

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मवती. एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आसं. 806/मुं/2023 (नि.व. 2014-15)
ITA NO.806/MUM/2023 (A.Y.2014-15)

Kheresh Abhay Chheda,
112, R-Plazzia CHS Ltd.,
Swastik Regalia Complex, Waghbil,
Godbunder Road, Thane – 400 615.

PAN: ADTPC-9455-H

..... अपीलार्थी/Appellant

बनाम Vs.

ACIT, Circle -1, Thane,
Ashar IT Park, Wagle Estate,
Thane – 400 604.

..... प्रतिवादी/Respondent

Assessee by : Shri R.D.Khona
Revenue by : Shri Prakash Kishinchandani

सुनवाई की तिथि/ Date of hearing : 10/08/2023
घोषणा की तिथि/ Date of pronouncement : 18/10/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short the 'CIT(A)'] dated 12/02/2023 , for the Assessment Year 2014-15.

2. The gist of grounds raised by the assessee in appeal is as under:

Ground No.1 – Disallowance of sales promotion expenditure -Rs.11,15,728/-

Ground No.2(a) – Adhoc Disallowance @ 30% of site expenses (purchase of Bamboo) -Rs.17,54,652/-.

Ground No.2(b) – Adhoc disallowance @ 10% of office expenses Rs.3,15,875/-.

Ground No.3 – Adhoc disallowance of labour charges – Rs.13,96,498/-.

Ground No.4 – Adhoc disallowance of office expenses, printing and stationery and transport @10% – Rs.2,61,504/-.

Ground No.5 – Disallowance of payment made to sub-contractor Pramod Baburao Salunkhe – Rs.18,26,000/-

Ground No.6 – Disallowance of payment made to sub-contractor Roju Sheikh – Rs.14,70,000/-.

Ground No.7 – Additional grounds of appeal raised before the CIT(A), not adjudicated by the CIT(A).

(i) Adhoc addition of Rs.88,42,882/-

(ii) Levy of Interest u/s. 234A(Rs.59,496/-) & 234B(9,82,509) of the Act

Ground No.8 – Adhoc addition of Rs.81,40,260/-

3. Shri R.D.Khona appearing on behalf of the assessee submitted that the assessee is a civil contractor. Assessee filed his return of income for the impugned assessment year declaring gross turnover of Rs.6.28 crores and total income of Rs.18,60,450/-. During the course of assessment proceedings, the assessee furnished various documents in support of business expenditure claimed. The Assessing Officer without appreciating the evidences filed by the assessee made adhoc disallowances of the expenditure claimed. He further submitted that the assessee had made payments to sub-contractors Pramod

Baburao Salunkhe – Rs.18,26,000/- and Roju Sheikh Rs.14,70,000/-. The assessee had deducted tax at source on the aforesaid payments. The Assessing Officer and the CIT(A) disbelieved the payments to the aforesaid sub-contractors and made addition. The payments made to Pramod Baburao Salunkhe have been disallowed for the reason that he is not regularly filing his return of income. Addition in respect of Roju Sheikh has been confirmed by the CIT(A) on the ground that the address in the return of income, 26AS Statement and the books of the assessee is not the same. He submitted that disallowance cannot be made in respect of the payments if the recipient of amount fails to regularly file his return of income. The assessee has discharged its onus to show payments made to the sub-contractor. Similarly, the payment made cannot be disallowed for the reasons that the address of the recipient in the books of assessee is different from the address given in return of income. The Id. Authorized Representative of the assessee submitted that Pramod Baburao Salunkhe in response to notice u/s. 133(6) by the Assessing Officer has confirmed that he has received the amount and Roju Sheikh has filed an affidavit before the CIT(A) admitting receipt of payments from the assessee.

3.1 The Id. Authorized Representative for the assessee submitted that the assessee's claim of site expenses including purchase of bamboo for scaffolding was disbelieved by the Assessing Officer. The Assessing Officer without rejecting audited books of account made adhoc disallowance of 15%. In first appellate proceedings, the CIT(A) enhanced disallowance in respect of purchase of bamboo to 30% and in respect of other site expenses restricted the disallowance to 10%.

3.2 Similarly, for other expenses viz.

- (i) Office expenses – Rs. 1,51,495/-
- (ii) Printing and stationery – Rs. 4,44,202/-
- (iii) Transportation – Rs.20,19,348/-
- (iv) Labour charges – Rs.1,39,64,985/-

the Assessing Officer made adhoc disallowance of 15% on the ground that vouchers are no verifiable from the third parties. The CIT(A) restricted the adhoc disallowance to 10%. The Id. Authorized Representative for the assessee submitted that the assessee had furnished all the relevant details before the CIT(A) and the Assessing Officer, however, without rejecting books of the assessee, adhoc disallowance was made in an arbitrary and unjustified manner.

3.3 The Id. Authorized Representative for the assessee submitted that the assessee had raised some additional grounds before the CIT(A). In the impugned order, the CIT(A) has referred to the additional grounds raised but has failed to adjudicate the same. The Id. Authorized Representative for the assessee prayed for restoring these grounds of appeal to CIT(A) for adjudication.

4. Per contra, Shri Prakash Kishinchandani representing the Department strongly supported the impugned order. The Id. Departmental Representative submitted that the assessee failed to prove genuineness of the transactions with the subcontractors. One of the contention of the assessee is that TDS has been deducted on the payments made, but no documentary evidence was furnished by the assessee to substantiate the claim. The Id. Departmental

Representative strongly supported the findings of the CIT(A) for disallowing the payments made to Pramod Baburao Salunkhe and Roju Sheikh.

4.1 The Id. Departmental Representative further submitted that in so far as office expenses, site expenses, labour charges, etc. are concerned, majority of the payments were made in cash, hence, the bills/vouchers furnished by the assessee were unverifiable.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The ground No.1 of appeal is in respect of disallowance of sales promotion expenses. The details of the expenses claimed is as under:

Credit Card AECBC	Rs. 3,30,769/-
Credit Card Citi Bank	Rs.3,88,869/-
Complementary item and incidental expenses for obtaining Repair Job from various Societies	Rs.9,89,100/-
Total	Rs.17,08,738/-

The Assessing Officer disallowed entire expenses on the ground that majority of expenses are made in cash and the assessee has not submitted bills/vouchers in support of the claim. With regard to payments made through credit cards the Assessing Officer held that the expenses are personal in nature. In first appellate proceedings, the CIT(A) disallowed entire credit card expenses aggregating to Rs.7,19,638/- and 40% of the remaining cash expenses. Thus, CIT(A) upheld addition of Rs.11,15,278/-. While disallowing cash/ credit card expenditure the CIT(A) has given categorical finding, *“that the cash expenses are more in the nature of business expenses and is incidental to the business carried out where as credit card expenses are more in the*

nature of personal expenses". Once, having held that the expenditure in cash is business expenditure or is incidental to business, we are of considered view that disallowance of 40% of such expenditure is unwarranted. In so far credit card payments are concerned, the contention of the assessee is that these expenses are towards business. No material is placed before us to substantiate that the payments made through credit card are for the business or in relation to business. Hence, we find no infirmity in disallowing credit card payments. Thus, ground No.1 of the appeal is partly allowed in the terms aforesaid.

6. The ground No.2 to 4 are taken up together for adjudication. The ground No.2 to 4 of the appeal is with respect to adhoc disallowance of business expenditure. The said expenditure claimed by the assessee includes:

S.No.	Name	Amount (Rs.)
1	Office Expenses	1,51,495/-
2	Printing & Stationery	4,44,202/-
3	Transportation	20,19,348/-
4	Labour Charges	1,39,64,985/-
5	Site Expenses	90,07,593/-
	Total	2,55,87,623/-

The Assessing Officer made adhoc disallowance of 15% of the above expenses on the ground that the vouchers are not verifiable from third parties. The CIT(A) restricted the disallowance to 10% in respect of office expenses, printing and stationery, transportation and labour charges. In so far are site expenses which includes expenditure for purchase of bamboo Rs.17,54,652/-, the CIT(A) enhanced the disallowance to 30%. The contention of the assessee is that the bamboos are used for scaffolding at the site. The payment for purchase of

bamboos are made through cheque. The CIT(A) has made adhoc disallowance of expenditure towards purchase of bamboo. The said disallowance is merely on suspicion, i.e. purpose for purchase and use of bamboos. The assessee is a civil contractor engaged in repairs and construction of buildings. The bamboos are used for raising scaffolding. We find that the CIT(A) has accepted the fact that the assessee has purchased bamboos, however, in his wisdom he held that the quantum of expenditure on bamboos purchased is on the higher side, hence, disallowed 30% of the expenditure. We find that the reason for making disallowance of 30% towards cost of bamboos is not justified. Once the assessee has been able to show the purpose for purchase of bamboos and the payments are made by way of cheques against invoice, the entire expenditure should have been allowed. The expenditure is purely for the business of assessee. Therefore, payment made towards purchase of bamboos are allowed in full.

In so far as, the other business expenditure viz. office expenditure, printing and stationery, transportation and labour charges are concerned, in the absence of verifiable vouchers, we are of considered view that the CIT(A) is justified in restricting the disallowance to 10% of such expenses. Ergo, ground No.2(a) is allowed in full. Ground 2(b), 3 and 4 are dismissed.

7. In ground No.5 of appeal, the assessee has assailed disallowance of payment to sub-contractor Pramod Baburao Salunkhe Rs.18,26,000/-. The Assessing Officer has made disallowance of the aforesaid expenditure merely for the reason that Pramod Baburao Salunkhe is not filing return of income regularly. The CIT(A) has disallowed assessee's claim of payment to Pramod Baburao Salunkhe doubting of genuineness of the payment made and his

creditworthiness. The assessee on the payments made to Pramod Baburao Salunkhe purportedly deducted Rs.18,260/- as TDS. Purportedly, no 26AS statement of the deductor and the deductee was furnished by the assessee before the CIT(A). At the outset we may point out here that the CIT(A) was not dealing with an issue where the assessee had to satisfy the conditions set out under section 68 of the Act in proving identity, genuineness and creditworthiness of the lender. The assessee had made payment to a sub-contractor. What was relevant to ascertain was, proof of services rendered by Pramod Baburao Salunkhe to the assessee for which he received the payments. Neither the Assessing Officer nor the CIT(A) raised any doubt qua services rendered by sub-contractor for which payment was made by the assessee. The Assessing Officer had issued notice u/s. 133(6) to Pramod Baburao Salunkhe. He responded to the said notice and confirmed the receipt of amount. In so far as proof of TDS by the assessee on payments made to Pramod Baburao Salunkhe, the the Assessing Officer was provided PAN details of sub-contractor, he could have easily accessed 26AS statement that is available on the Department's portal. Non filing of regular return of income by the recipient of amount is not a justifiable reason to disallow the said payment in the hands of payer. We find no valid reason to disallow the payment made to Pramod Baburao Salunkhe. Hence, the disallowance of Rs.18,26,000/- is directed to be deleted, the assessee succeeds on ground No.5 of the appeal.

8. In ground No.6 of appeal, the assessee has assailed disallowance of payment made to sub-contractor Roju Sheikh. A perusal of the assessment order shows that the Assessing Officer has disallowed the payment made to

Roju Sheikh for the reason that he has failed to respond to the summons issued u/s. 131 of the Act. In First Appellate proceedings the assessee filed an affidavit of Roju Sheikh confirming receipt of payment. The only reason for disallowance of payment made to Roju Sheikh was that the address mentioned in the books of assessee is different from the address in return of income and 26AS statement. The CIT(A) has recorded a categorical finding that Roju Sheikh has filed his return of income for the assessment year 2014-15. His 26AS statement was also filed during the appellate proceedings and on perusal of 26AS statement it is evident that payment of Rs.14,71,000/- was made to Roju Sheikh and TDS Rs.14,710/- was deducted. Once it is established that the payments are made by the assessee to Roju Sheikh and the assessee has also complied with the provisions of TDS, disallowing such payment only for the reason that the address mentioned in the return of income of Roju Sheikh and his address in the books of assessee is different cannot be a valid ground for disallowing the payment, especially in light of the fact that the recipient acknowledges receipt of payment with supporting evidence. In the facts of the case, the disallowance of payment made to Roju Sheikh is directed to be deleted, ground No.6 of the appeal is thus allowed.

9. The ground No.7(i) and (ii) of the appeal are with respect to adhoc disallowance of Rs.88,42,882/- and charging of interest u/s. 234A and 234B of the Act. The contentions of the assessee is that these two issues were raised by the assessee before the CIT(A) as additional grounds in the order of appeal. The CIT(A) has mentioned these additional grounds but has failed to adjudicate the same. The Id.A.R of the assessee prayed for sending these grounds back to the file of CIT(A) for adjudication.

10. We find that in so far as additional ground of appeal qua adhoc addition of Rs.88,42,882/- is concerned, it is with respect to adhoc additions confirmed by the CIT(A) on various accounts, that we have already adjudicated above. In additional ground the assessee has assailed the additions from a different facet. While adjudicating Ground No.1 to 6 of appeal, the additions have been considered and the same have been decided on merits. Therefore, no useful purpose would be served for restoring this ground to the CIT(A) for fresh adjudication. Hence, ground No.7(i) is dismissed.

11. As regards charging of interest u/s. 234A and 234B of the Act , levy of interest under the aforesaid sections is mandatory and consequential. Therefore, ground No.7(ii) of the appeal is dismissed being devoid of any merit.

12. In ground No.8, the assessee has assailed addition of Rs.81,40,260/-. No submissions were made in respect of ground No.8, hence, the same is dismissed as such.

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

Order pronounced in the open court on Wednesday the 18th day of October, 2023.

Sd/-

(PADMAVATHY. S)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 18/10/2023
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,
(Dy./Asstt.Registrar) Mumbai