

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.2738/Del/2022
Assessment Year: 2013-14

ASAS Global Services Pvt. Ltd., Vs DCIT,
2, Shanti Farms, Chandanhola, Circle 3(2),
Mehrauli, New Delhi.
New Delhi – 110 074.

PAN: AAHCA1209P

(Appellant)

(Respondent)

Assessee by : Shri Sanat Kapoor, Advocate
Revenue by : Shri Om Parkash, Sr. DR
Date of Hearing : 06.09.2023
Date of Pronouncement : 14.09.2023

ORDER

This appeal by the assessee pertaining to Assessment Year 2013-14 is filed against the order of the Id.CIT(A)-23, New Delhi, dated 17th October, 2022. The assessee has raised the following grounds of appeal:-

"1. That the addition of Rs 15,06,553/- upheld by the CIT(A) is illegal , bad in law and without, jurisdiction. This addition made by the AO and upheld by the CIT(A) should be deleted.

2. That, on the facts of the case, the AO has no power and jurisdiction to make any adhoc disallowance as made by the AO in the assessment order. The assessment order and the addition of Rs 15,06,553/- are illegal and incorrect.

3. That the AO and CIT(A) are incorrect in upholding the disallowance of Rs 15,06,553/- made @ 5% of total expense on adhoc basis and further

without pointed out any deficiencies in the vouchers, bills or supporting documents filed by appellant.

4. That the Ld AO has completely ignored the submission of the appellant that for immediately preceding AY 2012-13 the adhoc disallowances of administrative expenses was deleted by Hon'ble CIT(Appeals) and further the department appeal was rejected by Hon'ble Delhi ITAT.

5. That self generated vouchers made for day to day petty expenses amount to only Rs 76,447/- which does not justify or warrant the disallowance of huge amount of Rs 15,06,553/- @ 5% of total expense.

6. That the AO examined total expenses of Rs 3,01,31,063/- and found them to be correct to his satisfaction duly supported with bills & vouchers. The AO made disallowance of Rs 15,06,553/- just because there were some petty cash expenses and self-generated vouchers totaling to Rs 76,447/-. Therefore, disallowance of Rs 15,06,553/- is illegal and bad in law.

7. That without prejudice and in the alternative, the disallowance, if any, should not exceed Rs 76,447/-I.E to the extent of petty cash expenses against self-generated vouchers.

8. That we pray that the disallowance of Rs 15,06,553/- may kindly be deleted as the facts and circumstances do not justify the disallowance.

9. That , without prejudice , the AO has erred in assessing the income at NIL. The return was filed at loss of Rs 1,19,61,711/- and after the disallowance of Rs 15,06,553/- , the assessed loss should have been Rs 1,04,55,158/-. The AO grossly erred in assessing the income at Nil instead of loss of Rs 1,04,55,158/-."

2. The facts giving rise to the present appeal are that the assessee filed its return of income declaring a loss of Rs.1,19,61,711/-. The case was taken up for scrutiny assessment and while framing the assessment, the AO disallowed out of 'other expenses' @ 5% amounting to Rs.15,06,553/- and assessed income at nil. Aggrieved by this, the assessee preferred appeal before the CIT(A) who sustained the addition and dismissed the appeal of the assessee. Aggrieved against this, the assessee is in appeal before this Tribunal.

3. The only effective ground is against sustaining the *ad hoc* addition out of 'other expenses' @ 5% of the total 'other expenses.' The Id. Counsel for the assessee submitted that the expenditure has been disallowed on *ad hoc* basis. He submitted that such *ad hoc* disallowance is contrary to the law settled by various judicial pronouncements. He submitted that in assessee is own case for the assessment year 2012-13, the *ad hoc* disallowance made by the assessing authority was deleted. In this regard, he relied upon the decision of the coordinate Bench of the Tribunal in ITA No.435/Del/2016.

4. On the other hand, the Id. DR opposed the submissions of the assessee and supported the orders of the authorities below. He contended that it was incumbent upon the assessee to prove the expenditure as there is no ambiguity under law. Section 37 of the Act mandates that the assessee is required to prove that the expenditure was made wholly and exclusively for the business purposes. He submitted that in the present case, the assessee grossly failed to prove with supporting evidences that the expenditure was incurred wholly and exclusively for the business purposes.

5. I have heard the rival contentions and perused the material available on record. There is no dispute with regard to the fact that the impugned addition has been made purely on the basis of *ad hoc* disallowance made by the assessing authority. For the sake of clarity, the relevant contents of the assessment order are extracted below:-

"3. During the course of assessment proceedings it is noticed that sum of Rs.21,33,112/-, Rs.1,50,55,576/- & Rs. 1,29,42,375/- were shown incurred towards Vehicle Running and Maintenance, Business meetings & conference expense and Travelling expenses under the head 'Other Expenses'. The assessee was asked to produce bills, and vouchers in respect of other expenses. It has been observed that in some cases for small amount items, the expenses were incurred in cash and self generated vouchers and supporting bills could not be produce. When confronted AR submitted that these expenses are normal in this business and small expenses are incurred in cash too. After discussion Rs. 15,06,553/- @5% of expenses is disallowed and added to the total income."

6. The assessee before the Id.CIT(A) has stated that the expenditure in cash was incurred only to the extent of Rs.76,447/-. At the most, the AO ought to have made disallowance to that extent. The Id. CIT(A) has not given any finding on this submission of the assessee. Since the Revenue has not rebutted the contention that the expenditure to the extent of Rs.76,447/- was incurred in cash and was not supported by the vouchers, the addition is sustained to that extent and rest of the addition is hereby deleted.

7. Apropos another grievance of the assessee that the assessing authority has assessed income at nil when the assessee had claimed loss of Rs.1,19,61,711/-, I find merit in the contention of the assessee. Therefore, I direct the AO to recompute the income of the assessee and claim loss in accordance with the law.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 14.09.2023.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Dated: 14th September, 2023.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi