. Act.

(iii) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs. 69.70.000/- made on account of unexplained investment in bank deposit u/s 69 of the I.T. Act.”

13. Ground no.1 is regarding disallowance of interest on account of interest free advance to relatives.

14. We have considered the submissions of ld. DR and carefully perused the orders of the authorities below. An identical issue has been considered and decided by us for A.Y.2012-13. Accordingly in view of our finding on this issue for A.Y.2012-13 this issue is remanded to the record of the AO on the same terms and directions.

15. Ground no.2 is regarding disallowance made by the AO on account of sundry creditors.

16. We have considered the submissions of ld. DR and carefully perused the orders of the authorities below. In view of our finding on this issue for A.Y.2012-13 this issue is remanded to the record of the AO on the same terms and directions.

17. Ground no.3 is regarding unexplained investment on account of deposit in the bank.

17. Ld. DR has submitted that during the course of assessment proceedings the AO asked the assessee to explain cash deposited by him in the bank account during the year under consideration. In response the assessee explained that the saving bank accounts are being used in assessee's business operations carried out at various places in India and therefore, for meeting the various expenses the cash is deposited in these bank accounts. Ld. DR has submitted that this reply of the assessee is very vague as the assessee did not furnish saving bank accounts statements and also not produced the cash book for verification. Therefore, in absence any evidence in support of the source the AO has made addition of Rs.69,70,000/- in respect of deposit made in the two saving bank accounts of the assessee. He has relied upon the order of the AO.

18. We have considered the submissions of ld. DR and carefully perused the orders of the authorities below. The AO has made the disallowance in para 12.2 as under:

12.2 The assessee has not furnished copies of his savings bank account statements for the period under consideration. He has not produced cash book for verification and in such circumstances his claim that the cash was deposited in bank accounts out of available cash in hand cannot be accepted to be correct. The assessee is involved in the business of transport contract and entire payments are received by him only through cheques. Though, many expenses are incurred by him in cash and he is required to withdraw cash out of his bank accounts, such general claim cannot be accepted. The assessee was given sufficient opportunity of hearing and he could

have produced cash book and bank statements for the period in order to establish his claim. As the assessee has failed to discharge his onus regarding the sources of cash deposited by him in his savings bank accounts, there is no other alternative than to treat such deposits being made out of his undisclosed income.

12.3 As per ITS details available, the assessee has deposited following amount of cash in his savings bank accounts:-

<i>1. Bank of Baroda, Meghanagar</i>	<i>Rs. 12,70,000/-</i>
<i>2. Axix Bank. Jhabua</i>	<i><u>Rs.47,00,000/-</u></i>
	<i>Rs.69,70,000/-</i>

18.1 Thus the AO recorded that despite sufficient opportunity of hearing the assessee did not produce cash book and bank statement in support of claim of source of deposit. On appeal the Ld. CIT(A) has deleted the addition in para 4.5 as under:

“Ground No.5:- Through this ground of appeal the appellant has challenged the addition of Rs.69,70,000/- u/s. 69 of the Act. The AO made the addition on the ground that the appellant had made the cash deposit in the bank account. The appellant had made the cash deposit in the bank account as under:-

<i>1. Bank of Baroda, Meghanagar</i>	<i>Rs. 12,70,000/-</i>
<i>2. Axix Bank. Jhabua</i>	<i><u>Rs.47,00,000/-</u></i>
	<i>Rs.69,70,000/-</i>

The appellant's books of account are audited u/s 44AB of the IT. Act. The above accounts are disclosed account of the appellant. The books of account have been prepared after taking into consideration both of above accounts. The AO is not justified in treating the above cash deposit as unexplained investment u/s 69 of the I.T. Act. Therefore, the addition made by the AO amounting to Rs.69,70,000/- is Deleted. Therefore, the appeal on this ground is Allowed.”

18.2 The only grounds on which the Ld. CIT(A) has deleted the addition is that the books of accounts are audited u/s 44AB of the Act. As it is manifest from the impugned order of the Ld. CIT(A) that the assessee did not produce any evidence in support of the source of the deposit made in the saving bank accounts of the assessee. Therefore, the impugned order of

the Ld. CIT(A) without verification of the relevant record and evidence is not sustainable. Accordingly in the facts and circumstances of the case and in the interest of justice we set aside the impugned order of the Ld. CIT(A) and remand this issue to the record of the AO for fresh adjudication after verification and examination of the relevant record/evidence to be produced by the assessee in support of cash deposit.

19. In the result, the appeal filed by the revenue for A.Y.2012-13 is partly allowed for statistical purposes and for A.Y.2014-15 is allowed for statistical purpose.

Order pronounced in the open court on 12.09.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 12.09.2023

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*